

# Japan's Act on the Promotion of Measures to Prevent Bullying: Handling Serious Cases of Bullying

Kenji NAGATA\*

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## I. Introduction

### 1. The *Nakano-Fujimi Junior High School Case*<sup>1)</sup>

In February 1986, Morioka City, Iwate Prefecture, located more than 400 km from Tokyo, a 13-year-old second-year junior high school student committed suicide, leaving the following note: "At this rate, I'll be living in hell." He had been bullied by his

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\* Professor, Faculty of Law, Kansai University.

1) For details of the case, see Tokyo District Court, March 27, 1991, 1378 *Hanrei-Jiho* 26 and Tokyo High Court, May 20, 1994, 1495 *Hanrei-Jiho* 42.

classmates. The bullying episodes included serious and recurrent violence.

Before the child committed suicide, his bullies placed flowers, fruits, and incense sticks on his desk in the classroom. They wrote messages lamenting his “death” on a square drawing paper as if the student had died—a custom in Japan commonly practiced by teachers and classmates as an act of mourning when a student passes away. To make matters worse, four teachers at the school were also involved in the “ritual.” These teachers wrote: “You died, so I am sad,” “Goodbye,” “Please, rest in peace,” and “WHOA!” This case shocked Japanese society. Unfortunately, many people, including TV commentators—and, lamentably, many teachers—seemed to have been caught up in such cognitive distortions as “a bullied student is responsible for being bullied” or “a bullied student has reasons to be bullied.”

Many schools and teachers were indifferent to the bullied students, thinking, “It’s a shame to be bullied” or “Bullied students should conceal that they have been bullied.” Even after this case, a considerable number of students in the country suffered from bullying. While the bullies enjoyed happy school lives, many of the bullied students were unable to go to school for extended periods because they felt uncomfortable in being in the same place as the bullies or feared being bullied again. A relatively large number of bullied students were transferred to other schools. Sadly, there were endless cases of suicide precipitated by bullying.

In many cases, as though a hidden national conduct manual existed, schools and teachers did not admit that bullying was occurring. They often made statements to the mass media denying the causal relationship between bullying and suicide. In Japanese civil suits, the bereaved families of suicidal students have been held responsible for proving such a causal relationship. However, the obstacles to doing so are almost insurmountable. As a result, in civil suits, courts have repeatedly denied the causal relationship between bullying and suicide. In *the Nakano-Fujimi Junior High School* case, for example, both the Tokyo District Court and the Tokyo High Court explicitly denied such a causal relationship.<sup>2)</sup> This attitude has encouraged schools and teachers to avoid addressing the problem of bullying and the deaths of students, even when the suicides involve their own students. In addition to the bullied victims, the bullies were also ignored.

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2) The parents of the victim filed a civil suit against the Tokyo Metropolitan Government, Nakano Ward, and the parents of each of the two bullies, seeking damages. First, the Tokyo District Court ruled that the school had breached its obligation to consider all students’ safety. It upheld the bullied victim’s family’s claims against the Tokyo Metropolitan Government and Nakano Ward for damages relating to the assaults by the bullies. In addition, the court also upheld the claim for damages against the parents of the two bullies. However, the court denied a causal relationship between the bullying and the child’s suicide and did not grant damages on that point (Tokyo District Court, March 27, 1991). Second, the Tokyo High Court accepted the higher amount of damages but also denied a causal relationship between the bullying and the child’s suicide (Tokyo High Court, May 20, 1994).

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However, after the Great Hanshin Earthquake and the sarin gas attack on the Tokyo subway system in 1995, Japanese society began to pay attention to the victims of bullying. More people have come to believe that victims should be protected, respected, supported, and cared for. In the criminal justice system, some legislation has been enacted and amended to protect and support crime victims. For example, the Parliament enacted the Act on Measures Incidental to Criminal Procedures for Protecting the Rights of Crime Victims<sup>3)</sup> in 2000, the Basic Act on Crime Victims<sup>4)</sup> in 2004, and the Act on Payment of Benefits for Relief of Crime Victims of Aum Shinrikyo<sup>5)</sup> in 2008. Since 2000, the Code of Criminal Procedure,<sup>6)</sup> the Act on the Committee for the Inquest of Prosecution,<sup>7)</sup> the Juvenile Act,<sup>8)</sup> and the Act on Payment of Crime Victims Benefits<sup>9)</sup> have been amended one after the other. However, no statute had been enacted to protect the victims of bullying, and although Japanese society's view toward bullying had changed significantly, schools' and teachers' views had not.

## 2. The *Otsu City Case*<sup>10)</sup>

In October 2011, 25 years after *the Nakano-Fujimi Junior High School* case, bullying again made headlines. In Otsu City, Shiga Prefecture, near Kyoto, a second-year junior high school student committed suicide. He had also been bullied by his classmates, and again the bullying episodes included serious and recurrent violence. In addition, the bullies stole the child's comic books and his watch from his house and tried to force him to eat a dead bee.

In view of this case, the Otsu City Board of Education,<sup>11)</sup> which established the school,

3) Act No.75 of 2000; the Act was amended in 2007 (Act No.95 of 2007). At that time, the title was changed to the Act on Measures Incidental to Criminal Procedures for Protecting the Rights and Interests of Crime Victims.

4) Act No.161 of 2004.

5) Act No.80 of 2008.

6) Act No.131 of 1948; major amendments related to victim protection have included Act No.74 of 2000, Act No.95 of 2007, and Act No.54 of 2016.

