

# Restraining orders needed to check school bullying

By ROBERT DEKOVEN

**D**espite the state Legislature's best efforts to reduce school bullying and related crime, a recent report by the state auditor indicates that school bullying is still a major problem in California. In San Diego County, for example, at least four student suicides by teens in the spring were attributed to relentless school bullying.

For over the past 30 years, the Legislature has provided fairly strict guidelines for school districts to follow in dealing with harassment of students by fellow students. Disciplinary actions are on the rise, as well as expulsions and referrals to the juvenile justice system. A handful of students have sought relief through civil remedies.

Our efforts to combat school bullying have produced little solace for anyone. More kids being disciplined, suspended and expelled, while other kids enter the "school-to-prison" pipeline.

New Jersey's approach has been to require school districts to provide a safe place to learn on school grounds. If not, schools pay the costs of sending the bullied kids to public or private schools. This may be California's next option. Yet there may be a cheaper solution.

In the past, the Legislature empowered courts to issue restraining orders to better address domestic violence, child abuse, elder abuse, workplace violence, and more recently potential violence at a post-secondary school campus. It's now time

to broaden the reach to include "potential violence at any educational institution."

Under current law, a local school board can obtain a "workplace violence" protective order against a student who threatens the board or a school employee. But a school district may not be able to restrain a fellow student from bullying or threatening another student under a workplace violence regime.

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Sympathetic school staff are unable to help the student and his or her parents. There are the traditional harassment procedures under the Code of Civil Procedure. Families unable to hire a lawyer or navigate the legal process are often without help.

Enforcing the order on school grounds may also be problematic.

School boards complain the real harassment does not take place on school grounds. It occurs off school grounds, often through social media. Efforts to combat such off-school conduct can run afoul with First Amendment and jurisdictional concerns.

For example, in one federal case, the Beverly Hills Unified School District was sued for taking disciplinary action against a student who used social media to allegedly harass a fellow student. Even though the victim argued that she felt distraught while on school grounds, the court found the statements made on a website off school grounds did not have a sufficient "nexus" to the school in order to impose

discipline. In short, the statements were protected free speech. But the 9th U.S. Circuit Court of Appeals distinguished that last year when it found that a student who threatens to cause harm on school grounds does have a sufficient nexus.

Navigating between these rulings can prove costly for school districts. But a court can via a restraining order prohibit speech/conduct that might otherwise be immunized by First Amendment concerns. For example, in one case parents filed a restraining prohibiting a boy from contacting their daughter. Despite his First Amendment "freedom of associa-

tion" claim, the court ruled in favor of the parents.

Bullying/teasing is not and should not necessarily be a crime. This is a concern for the Legislature and juvenile authorities. Behaviors once treated as school disciplinary matters wind up in our courts, fueling what is the "school-to-prison" pipeline.

As noted in recent news reports, a player on the U.S. Women's Soccer team was once the object of a restraining order while she was in high school. She was prohibited from being in contact with a fellow student. She was not convicted of any crime. She went on to pursue a very successful career.

A restraining order is not a conviction of a crime. A crime occurs if the person violates the order.

Expanding anti-violence protection orders to schools would give school officials and designers a simple tool to address malicious conduct that can often lead to dire consequences, such as suicides and school shootings.

Presumably, the Judicial Council could simply modify forms now used to restrain violence at private universities to include all schools.

Hopefully, there will be little use for this procedure in the future. Civility in the school place will prevail as it should in the workplace.

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