

Analysis on Prevention and Control of School Bullying in Legal View

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Abstract: School bullying does great harm to students. The existing approaches to preventing and controlling school bullying have a limited influence. There are several problems of laws in the management of school bullying. Besides, in the practice of managing school bullying, there also exist phenomena that deviate from the statutable spirit. They all need to be analyzed carefully.

Keywords: School bullying; Rule of law; Substantial results of management

1. Introduction

At present, the department concerned released policies of preventing and controlling campus bullying one after another, which creates an atmosphere of attaching importance to preventing and controlling school bullying and provides a policy sustainment for winning the battle against school bullying. Now managing school bullying has acquired certain effectiveness. However, some issues are still exposed.

2. The Existing Approaches to Preventing and Managing School Bullying Have Insufficient Substantial Results

2.1. The degree of attention needs to be strengthened

From measures that each responsible subjects take currently to prevent and manage campus bullying, we can see that these main bodies lack extraordinary attention and obvious features. Some of them take those measures for the occasion to deal with their superiors. There are institutions only present for superiors and measures limited in a single form. What's more, they deliberately simplify ways to react and handle school bullying, trying to disguise major accidents. It seems that they usually confuse school bullying with daily tricks between students and trivialize issues.

2.2. School bullying management tends to be apparent and formal

With the release of central, provincial and municipal policies concerned, each responsible subjects that related to managing campus bullying carry out special activities in succession such as making exhibition boards in order to disseminate widely, conducting an education about rule of law by entering the school and inviting parents to visit and learn. However, these measures generally have some defects that there are short publicity time, narrow range of people influenced and hollow measures. A number of

people just know about those activities from news report by accident, but when they are about to visit them, everything is over. It makes citizens feel that relevant subjects declare that they are taking actions superficially by inviting media, taking some photos and publishing news. Evidently, unsubstantial and unthorough forms and steps lead to superficial work, where lacks expectations and measures that go deep into the core of issues. As performed outstandingly, there are obvious formalization, privative substantial contents and limited effects. Responsible subjects fail to set the stage for making increasing number of people comprehend and learn which results in extremely limited educated crowd.

2.3. There is no long-effective protection mechanism for preventing and controlling school bullying

School bullying appeared in the past and will exist in the future instead of becoming a product only at present. Therefore, it demands long-effective prevention and normal control rather than motional and passive management, namely actions taken at superiors' requests. Up to now, the keys to how to make sure that present working mechanisms and measures are long-effective are still uncertain and doubtful. As is well known, every life is short throughout history. In the addition, flexible system of employing people, enormous transfer and mobility of staff position request a normal mechanism to maintain improvement of responsible staffs' capability to prevent and control school bullying frequently. Currently, training for educating staffs' ability to prevent and control school bullying, updating, adjusting and perfecting mechanism of institution of managing school bullying, mechanism of school bullying's dynamic monitoring and data collection and analysis, mechanism of coordination and improvement between each responsible subjects are rarely planned. When lacking these protecting mechanisms, the way to prevent and control school bullying is bound to be transient or static, which will form a obstacle

to affect the sustainable development of preventing and controlling school bullying.

2.4. The power of cooperation to prevent and control school bullying isn't enough

Preventing and controlling school bullying needs joint effort coming from judicial authority, educational administrative department, schools, police and families. It is not explicit that who is leading and who is mainly responsible in these organizations and sections. Some departments undertake heavy duties and have limited energy, so they can't spare more time to concern about things beyond their legal obligations, which influences work initiative and efficiency. What's more, families dissociate from official arrangement for mechanism of preventing and controlling school bullying. It isn't paid enough attention that we can make the most of parents' functions. Positive communication with parents and training for improving their capability to prevent and manage are not planned or implemented yet. For lack of families' intervention, system of preventing and controlling school bullying will be trapped in The Bucket Theory set pattern so that the power of cooperation will be cut back.

2.5. Measures of preventing and controlling school bullying are not microcosmic and concrete enough

Current managing measures are confined to three kinds, rough, macroscopic, unthorough, unspecific and poorly targeted. Educational forms aren't multimember enough. Some of the students reflect that they have once watched a few videos about preventing and controlling school bullying in school. When it comes to campus bullying, the majority of students seem to have an impression upon holding events like this. Nevertheless, those video clips have disappeared after being showed, with parents also failing to watch them. If this kind of videos can be put on school websites, parents will get access to learning from them.