7) Act No.147 of 1948; major amendments related to victim protection have included Act No.74 of 2000 and Act No.62 of 2004.

8) Act No.168 of 1948; major amendments related to victim protection have included Act No.142 of 2000 and Act No.71 of 2008.

9) Act No.36 of 1980; the Act was amended in 2001 (Act No.30 of 2001). At that time, the title was changed to the Act on Payment, etc., of Crime Victims Benefits. The Act was also amended in 2008 (Act No.15 of 2008). At that time, the title was changed to the Act on Support for Crime Victims by Payment, etc., of Crime Victims Benefits.

10) For details of the case, see Otsu District Court, February 19, 2019, [https://www.courts.go.jp/app/files/hanrei\\_jp/609/088609\\_hanrei.pdf](https://www.courts.go.jp/app/files/hanrei_jp/609/088609_hanrei.pdf) (retrieved May 20, 2020), and Osaka High Court, February 27, 2020, [https://www.courts.go.jp/app/files/hanrei\\_jp/420/089420\\_hanrei.pdf](https://www.courts.go.jp/app/files/hanrei_jp/420/089420_hanrei.pdf).

11) In Japan, the head of a local government has no authority to govern public schools; this authority belongs to a board of education, which is politically independent from the departments of the heads of a local

claimed to the mass media that the school and its teachers had not known that the bullying had occurred. However, it later became clear that both the school and its teachers had been aware of the bullying but had not taken the necessary measures to redress the situation or prevent further abuse. The Otsu City Board of Education, therefore, deliberately provided a false explanation to the media.

This case also had a major impact on Japanese society. Unlike 25 years ago, many people were outraged by this bullying case and critical of the schools, teachers, and bullies. People condemned the failure of schools and boards of education to properly handle the bullying and decried their attempts to cover the mistakes of the school and its teachers. In a civil suit filed by the bullied student's parents, both the Otsu District Court and the Osaka High Court recognized a causal relationship between the bullying and the child's suicide.<sup>12)</sup>

## II. The Act on the Promotion of Measures to Prevent Bullying

### 1. Enactment and Purpose of the Act

The Otsu case led the Japanese Parliament to enact the Act on the Promotion of Measures to Prevent Bullying (APMPB) (*Ijime Boshi Taisaku Suishin Ho*)<sup>13)</sup> in September 2013. This was the first Act in Japan specifically directed at bullying in the school environment. The APMPB consists of six chapters and 35 Articles. Chapter 1 refers to general provisions (Articles 1–10), Chapter 2 refers to basic policies (Articles 11–14), Chapter 3 refers to basic measures (Articles 15–21), Chapter 4 refers to measures for the prevention, early detection, and handling of bullying (Articles 22–27), Chapter 5 refers to how to handle serious cases (Articles 28–33), and Chapter 6 presents miscellaneous provisions (Articles 34 and 35). The contents of the Act are described in the following sections.

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government, per Article 21 of the Act on the Organization and Operation of Local Educational Administration (Act No.162 of 1956).

12) The parents of the victim filed a civil suit against Otsu City and the parents of each of the three bullies, seeking damages. First, the Otsu District Court acknowledged a causal relationship between the bullying and the child's suicide and upheld a claim for damages against the parents of two of the three students (Otsu District Court, February 19, 2019). Second, the Osaka High Court also acknowledged the causal relationship and upheld a claim for damages against the parents of the two students, but reduced the amount of damages (Osaka High Court, February 27, 2020).

13) Act No.71 of 2013; the following books provide detailed commentaries: Hiroyuki Konishi, *Ijime Boshi Tisaku Sushin Ho no Kaisetsu to Gutaisaku: Horitsu de Nani ga Kawari, Kyoikugenba ha Nani wo Shinakereba Naranainoka (Commentaries of the Promotion of Measures to Prevent Bullying Act and Concrete Measures to be Taken: What Changes with the Act and What Must Educational Practitioners Do?)*, WAVE Publishing (2014); Daini Tokyo Bengoshikai Kodomo no Kenri ni Kansuru Iinkai (ed.), *Do Tsukau Do Ikasu Ijime Boshi Taisaku Suishin Ho (The Promotion of Measures to Prevent Bullying Act: How to Use and How to Make It Effective)*, Gendai-jinbunsha (2nd ed., 2018).

## 2. General Provisions (Chapter 1)

### (1) Purpose of the APMPB

Article 1 of the APMPB provides the purpose of the Act.

This Article acknowledges that bullying significantly violates students' right to education, has a serious impact on their sound mental and physical growth and development of character, and is likely to cause grave danger to their lives or bodies. To maintain the dignity of bullied students, the Act establishes basic principles concerning the prevention and early detection of bullying, provides measures to handle bullying cases, stipulates the responsibilities of the national and local governments and others, requires the establishment of basic policies concerning measures to prevent, detect early, and handle bullying, and covers basic measures for the prevention, early detection, and handling of bullying. Article 1 also presents the purpose of the Act, which is to promote comprehensive and effective measures and efforts to prevent bullying.

### (2) Definition of Bullying

The APMPB defined *school bullying (ijime)* as “the conduct of influencing a student mentally or physically, including through the Internet, by another student (or students) who has (or have) a certain personal relationship with the student, such that the victim feels mental anguish or physical pain” (Article 2 (1)). This definition does not take into account the intentions of the bullies; instead, it places emphasis on the bullied students' perceptions of pain inflicted by the bullies' conduct. This definition is in line with the definition of harassment in the workplace. Because of the official definition provided by the APMPB, more schools are now recognizing bullying in Japan.

