

CAN BULLYING BE MEDIATED?

Can bullying behavior be mediated? This question has arisen recently because the American Arbitration Association (AAA) and Alternative Dispute Resolution Consortium (ADRC) have recommended that colleges and universities provide mediation as an option for faculty who feel bullied by their colleagues. Workplace bullying as defined by the Workplace Bullying Institute (WBI – see below) seems to me to rarely be negotiable - or mediable – especially to those experiencing it. However, based in large part on my involvement in helping establish a restorative justice program at the University of Colorado at Boulder in the late 1990's, I believe there are two specific practices from that tradition that could be used to facilitate meaningful and potentially even healing encounters in these situations. These practices differ from the more familiar forms of mediation and the conditions required for success are very specific.

As a university ombuds I have found mediation is often an effective way to help staff and faculty to manage and/or resolve workplace disputes. Sometimes both people have the same concern(s) and sometimes their concerns differ. But in most disputes I have mediated, both parties seemed to contribute fairly equally to the creation of the dispute. As a result, they could usually participate fairly equally in developing solutions. And agreements they made to resolve their disputes – even when they included relationship issues such as respect, trust, or communication - usually seemed balanced, as well.

By contrast to these disputes, the WBI defines “bullying” as “. . . *repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators that takes one or more of the following forms:*

- *Verbal abuse*
- *Offensive conduct/behaviors (including nonverbal) which are threatening, humiliating, or intimidating*
- *Work interference — sabotage — which prevents work from getting done*

The word *mistreatment* in the WBI definition suggests the presence of *inappropriate* workplace behavior. When a person feels “mistreated,” the behaviors that lead her or him to feel this way are, by definition, unacceptable to her or him. Any other concerns she or he may have are likely to pale by comparison in importance and impact. And, when those behaviors are seen as acceptable by the person engaging in them, these differing perceptions present a nearly insurmountable threat to psychological and/or physical safety and trust for the person who feels bullied. Although a reduction in the frequency of these behaviors would probably be seen as a slight improvement, most likely, *any* amount of this behavior would still be unacceptable to anyone experiencing it. Thus, people who feel bullied are not likely, for example, to make agreements to allow that behavior in the future on Tuesdays and Thursdays but not Monday, Wednesday, and Friday! For the person who feels bullied, even listening to the concerns of the other person, let alone offering to make concessions just to get her or him to stop engaging in bullying behaviors, is likely to feel unfair and unjust. Therefore, the kinds of mediation typically used to help resolve workplace disputes is unlikely to address bullying.

If laws and policies defining and prohibiting workplace bullying were established – especially if accompanied by awareness campaigns and/or training, it would probably help people develop a more common understanding of bullying behavior and its impacts. Anti-bullying laws and policies would define engaging in this behavior as *wrongdoing*. The most common western approach to dealing with *wrongdoing*, especially in the criminal justice system, assumes the proper response is to determine: 1) whether any laws or policies have been violated, and if so, which ones; 2) who was guilty of violating them; and 3) what punishment should be administered for the violation(s). This assumption is rooted in the principles of retributive justice (Rachels, 1997, p. 466). But laws and policies could also set up the possibility of using an approach rooted in the principles of *restorative* justice (Zehr, 1998, p. 47).

Restorative justice conceives of wrongdoing as behavior that harms individuals and communities, rather than as violations against “the state” (Umbreit, 2005, p. 254). For the purposes of this discussion, a restorative approach would focus on identifying: 1) who has been harmed by bullying; 2) exactly how she, he, or they were harmed; and 3) how to best repair that harm. One restorative practice that might be used to address workplace bullying is victim-offender mediation (Umbreit, 2001, p. xxxvii). An individual who engaged in bullying behavior and one who experienced it would meet together with a mediator to address the questions above and develop an agreement about what the person responsible could do to repair the harm she or he has done. Another restorative approach, based on family group conferencing (Zehr, 2002, p. 44), would include supporters (colleagues, friends, family members, etc.) of both victims and offenders, and other affected community members, which in this case is likely to be colleagues or bystanders, in a facilitated discussion. Both of these processes would result in agreements which, to the greatest extent possible, focus on repairing the harm done by bullying. And in both processes harm – especially psychological harm - is sometimes repaired as much or more by what occurs during the facilitated encounter as by the completion of agreement items by offenders.

Under what conditions might one of these restorative practices be useful for addressing workplace bullying? Following the model we used at the University of Colorado at Boulder, first, the person engaging in bullying behavior would have to acknowledge she or he did it and agree not continue to do it. Second, for everyone involved in either process participation would be completely *voluntary*. Third, the restorative option would be established as an alternative to formal procedures and made available only when the above conditions were met. Therefore, if the mediation or conference did not occur, if it ended with no agreement, or if an agreement were broken, a mechanism would have to be in place to refer the matter to someone with the administrative authority to conduct an investigation and issue sanctions.

To make an informed decision about whether to participate in a restorative process, anyone accused of engaging in bullying would need to be informed that, as part of the process, she or he would be expected to: a) admit responsibility for engaging in this behavior directly to the

person(s) harmed by it and b) answer specific questions in the mediation or conference, including questions such as:

- What were you thinking when you engaged in these behaviors?
- Who do you think your behavior affected?
- How do you think they were affected?
- What has happened for you since you were accused of violating the anti-bullying policy (or law)?
- What are you thinking now about what has happened in this situation?

In addition, the person accused would need to understand that participation would require her or him to listen to descriptions about the impacts of her or his behavior on the person(s) harmed by them and collaborate with the person(s) harmed to create a plan for repairing the harm.

To assess the appropriateness of mediation in any situation, I have found that separate pre-mediation meetings with prospective participants are very useful. I believe this practice would be critically important before bringing people together to discuss workplace bullying. Those who say they did not violate the policy or law should never be given a restorative option. Instead, the matter should be investigated in an administrative procedure providing due process rights and the opportunity for the accused person to defend herself or himself.

I recognize that, currently, people accused of bullying rarely view their own behavior as inappropriate. I also recognize that most people subjected to these behaviors do not wish to openly expose their pain to someone they perceive has harmed them. But the development of laws and policies might help more people recognize and acknowledge responsibility for engaging in this behavior. This, along with the willingness of those harmed to reveal how they were harmed by it are prerequisites for attempting facilitated restorative encounters in situations involving allegations of bullying. While, admittedly, these conditions significantly limit who can participate in mediation, for those who meet them, they also set up the best chance for a successful - perhaps even transformative - outcome.

References

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