In different growing phases, there are various bullying behaviors between students and every behavior has its particular aim. Educational circles ought to refine species of frequent bullying behaviors at different stages and clarify which kind of behaviors are bullying. Those who are bullied should keep it in mind that they take targeted actions when facing different bullying behaviors. In a word, bullying behaviors must be refined and classified, but this work has not been systematically displayed yet.

3. Analysis on Substantial Results That Existing Laws Achieve in China

The legislation involved in prevention and control about school bullying, including civil law, administrative law and criminal law, is stipulated dispersedly in relevant laws. China's existing laws on management of school bullying have deficiencies, which becomes an important

factor that affects substantial results. This kind of deficiencies mainly displays in following several aspects.

3.1. The defect site of law and incapability of law coexist

At present, China lacks regulation of anti-bullying in campus. There're no specific lines of demarcation and stipulation in existing legal texts. Compared with extra-territorial regulation practice, China ought to carry out special regulation in order to make full use of rule of law. Applying laws to stipulate campus violence matters specifically is far better than so-called special management.

At the same time, the existing laws may not be effective against some school bullying behaviors due to a series of restrictions imposed by stipulations and norms, which brings selective failure out. For example, the existing law excludes school bullying behaviors implemented by teenagers aged under 14, that's to say that they don't need to shoulder corresponding legal responsibilities and their guardians partly bear civil compensation liability at most. It's helpless for laws to treat these particular doers.

3.2. Unreasonable education and insufficient chastisement coexist

China's present laws give priority to educating bullies in campus, especially minor ones. However, education doesn't mean there is no need to shoulder any responsibilities. If education loses chastisements, it is incomplete. After all, chastisement is a educational method. Facing some bullies aged under 14 in practice, relevant departments are unwilling or unable to intervene. It makes people think deeply about how these educational methods such as participating in warning education, giving admonitions and criticisms, or order guardians to discipline strictly influence. Even if bullying behaviors that implemented by people aged over 14 are dealt with, the results are actually lenient, mitigatory and even canceled. That punishment isn't enough is a sharp issue that China face during school bullying management. When punishing bullies, there exists a phenomenon that emphasizes education but ignores punishment and tries first to make their mistake sound less serious and then to reduce it to nothing at all. The missing or insufficient chastisement not only cuts down educational effects but also connives bullies so that those bullies don't get punishment they deserve for private reconciliations.

3.3. Ambiguous authority and insufficient performance coexist

Governing school bullying requires joint management of multiple departments, schools and families instead of one of them alone. It isn't clear which kind of power Public Security Organizations, Procuratorial Organizations, People's Courts, education authority and schools own. For example, whether the school has the right to punish

or order bullies to transfer to other places and command that they labour compulsorily isn't stipulated in legislation. How should Public Security Organizations, Procuratorial Organizations, People's Courts treat does that don't reach the age? Should those organizations educate them directly or inform their school and parents to bring them back? The condition that authorities ought to admonish exists in practice, but the degree isn't strong enough or they don't admonish and even refuse to participate in warning education.

3.4. Principle of entitative stipulations and the lack of established procedure coexist

The existing laws of prevention and control about school bullying pay excessive attention to principle of stipulations. Power, rights and legal outcomes are not specific and definite. When school bullying happens, how to affirm, handle campus bullying and how to chastise and minister and other procedural stipulations are privative in current legislation.

3.5. The lack of stipulations of advance prevention and management during the condition coexist.

Preventing and controlling school bullying is a process including advance, present and subsequent management. Only by stipulating in the three links in legislation can prevent and control school bullying effectively and comprehensively, but it's rare to see legal stipulations of preventing. The mechanism of finding and warning in advance isn't included in present laws up to now. After school bullying, how to deal with it needs to not only lay emphasize on legitimacy and rationality of results but also consider whether demands third party to investigate and handle and take both of the students' advice that involved in bullying. There are no enough stipulations of those details during the condition.

3.6. Excessive protection of bullies and insufficient protection of victims coexist

School bullying occurs mostly in the middle school stage and does are mainly teenagers. China's current laws adopt a loose policy for minors who commit bullying. Similar stipulations can be seen everywhere in laws. For example, according to the relevant judicial interpretations, that people under the age of 18 use slight violence or threat, blag forcibly others' carry-on living and studying or inexpensive supplies and don't cause serious harm to the victim or lead to that victims aren't go to school for studying and live shall not be deemed a crime.

It's worth noticing that current laws give excessive protection to bullies. In contrast, there isn't sufficient protection of victims, which makes them mentally and physiologically injured. The recover of injuries and the effect on study are unable to attract the legislation's attention.