In this Act, *student* refers to anyone enrolled in an elementary school, junior high school, high school, or special needs education school, per (Article 2 (2), (3) of the APMPB. See Article 1 of the School Education Act<sup>14)</sup>). The Act sets out the basic principle that bullying should be prevented both inside and outside all schools (Article 3 (1) of the APMPB). The APMPB states that “students shall not bully any students” and that bullying is illegal (Article 4). However, the Act does not stipulate any punishment for those who bully others.

## 3. Basic Policies (Chapter 2)

Under the APMPB, the national government, local governments, schools, local residents, students' families, and other concerned parties must cooperate to overcome the problem of bullying (Article 3 (3)). First, the Act specifies that national and local governments are responsible for formulating and implementing measures for the prevention, early detection, and handling of bullying in schools (Articles 5 and 6). Therefore, the APMPB directs the Minister of Education, Culture, Sports, Science and

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14) Act No.26 of 1947.

Technology to establish a national basic policy for comprehensively and effectively promoting measures to prevent, detect early, and handle bullying (Article 11). In October 2013, the Minister established the National Basic Policy. Because the Act does not provide for enforcement regulations or ordinances, the National Basic Policy is essential for not only providing details of the Act but also supplementing it. The APMPB also states that local governments should establish local basic policies that comprehensively and effectively prevent, detect, and handle school bullying (Article 12). Today, approximately 90% of local governments have established their own locally applicable basic policies.

Second, the Act stipulates that an establishment of the school (e.g., a board of education) will be held responsible for taking the necessary measures to prevent, detect early, and handle bullying at the school (Article 7). Schools and teachers must tackle the prevention and early detection of bullying at the school as a whole and handle appropriately and promptly all cases in which they suspect students of bullying or being bullied (Article 8). Thus, each school is responsible for establishing its own school basic policies covering the prevention, early detection, and handling of bullying (Article 13). Most school basic policies govern how teachers must manage bullying cases. For example, many specify that teachers must contact the parents of the bullied child and the parents of the bullies on the same day they discover the bullying case.

Third, the APMPB states that parents should educate their children about bullying and instruct their children not to bully others (Article 9 (1)). Parents must also protect their bullied children (Article 9 (2)) by various measures.

#### **4. Basic Measures (Chapter 3)**

Under the APMPB, schools and their establishers must systematically provide teachers with the necessary measures, including training, to prevent, detect early, and handle bullying (Article 18 (2)). They are required to take the necessary measures to prevent bullying in schools, including bullying carried out through the Internet (Articles 15 and 19 (1)). To detect school bullying early, they are directed to take such measures as conducting periodic questionnaire surveys of students (Article 16 (1)); notably, many schools in Japan have a three-semester system, and they usually conduct at least one questionnaire survey on bullying during each semester. The APMPB also directs schools and their establishers to develop systems provide students, parents, and teachers with consultation on bullying (Article 16 (3), (4)), including opportunities for students, parents, and teachers to consult with professionals such as school counselors and school social workers.

Under the APMPB, the national government and local governments are required to develop systems that ensure that schools and their establishers are (a) taking appropriate measures to handle bullying, such as providing support to bullied students or their parents, providing counseling to bullies, or giving advice to bullies' parents (Article 17) and (b)

taking these measures appropriately based on expert knowledge (Article 18 (1)).

### **5. Measures for the Prevention, Early Detection, and Handling of Bullying (Chapter 4)**

Article 22 of the APMPB states that schools must establish an organization (the School Bullying Task Force) that takes action against bullying, and this organization should consist of teachers, experts on psychology or welfare, and other persons concerned with the well-being of students. In many schools, these organizations also include school counselors, school social workers, and even school lawyers. The organizations play an important role in handling bullying when it occurs.

When teachers are informed by the victims' parents that students have been bullied, or when teachers suspect that students are being bullied, their school must immediately ascertain whether and in what form the bullying has occurred (Article 23 (1), (2)) by convening hearings involving the students involved. Under the APMPB, the School Bullying Task Force is assumed to play this role. (The "students involved" include suspected bullying victims, the alleged bullies, and witnesses to the bullying incidents.) If schools confirm that bullying has occurred, they must stop it. Furthermore, to prevent the recurrence of bullying, the school is directed to provide support—continuously, and with the cooperation of persons with expert knowledge in areas such as psychology or social welfare—to the victims or their parents, as well as provide counseling to the bullies or advice to their parents (Article 23 (3)). The School Bullying Task Force is also assumed to play a central role in this. Bullying victims and their parents are often shocked; they become distrustful after having been hurt in schools that were supposed to be safe and secure. Therefore, school counselors must provide counseling, and school social workers need to coordinate with all parties to ensure a safe school life going forward. As for the bullies, school counselors should provide counseling and school social workers should refer them or their parents to specialized agencies, such as child consultation centers<sup>15)</sup> (Articles 11 (1) and 12 of the Child Welfare Act<sup>16)</sup>), to properly understand and address the causes of the bullying.

There are various reasons why children may come to bully other children<sup>17)</sup>. For example, some bullies have been bullied in the past by others and may not have received the necessary support and care. Some bullies have been abused by their parents or other adults, and this has corrupted their sense of right and wrong. Some bullies have developmental disorders that render them unable to adapt to societal norms of civility and

15) A child consultation center is an organization established by a prefectural government that offers various services concerning the welfare of children (Articles 11 (1) and 12 (2) of The Child Welfare Act).

