



# HOW CAN I HELP WHEN MY CHILD HAS BEEN BULLIED?

by Ellen A. Callegary, Esq.

**A**CCORDING TO THE US DEPARTMENT OF EDUCATION, forty-six states now have antibullying laws in place, with eighteen providing specific protections to protect students with disabilities who are bullied. Maryland, along with New Jersey, offers the broadest antibullying protections.

What is bullying?<sup>1</sup> Maryland law defines “bullying, harassment, or intimidation” as intentional conduct, including verbal, physical, or written conduct, or an intentional electronic communication. Electronic communication includes communication transmitted by any electronic device, including a cell phone, computer or pager. Many other states include a similar definition.

When is behavior not bullying but just teasing? “Teasing” is viewed as playful, friendly and reciprocal. However, when teasing is hurtful to the person who is the subject of the behavior, it crosses the line and becomes bullying. For individuals with disabilities, comments can often be hurtful even if they are couched as teasing. In my experience, many adults attempt to minimize the harmful effects of bullying by telling the victims that they should “get over it” because the bullies were just “teasing.” These comments result in quashing the victims’ desire to report what is happening to them.

### Reporting bullying

Most bullying laws require school staff to report bullying. As the Maryland State Department of Education (MSDE) noted in their model policy to address bullying: “Sometimes regarded as a ‘rite of passage,’ bullying and harassment can no longer be regarded as such. During the past two decades, the often devastating effects of bullying and harassment have evidenced themselves on the well-being of students and the climate of schools.”

An incident of bullying, harassment, or intimidation may be reported by:

- A student, the parent, guardian, or close adult relative of a student; or
- A school staff member.<sup>2</sup>

MSDE has created a standard reporting form which includes:

- Identity of the victim and the perpetrator
- A description of the incident, including statements made by the perpetrator
- The location of the incident
- Description of any physical injury suffered by the victim
- The number of days a student is absent from school as a result of the incident
- Any request for psychological services initiated by the victim or the victim’s family due to psychological injuries suffered.

When staff, students, or parents learn of bullying, the first thing they need to do is ensure the child’s safety and then let the principal and the child’s teachers know what is going on to prevent future bullying. We have worked with schools where everyone came together immediately to address the behaviors in a proactive, responsive manner. A plan was developed and implemented to protect the child and educate other students about children with disabilities. The student’s IEP was revised to add goals in the area of self advocacy and self esteem.

### Case examples

Unfortunately, not every administrator understands the horrible effects of bullying. Last year, a Baltimore City Public Schools principal attempted to defend his inaction to protect students by testifying that bullying is “a buzz word” of the moment. In a lawsuit, parents said that their nine-year-old son with disabilities was repeatedly beaten by other students at his elementary school, who then targeted their daughter when she defended her brother.

The principal said that the students’ behavior would not have been called bullying until recently. “The word bullying didn’t come about until another child was killed in another municipality. This recently has become a buzz word. Before, when a child had a problem, it was called ‘bothering’ or ‘picked on.’”

A federal court judge in New York State in 2011 considered a case involving the effects of bullying on students with disabilities.<sup>3</sup> As the judge noted, students with disabilities are frequently the targets of bullying. They may be small, or exhibit immature behaviors, or their disability may cause odd behaviors or tics—all of which can draw unwanted attention from antagonistic classmates. The judge found that the bullying those students experience can eventually impair their ability to learn. He set out a three-part test to determine whether bullying effectively denied a student the opportunity to receive in-

struction. If bullying is occurring, he said, it can impair a student’s ability to learn if:

- The bullying is related to the student’s disability;
- The school was aware of the bullying; and
- The school displayed deliberate indifference to reports of the bullying.

As attorneys representing children with disabilities, we hear from our clients about conduct that goes well beyond “bothering.” Parents frequently come to our law firm seeking help to stop bullying that is ignored and minimized by school staff. In our experience, parents are often not even told about the existence of a Bullying Report Form when they complain to school officials about their children being bullied. Despite mandatory school staff reporting, parents find that no report has been filed.