4. The Investigation of Deviating From the Spirit of Rule of Law in the Practice of School Bullying

4.1. Lacking institutional provisions to prevent and control school bullying in the legal sense

In the realm of law, the legal logic emphasizes the main premise, the small premise and the conclusion. The main premise refers to the general provisions of the law, which must have and should be clear. But so far, some schools lack supporting provisions with national laws and policies and systemic provisions to prevent and control school bullying. Individual provisions are scattered. Beforehand, in the matter and afterwards, the prevention and control system arrangement is not comprehensive, the content is vague, according to this it is difficult to conduct effective scientific prevention and control of school bullying decision, and take corresponding measures. When the main premise is missing or unclear, it loses the standard judgment criteria whether an act belongs to school bullying, which makes the determination of campus bullying subjective. In practice, with campus bullying mixed with fight and brawl, parents and schools argue on whether it belongs to the campus bullying or others for lack of the main premise.

The law also emphasizes the precondition, the behavior pattern and the legal consequence. The behavior pattern refers to what people can and can not behave, but the current middle school system arrangement rarely has the system regulation related to the school bullying behavior kind, the behavior representation, targeted prevention measures and the corresponding legal consequence and so on. Enumeration of school bullying behaviors is lacking. It can not be clear about the scope of campus bullying and what students can not implement, which affect the judgment and determination of nature of campus bullying. In addition, legally speaking, legal liability is divided into civil liability, administrative liability and criminal responsibility. However, at present, in many institutional arrangements to prevent and control school bullying, there is a single or even lack of discipline in the implementation of the rules and regulations of the students who carry out bullying, which objectively produces the negative effects of the system discipline and allowing bullying.

4.2. The school rules and regulations against campus bullying violate current legal spirit

The school rules and regulations are important bases for the school to carry out internal governance. The content must correspond to legal stipulations and spirit and can't violate laws. In practice, the school rules and regulations have many problems. At first, from the current contents we can see that duty, power and obligation of preventing and controlling school bullying is ambiguous and incon-

sistent. Some subjects have only power without obligations, and some are responsible for duties without corresponding power. Moreover, the general status of teachers and students is neglected. Students are regarded as the object of preventing and controlling school bullying unneutrally. Secondly, from the ways of chastising, there are problems that the intensity of chastisement is weak, the method is onefold and may break the law. Criticism and admonition may have effects, but they lack mandatory measures, which results in limited deterrents. In some school regulations, there are some methods include fining, dismissing, demanding to withdraw from school, corporal punishing and restricting personal freedom, which violate the law. Thirdly, some regulations stipulate more about bullies instead of focusing on protecting victims' interests. It sets inequality between education, chastisement and protection, guidance for bullies and victims apart. It's also insufficient for victims to achieve protection mentally and physically. Last but not least, when dealing with school bullying, it tends to simplify and be unconscionable. There exist extra outcomes beyond school regulations so that relevant rules are left unused.

4.3. Procedure of preventing and controlling school bullying is illegal

From the perspective of procedures, the prevention and control of school bullying attaches great importance to substantiality stipulations and lacks procedural regulations, and there is also a lack of procedural thinking and institutional arrangement on how to effectively, fairly, openly and fairly deal with the prevention and treatment of school bullying. Firstly, lacking a relatively independent and impartial anti-bullying body that acts as a "court" to deal with disputes between the bully and the victim

without bias, but it is rare to see the procedure settings that how institutions are organized, where the members come from, and whether decisions made are final and effective, and so on. Secondly, the school rules and regulations on preventing and controlling bullying fail to fully solicit the opinions of students and parents, and are lacking in preventing, judging and dealing with bullying incidents and behaviors from the standpoint of students. Inadequate argumentation of rules and regulations lacks the necessary public opinion base, and the simple and extensive publication procedure will inevitably affect its follow-up use and effectiveness. Thirdly, there is a lack of common institutional arrangements in the process of preventing and controlling bullying and challenge system. When the parties involved in the bullying are in two or more different classes, the related responsible people should avoid, when the parties in the bullying have an interest with the school administrators, the related responsible people should also avoid. Participatory procedures are also missing. Children have the right to express their claims in the face of major events. Whether an incident is bullying or not, it is not the adult who is in charge, nor the school, but the child. School bullying should be assessed more from a child's perspective. [2] A hearing should be held when the students are given heavier penalties. At present, the hearing, especially the standard hearing, rarely starts in the prevention and cure of bullying in campus.

References

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