16) Act No.164 of 1947.

17) Kenji Nagata, *Ijime no Judajitai no Handan ni Kansuru Kosatsu: Ijime Boshi Taisaku Suishin Ho no Kyojinka wo Mezashite* (Study on Judgement of Serious Cases of Bullying: Aiming to Strengthen the Promotion of Measures to Prevent Bullying Act), *70-2=3 Kansaidaijaku Hogakuronshu* 195 (2020), at 202–204.

respect. Some bullies are merely “acting out” in response to a difficult situation such as poverty, family strife, illness of a loved one. Many bullies feel some personal inadequacy that they project onto others—feelings of not measuring up, jealousy, bigotry, powerlessness.

The APMPB suggests that in cases where the school deems it necessary, arrangements should be made for the bullies to study in classrooms separate from the bullied students (Article 23 (4)); in such cases, the bullies should not be made to feel that they are being punished. In the past, when bullying has occurred among students in the same classes, and the bullied students feel emotional distress when they are in the same classrooms as the bullies, the victims have resorted to studying in places other than the classrooms, such as the library, nurse’s office, principal’s office, or even school storage spaces. However, this is unfair; the victims are re-victimized by having to give up their places in the classroom. In this context, the APMPB is epoch-making, as it requires that the bullies be the ones to leave the classroom.

When schools provide the support, guidance, or advice mentioned above, the information about bullying should be shared between the victims’ parents and the bullies’ parents (Article 23 (5)). Before the APMPB was enacted, schools often did not provide the victims or their parents with information about school bullying. In severe cases, schools lied to victims or provided them with false information. In other cases, schools intentionally gave different information to the victims and the bullies and their parents, causing problems among them. Both victims and bullies may want accurate information about the case. Accordingly, the Act requires that schools inform both the victims and the bullies about the occurrence. This has great significance for the resolution of bullying cases.

If bullies’ conduct constitutes a crime, the school must handle it in cooperation with the police (Article 23 (6)). Examples are these: (a) when bullies steal money or property from their victims (theft); (b) when bullies take money or property by threatening their victims (blackmail); (c) when bullies use violence against their victims (assault), resulting in injury to the victims (injury); (d) when bullies use sexual violence against their victims (sexual assault); and (e) when bullies damage the victims’ reputation by spreading false information about them, including via the Internet (defamation). In cases involving crimes, the school must report incidents to the police if the victims wish to pursue the bullying as a criminal matter. Of course, the victims can also report directly to the police. If there is a risk of serious damage to the life, body, or property of any bullied students, the school is now obligated to immediately report to the police and request appropriate assistance.

The board of education must also promptly take the necessary measures to ensure that the bullied students and their classmates can study in tranquility (Article 26). Specifically, the board of education is now directed to order the bullies to be suspended from school, under Articles 35 (1) and 49 of the School Education Act, or to transfer the bullies to a different school.

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Many teachers and commentators have persistently opposed the following: (a) allowing bullies to study at the same school as their victims but in a separate place; (b) transferring bullies to a separate classroom from the victims; and (c) transferring bullies to another school, which they claim violates the bullies' "right to learn." This last argument is based on a misinterpretation of the "right to learn." They mistakenly believe that it guarantees students' placement in a particular class or a particular school. However, the "right to learn" means the "right to learn at school" and does not guarantee that students can study in a particular class or a particular school. If the "right to learn" *did* guarantee that students could study in a particular class or a particular school, that would also apply equally to the victims. The APMPB rightfully places emphasis on not infringing on the victims' right to learn, which is impeded by the continued proximity of their abusers. Transferring bullies to another school does not deprive them of their right to learn at school, only their desire to learn under particular conditions. Supporters of bully transfers argue that this reinforces the lesson for bullies that abusing others has consequences. Suspension, in contrast, does infringe on the students' right to learn at school, although the duration of the suspension and arrangements for temporary home-schooling would be mitigating factors. Short-term suspension should not be the primary measure, in principle, and expulsion should be considered with caution in serious cases.

## 6. Handling of Serious Cases (Chapter 5)

The handling of serious cases is discussed in greater detail in Section III, but the following is a brief overview. The APMPB defines two types of serious cases: (a) "serious cases of life, body, mind, and property" (Article 28 (1) (i)); and (b) "serious cases of [bullying victims'] inability to attend school" out of fear of further harassment or retribution (Article 28 (1) (ii)).

In serious cases, the school and its establishers are now required to promptly set up an investigative organization to handle the matter and to develop a plan to prevent the occurrence of other such cases. The organization must conduct investigations to clarify the facts of the serious case by appropriate means, including the use of questionnaires (Article 28 (1)). After the investigation is complete, the school and its establisher are then required to provide the victims with the necessary information, such as the specific facts related to the case, as appropriate (Article 28 (2)). Schools must also report any serious cases to the heads of local governments or others that the APMPB regulates (Articles 29 (1), 30 (1), 30-2, 31 (1), 32 (1), and (5)). The heads of local governments or others who have received the report may, when they find it necessary to handle the case or to prevent the occurrence of a case of the same seriousness, investigate the findings of the investigation (reinvestigation) by establishing an affiliated organization or by another manner (Articles 29 (2), 30 (2), 30-2, 31 (2), 32 (2), and (5)).