We recently filed a lawsuit in federal court on behalf of a client who experienced ongoing bullying in public schools. The student, called SB in the lawsuit, was threatened, physically assaulted, and insulted, with the aggressors making it clear that he was being targeted as the result of his disabilities. This bullying continued, persistently, over the course of five years. When SB’s parents brought the bullying to the attention of school staff, staff members did nothing. When they pursued their concerns to the school board, the board responded that no bullying could have taken place, because school staff never completed bullying forms.

The case is pending at this time, but SB’s experiences mirror what other clients describe to us. In one of our cases, a middle school student was running out of school and taking a shortcut home, to avoid the bus. His family discovered that, as he walked home from the bus stop, a mob of other students followed him, taunted him, and dared him to fight. The boy eventually began avoiding school altogether. When the family told school administrators about the problem, the school treated the matter as just “boys being boys.”

The mother of another student talked to us about the bullying her son experienced at school. The seventh-grade boy, who we’ll call “Aaron” to protect his privacy, would regularly come home crying, but was reluctant to discuss what was bothering him. Aaron’s mother said that after she asked him a few questions, he admitted that he was being regularly harassed on the bus, and then discussed the physical bullying going on at school. He also told her that while he was at school he had been hit in the face, bitten by another student, and slammed against a locker. When Aaron tried to defend himself, he was punished for fighting alongside his tormentors.

When Aaron’s mother contacted his teachers to discuss her concerns, the teachers brushed off her concerns. One teacher responded that “Aaron is different and other kids are going to notice it.” Another teacher responded in the same vein: “Everybody has their own thing, they have to deal with it.” Aaron’s principal did not want to call Aaron’s experiences “bullying.”

### Strategies to help when a child is bullied

We agree with the advice Aaron’s mother offered for other parents:

- **Listen to your children and look at them—is what is coming out of their mouths consistent with their affects?** When asked what’s wrong, kids will often say “nothing.” If they’re being bullied, they likely won’t discuss the issue with you right away. Look at your chil-



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dren when they come home, and try to decide if how they act matches up with what they’re telling you about their day.

- **Ask straight out.** If you think something’s wrong, and your child doesn’t offer any explanation, ask specific and direct questions. If your child says “It was no big deal,” ask him or her to tell you exactly what happened.
- **Don’t wait.** If your child tells you that someone’s bothering them at school, tell the principal and the teachers right away. Ask them to fill out a bullying report. If you don’t address it right away, school staff will often dismiss your concerns—they will say that later instances of bullying are “isolated instances.”
- **Document the bullying yourself.** If your jurisdiction does not have a bullying reporting form, write a letter to the principal documenting what happened and asking that the matter be resolved. Aaron’s mother said that when school staff weren’t willing to report bullying, the parents began to complete the reports themselves, to document the ongoing problems that their son experienced, and to make sure written records of the incidents were on file with the school. 🗨

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**Ellen A. Callegary, Esq.,** is a founding partner of the law firm of Callegary & Steedman, P.A. She has been an attorney for over thirty years. Her practice focuses on representing children and adults with disabilities. During her ten years as an assistant attorney general for the State of Maryland, she worked directly with two Attorneys General, advising state agencies on matters related to the rights of persons with disabilities. She has lectured extensively on special education and health law, and taught a Mental Health Law Clinic as a clinical law professor at the University of Maryland School of Law, where she has taught several courses including the “Civil Rights of Persons with Disabilities Seminar” as an adjunct professor.

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#### NOTES

1. Maryland Code, Education Article, § 7-424(a)
2. Maryland Code, Education Article, § 7-424(b)
3. TK and SK v. New York City Dep’t of Educ., 779 F.Supp.2d 289 (2011 E.D.N.Y.)