

Presentation to the Governor's Task Force on the Prevention of School Bullying
Donald A. Gemberling, Attorney and consultant. June 4, 2012

Problem Statement. Labeling a child as a bully will have long term consequences for that child and his/her family. How the terms "bully" and "bullying" are defined and what fair and open standards are established to regulate how those labels are applied and used by schools and other institutions will be critical to minimizing adverse and unfair consequences to children.

Labeling of children in a variety of ways, including such things as "homosexual tendencies", "pre-delinquent", "mentally retarded", "sociopathic", and "overly aggressive" has a long history in schools in this country. (See Dossier: The Secret Files They Keep On You, Aryeh Neier, Stein and Day Publishers, New York 1975 and the report on school record keeping practices published by the Russell Sage Foundation in 1974.) The Sage Foundation report played a critical role in the 1974 passage of the federal "Family Educational Rights and Privacy Act".

"Bully" and Related Definitions.

1. From Webster's Unabridged Dictionary, Second edition, 1979.

Bully. 1. A person who hurts, frightens, threatens, or tyrannizes over those who are smaller or weaker.

(to) Bully 1. to act the bully toward; to force (a person) into doing something by threatening loudly; browbeat; bulldoze.

2. From Webster's Ninth New Collegiate Dictionary, 1983.

Bully. 2. a threatening, browbeating fellow; esp. one habitually cruel to others weaker than himself.

Bully (v.) to treat abusively; to use browbeating language or behavior; bluster.

3. From S.F. 2285 and H.F. 1953.

Subd. 2. "Bullying means" means conduct that . . .

(1) is so severe, pervasive, or objectively offensive that it substantially interferes with the student's educational opportunities;

(2) places the student in actual and reasonable fear of harm;

(3) places the student in actual and reasonable fear of damage to property of the student; or

(4) SUBSTANTIALLY DISRUPTS THE ORDERLY OPERATION OF THE SCHOOL. (Emphasis added.)

Recent news stories and letters to the editor illustrate the wide spread and loose usage of the terms bully and bullying. A resigned Roseville athletic coach called parents bullies. An opponent of the tax supported football stadium called the Vikings management bullies.

Action Suggestions. This Task Force should:

1. Very carefully define the terms “bully” and “bullying”.
2. Be mindful of and hear testimony from school districts that currently define bullying to include what most people see as normal child behavior. (Little boys, especially, do spend a certain amount of time shoving back and forth.) Question how those policies were arrived at, how they are working and how many children in those districts have acquired the label of bully.
3. In deciding definitions and suggesting policies and procedures, be very aware of different cultural views of physicality and physical interaction among children. (Many of us were taught that the only way to deal with a bully is to hit him or her harder than you were hit, otherwise known as the “golden gloves” cure for bullying.)
4. Children of color are disproportionately disciplined in public schools. (A number of studies clearly establish that fact.) It is likely that the application of the “bully” label will exacerbate that problem. The Task Force should make this issue a priority item in its deliberations.
5. Be aware that under current laws, prospective employers, the military, and future schools in which a student may seek to enroll can force students or their parents to release the content of school records.
6. Be mindful that a lack of acceptable definitions of terms like bully and bullying and attendant real or perceived mislabeling of children will bring about a popular reaction. This reaction may include greater recourse to and use of the rights to challenge accuracy and completeness of data under state and federal laws that will have a financial impact on students, parents and schools.

In his book Dossier, Areyh Neier, discussed the need to change existing laws on dossiers to deal with the impact of dossiers on children and others. In conclusion, he wrote the following:

It is urgent that we bring back into the social mainstream the millions of those rootless and disaffected people. We can recapture many for a constructive life. Our best hope is to stop adding to the pariah population. We can end the labeling of children as “disruptive” or “mentally deficient” [or bullies] . . . We can end the dossiers of misdeeds, real and alleged, that follow us and our children everywhere. (Dossier, page 199.)