## 7. Miscellaneous Provisions (Chapter 6)

As described above, “bullying” under the APMPB means only “school” bullying (Article 2 (1), (2)), where “school” means an elementary school, junior high school, high school, or special needs education school. Technical colleges are not included among the schools covered, as stipulated in Article 1 of the School Education Act. Therefore, conduct equivalent to bullying that occurs at a technical college does not constitute “bullying” under the Act. The APMPB does state, however, that technical colleges should also take the necessary measures to prevent, detect early, and handle conduct equivalent to bullying (Article 35).

## III. Handling of Serious Cases

### 1. Establishment of Guidelines

Before the APMPB was enacted, the Ministry of Education, Culture, Sports, Science and Technology (MEXT) demanded that schools and their establishers investigate serious bullying cases. In June 2011, with regard to cases involving suicide, the MEXT promulgated the *Guidelines for Investigations of Background of Suicides in Children (Kodomo no Jisatsu ga Okita Toki no Haikeichosa no Shishin)*; it amended those guidelines in July 2014. Then, in March 2016, the MEXT established the *Guidelines for Investigations Concerning Serious Cases of the Inability to Attend School (Futoko Judaijitai ni kakaru Chosa no Shishin)* for cases in which the distress of proximity to their abusers and enablers leads to the children being unable to attend school.

However, when serious cases occurred, many schools and their establishers, especially boards of education, did not obey the APMPB, the National Basic Policy, or these guidelines. Their unlawful lack of compliance often inflicted serious damage to bullied students and caused great distrust among their parents. Therefore, in March 2017, the MEXT promulgated the *Guidelines Concerning Investigation of Serious Cases of Bullying* (hereinafter referred to as the *Guidelines*) (*Ijime no Judaijitai no Chosa ni kakaru Gaidorain*) commanding schools and their establishers to conduct investigations appropriately in accordance with the APMPB. At the same time, the Minister of Education, Culture, Sports, Science and Technology also amended the National Basic Policy.

The APMPB does not specify the procedures for investigating serious cases, nor does it include enforcement regulations or ordinances. However, the investigation procedures for serious cases must be carried out in accordance with the National Basic Policy and the *Guidelines* (Title 2, Chapter 4 (1) of the National Basic Policy and Notification of the Director-General of the Elementary and Secondary Education Bureau and the Director-General of the Lifelong Learning Policy Bureau and the Director-General of the Higher

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Education Bureau of the MEXT on March 16, 2017<sup>18)</sup>). Failure to comply with the investigation procedures regulated under the National Basic Policy or the *Guidelines* may result in the investigation of the findings of the investigation (reinvestigation) (Articles 29 (2), 30 (2), 30-2, 31 (2), 32 (2), and (5) of the APMPB).

## 2. Definition of a “Serious Case”<sup>19)</sup>

As mentioned above, there are two types of serious cases. Cases considered to fall under the first type, “serious cases of life, body, mind, and property” (Article 28 (1) (i) of the APMPB), are as follows:

- (a) The bullied student attempted or successfully committed suicide.<sup>20)</sup>
- (b) The bullied student had a fracture, concussion, or broken tooth.<sup>21)</sup>
- (c) The bullied student had post-traumatic stress disorder (PTSD).<sup>22)</sup>
- (d) The bullied student was sexually assaulted.<sup>23)</sup>
- (e) The bullies uploaded sexual videos or images of the bullied student to the Internet.
- (f) The bullied student was extorted.<sup>24)</sup>
- (g) The valued property (e.g., a cellphone) belonging to the bullied student was destroyed.<sup>25)</sup>

The second type, “serious cases of inability to attend school” (Article 28 (1) (ii)), covers cases where victims feel unable to attend school for a considerable period of time because of bullying (Article 28 (1) (ii)). Under Title 2, Chapter 4 (1) (i), of the National Basic Policy, a “considerable period of time” is approximately 30 days per school year, following the definition of school nonattendance. In the case of nonattendance related to bullying, however, 30 days is too long when that absence is the result of others’ abuse. Thus, cases in which victimized children have been absent for fewer than 30 days can be considered serious cases.<sup>26)</sup> Under the APMPB, a “considerable period” in bullying cases is 15 days. This number was arrived at because, in Japan, almost all public schools have a five-day study week, and if the number of absences is more than 15 days, the absences will total three weeks, and this represents a significant impact on the students’ school

18) The Elementary and Secondary Education Bureau of the MEXT, Act No.1648 of Fiscal Year 2016.

19) For details, see Nagata, *supra* note 17, at 214–223.

20) Title 2, Chapter 4 (1) (i), of the National Basic Policy and the Appendix of the *Guidelines*.

21) *Ibid.*

22) *Ibid.*

23) The Appendix of the *Guidelines*.

24) As an example of a serious case, the Appendix of the *Guidelines* lists a case in which a bullied was blackmailed for 10,000 yen. Cases of blackmail are considered more vicious than theft because they involve notification of harm. Therefore, blackmail cases should be treated as serious cases regardless of the amount of damage.

25) The Appendix of the *Guidelines*.

26) The Appendix of the *Guidelines*.

lives.

In either type of serious case, schools or their establishers must investigate when there is suspicion of serious damage or absence for a considerable period of time (Article 28 (1) of the APMPB and Title 2 of the *Guidelines*). Bullied students or their parents are more likely to report bullying when there is serious physical or property damage involved. Therefore, in principle, schools or their establishers should investigate the allegations diligently (Title 2 Chapter 4 (1) i) of the National Basic Policy and Title 2 of the *Guidelines*).

### 3. Reports of Serious Cases<sup>27)</sup>

When serious cases occur, schools are obligated to report them promptly (Articles 29 (1), 30 (1), 30-2, 31 (1), 32 (1), and (5) of the APMPB and Title 2, Chapter 4 (1) (i), of the National Basic Policy), as required by Title 3 of the *Guidelines*. Such reports provide an opportunity for local governments to offer investigative guidance, advice, and support to the school and its establishers (Title 3 of the *Guidelines*), as well as to offer the services of teachers, school counselors, school social workers, and school lawyers.

The procedure for such school reports is as follows: schools established by national universities report to the Minister of Education, Culture, Sports, Science and Technology (Article 29 (1) of the APMPB); schools established by local governments report to the heads of local government, such as governors or mayor (Article 30 (1)); schools established by municipal universities report to the heads of local government tasked with establishing the municipal university corporation (Article 30-2); private schools established by incorporated educational institutions report to the governor (Article 31 (1)); and private schools established by companies or nonprofit corporations report to the heads of local government (Article 32 (1), (5)).

### 4. Establishment of Investigative Organizations<sup>28)</sup>

#### (1) Investigative Organizations

When serious cases occurs, schools or their establishers are obligated to promptly establish an investigative organization (Article 28 (1) of the APMPB and Title 2, Chapter 4 (1) (i), of the National Basic Policy).<sup>29)</sup> First, the establishers of the school must decide whether they or the school will set up the investigative organization (Title 2, Chapter 4 (1)

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27) For details, see Nagata, *supra* note 17, at 223–227.

28) For details, see Kenji Nagata, *Ijime no Judaijitai no Chosashiki Sechi ni Kansuru Kosatsu: Koheisei Oyobi Churitsusei Narabini Senmonsei wo Kakuhoshita Chosashiki wo Mezashite* (Study on Establishment of Investigation Organization for Serious Cases of Bullying: Aiming to be an Investigation Organization that ensures Impartiality, Neutrality and Expertise), *70-4 Kansaidagaku Hogakuronshu* 167 (2020), at 182–225.

29) Title 2, Chapter 4 (1) (i), of the National Basic Policy allows the heads of local governments to conduct “parallel investigations” to the schools’ investigation, under Article 28 (1) of the APMPB. This has occurred in several cases.

(i), of the National Basic Policy and Title 4 of the *Guidelines*). The school establishers must also decide on the composition of the organization—particularly, they must decide whether all the members of the investigative organization will be third parties. If the establishers decide against including only third-party members, the school must add third parties (Title 4 of the *Guidelines*). When all members of an investigative organization are third parties, the organization is called a “third-party committee.”

In practice, when schools establish investigative organizations, these usually consist of a teacher from the school and some third parties. Title 2, Chapter 4 (1) (i), of the National Basic Policy suggests adding third-party investigators to the School Bullying Task Force (Article 22 of the APMPB). On the other hand, when school establishers set up investigative organizations, such organizations usually consist of only third parties.

In general, it takes less time to appoint committee members than for establishers of schools to establish investigative organizations; thus, in theory, organizations established by schools can start investigations more quickly. In addition, since the school-based investigative organizations include many teachers from their school, they generally find it easier to arrange members' schedules for meetings and hearings. Thus, intensive investigations can be conducted more quickly, meaning that bullied students can return to their school or classrooms earlier, and schools and their establishers can begin counseling the bullies.

However, when schools establish investigative organizations to “police themselves,” doubts arise with respect to their ability to remain neutral and proceed fairly, even if third parties are part of the organization. In addition, the expertise of the organization members may be questioned. It is also possible that investigative organizations may not follow the proper procedures or conduct appropriate fact-finding, either intentionally or through a lack of proper guidance. It is not uncommon for investigative organizations to take inappropriate measures against bullied students because of their lack of expertise. Therefore, in principle, investigative organizations should be set up by the schools' establishers rather than by schools.

On average, it takes schools' establishers three months to assemble an investigative organization and start an investigation because they have to appoint third-party members in accordance with recommendations of professional organizations or academic societies. In addition, since the organization members will have other commitments, complications related to arranging schedules for the meetings and hearings of the investigative organization can make it difficult to conduct the investigations quickly or thoroughly.

Title 2, Chapter 4 (1) (i), of the National Basic Policy states that boards of education, which are establishers of public schools, should set up permanent investigative organizations *before* serious cases occur, analyzing potential situations and obtaining advice from experts in anticipation of serious cases of bullying. However, the members of such organizations are not third parties because they have continuing relationships with the boards of education. In addition, any information provided by these boards of education

before the occurrence of such cases can lead to preconceptions and prejudices about bullying, and this can make it impossible for the organizations to conduct fair and neutral investigations in the event that serious bullying cases arise. Therefore, permanent investigative organizations are not allowed to investigate serious bullying cases. In such cases, the establishers of the relevant school must set up an investigative organization with only third-party members.

As discussed above, the timing of the start of investigations, the duration of investigations, and the quality of investigations differ depending on whether the school or its establishers set up the investigative organization and how many of its members are third parties. Where to establish the investigative organization should be based on the wished of victims (Title 2, Chapter 4 (1) (i), of the National Basic Policy).

In the interests of fairness and neutrality, a secretariat of any investigative organization should be established. Often, when the establishers of the school set up investigative organizations, they set up a secretariat under the establisher. There have been cases where a board of education established a third-party committee and set up a secretariat at the board of education, but the secretariat intentionally failed to hand over to the third-party committee the evidence or documents submitted by the parents of victim because doing so would have been disadvantageous to the school or the board of education. To prevent and the obstruction of justice through this type of cheating, the investigative organization's secretariat should be part of an institution other than pertinent school or its establisher. Specifically, the establishers of schools should entrust all affairs of the secretariat to a law office other than that of the school or its establisher.

## **(2) Members of Investigative Organizations**

Title 2, Chapter 4 (1) (i), of the National Basic Policy calls for ensuring fairness and neutrality in investigations. Title 4 of the *Guidelines* requires that investigative organizations ensure that they proceed with fairness and neutrality and conduct objective fact-finding efforts. According to Title 2, Chapter 4 (1) (i), of the National Basic Policy and Title 4 of the *Guidelines*, schools or their establishers should make its third-party membership appointments in accordance with the recommendations of professional organizations or academic societies. The National Basic Policy and the *Guidelines* require that such appointments follow the recommendation of professional organizations because many school establishers have cheated, appointing stakeholders, friends, or relatives to "stack the deck," as it were.

Recently, more advocates have expressed the view that bullying victims should have a voice in who should be included as members of organizations investigating their cases. Their detractors argue that including members recommended by the victims will compromise organizations' fairness and neutrality. Therefore, under the National Basic Policy and the *Guidelines*, schools or their establishers must follow the recommendations of professional organizations when making their third-party appointments. In this context,

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a third party is someone with expert knowledge and experience (e.g., an attorney, psychiatrist, academic expert, psychological, or welfare professional) and with no direct relationship with or special interest in the persons in the bullying case.

Investigative organizations must ensure fairness and neutrality when conducting investigations. They should also avoid any actions or statements that raise doubts about their fairness and neutrality. Therefore, clarifications are necessary for the meaning and scope of the terms “direct relationship” or “special interest.” In this context, a “direct relationship” is not restricted to personal relationships with parties in a specific case. It also includes connections in cases in which the would-be member has no personal close relationship with the parties but is associated with individuals or organizations that do have such a connection. In this context, “special interests” include not only cases where there is a legal relationship (e.g., a contract) but also cases where there is a relationship in which there is a de facto interest, such as use of the school's playground without charge.

Public schools established by local governments will be used as examples here, as they represent the largest number of serious cases. In these examples, the following persons are not considered third parties:

- (a) anyone who was or is a teacher at a public school in the same prefecture as the public school where the serious case occurred
- (b) anyone who was or is an official of the board of education of the school in which the serious case occurred
- (c) anyone who was or is an official of the board of education of the prefecture of the school where the serious case occurred is located
- (d) anyone who was or is an official of MEXT
- (e) an official of a department of the mayor of the local government that established the public school where the serious case occurred
- (f) anyone who is occupationally related to the victims or the bullies, such as a physician, public health nurse, nurse, certified psychologist, clinical psychologist, mental health worker, social welfare worker, lawyer, police officer, or official of a child consultation center
- (g) any representative, employee, or member of a juridical person (a nonhuman legal entity authorized by law with duties and rights) or anyone who has a contractual relationship with the public school where the serious case occurred or its establisher
- (h) anyone who had attended or currently attends the public school where the serious case occurred or the parents of that person
- (i) relatives of persons referred in (a) to (h)
- (j) anyone who personally or as part of an organization has or had a relationship with the persons referred to in (a) to (i) or an organization to which they belong

Because the scope of what constitutes a third party is wide, members are often

criticized for not being far enough removed, especially when schools or their establishers appoint members from the same prefecture where a serious case occurred. Therefore, it has been increasingly common for schools and their establishers to appoint members from other prefectures.

Not only do members of investigative organizations need to be third parties but they must also have expertise or professional skills. For this reason, common third-party appointees are lawyers, psychiatrists, academics, psychologists, social workers, and social welfare experts. However, it is not enough for members to possess one of these qualifications; they must also be able to appropriately conduct fact-finding efforts, analysis, and recommendations as they relate to bullying cases from a professional perspective. Therefore, if schools or their establishers consider that a candidate recommended by a professional organization is not competent, they will have to request that the professional organization recommend another person.

## 5. Matters to Be Explained<sup>30)</sup>

Schools, its establishers, or investigative organizations are legally obligated to explain the following six matters to bullying victims before conducting an investigation (Title 5 of the *Guidelines*). While explaining the matters, they must also listen to the wishes of the victims and consult with them about the matter and manner of the investigation. These procedures are essential for a thorough investigation.

### (1) Objectives or Targets of the Investigation

The investigative organizations must explain that the objective or target of the investigation is to clarify the facts of serious cases so that the schools or their establishers can handle serious cases and prevent the occurrence of similar cases, as required by Article 28 (1) of the APMPB. The specific objectives or targets of an investigation include these: (a) details of the bullying; (b) details of the relevant school's handling of the case; (c) details of the relevant school establisher's handling of the case; (d) consideration of measures to prevent the recurrence of the bullying and to provide support or counseling to the victims, the bullies, and other students; and (e) consideration of measures to prevent the occurrence of similar cases. Investigations of serious cases do not directly aim to pursue matters of criminal or civil liability. However, civil actions may be filed after an investigation has been completed, and a report of the investigation findings may be submitted to a court as important evidence.

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30) For details, see Kenji Nagata, *Ijime no Judaijitai no Chosa no Tameno Setsumeijiko no Setusmei ni Kansuru Kosatsu: "Ijime no Judaijitai no Chosa ni Kansuru Gaidorain" no Junshu wo Mezashite* (Study on Matters to Be Explained for the Investigation of Serious Cases of Bullying: Aiming to Comply with "Guidelines Concerning Investigation of Serious Cases of Bullying"), *70-5 Kansaidaijaku Hogakuronshu* (forthcoming).

**(2) Investigative Organizations**

The investigative organizations must communicate the details of members to the victims—specifically, the members' names, affiliations, backgrounds, current residence (prefecture, city, etc.), specialties, experience in bullying investigations, and extent of difficulty in scheduling meetings of the investigation. If the bullied students or their parents express doubts about the fairness, neutrality, and expertise of the members, the relevant school's establishers are obligated to dismiss the disputed members and appoint new ones.

**(3) Schedule of the Investigation**

The investigative organizations' explanation of the investigative schedule must include when the investigation will begin and how long those affected should expect to wait for the findings of the investigation. The organization must deliver timely progress reports of the investigation to the victims.

**(4) Investigative Matters and Targets**

The investigative organizations are required to explain what and who they plan to investigate. This usually includes the facts of the bullying and the handling of the case by the relevant school and its establisher. The investigations target students and teachers, and they cooperate, often through the use of questionnaires and participation at hearings.

The organization should hear details about the events, problems, and targets of the investigation sought by the victims and reflects them in the investigation as much as possible.

**(5) Investigative Methods**

The investigation organizations are required to explain their investigative methods to the victims. The most common methods used are questionnaires and hearings, but the methods may also include the analysis of videos or images from surveillance cameras and recorded voice data. The investigation organizations determine the respondents and the contents of the questionnaire after consulting with the victims, and they are required to conduct the questionnaire in accordance with general social research methods. For example, questions should not be closed (i.e., yes/no or multiple choice) but open (i.e., essay) to prevent bias and leading the respondents' answers. The questionnaire process should take place as soon as possible and all respondents should complete it under the same conditions.

Each questionnaire must be signed by the respondent so that its contents can be confirmed during the hearing. When conducting a questionnaire, the investigation organizations must fully convey the objectives of the investigation to the respondents as well as the parents as well of the student respondents and secure their consent to share the findings of the investigation, including their answers to the questionnaire, with the victims

(Title 6 of the *Guidelines*). If questionnaires are conducted without properly informing the respondents or their parents and securing their consent, those questionnaires cannot be used.

If the students fill out the questionnaire at school, they and their parents may be deprived of the opportunity to discuss how to fill out the questionnaires, given that the answers will be shared with the victims. Therefore, the students should be allowed to take such questionnaires home to fill out and return them, signed and sealed, after completion. The questionnaires must be tightly sealed to prevent tampering by the schools or their establishments, who may try to hide or destroy questionnaires that represent them in a disadvantageous manner. This also protects them from accusations of tampering. When a third-party committee conducts an investigation, the committee should arrange for students to mail their signed, sealed questionnaires directly to the secretariat of the organization.

Hearings are an essential tool for examining the information obtained from such questionnaires. Investigative organizations must give top priority to protecting the persons whose testimony they hear (Title 2, Chapter 4 (1) (i), of the National Basic Policy). These hearings should use forensic interview techniques to minimize the burden on the subjects and collect accurate information. Again, the questions should not be closed but open to ensure that people can give thorough, comprehensive, and nuanced answers. The victims should be heard before the bullies.

To minimize the stress of all students involved, the investigative organization should not conduct its hearings right before critical examinations or important school events. Investigative organizations should listen to students during the day. Again, the investigative organizations are tasked with determining who and what will be included in the hearings after consulting with the victims.

#### **(6) Conveying Investigative Findings**

The relevant schools, its establishments, or investigative organizations are obligated to explain in advance what kind of content from the investigation findings will be conveyed to the victims after the investigation has been completed. The organization must also consult with the victims about what the organization will convey to the bullies.

The organization must report the progress of the investigation to the victims, even during the investigation (Title 2, Chapter 4 (1) (ii), of the National Basic Policy and Title 6 of the *Guidelines*). Records relating to investigations, including questionnaires, are administrative documents. Therefore, they must be stored in accordance with the document management rules of the school establishments. The schools or their establishments are required to explain the time limits of their record storage to the victims and to keep the records stored properly.

Schools, their establishments, or investigative organizations are obligated to explain these six matters to the bullies and their parents as well as the victims and their parents before

conducting the investigation (Title 5 of the *Guidelines*).

## **6. Conduct of the Investigations**

Investigations are usually conducted in the following order.

- (1) gathering and understanding information and turning it into document form, including documents prepared by the school
- (2) conducting questionnaires
- (3) conducting hearings
- (4) organizing collected information
- (5) considering measures to prevent recurrence
- (6) writing the report

## **7. Explanations and Publication of the Findings of the Investigation**

### **(1) Explanations to Victims**

After the investigation has been completed, schools, their establishers, or the investigative organizations are required to share with the victims the results and all necessary and appropriate information, such as the facts of the serious case (Article 28 (2) of the APMPB); in practice, the investigative organizations often provide this information to the victims. The organizations are obligated not just to report the findings but to answer the victims' questions in detail. The schools, their establishers, or investigative organizations are compelled to comply with all relevant acts, regulations, and municipal ordinances concerning the protection of personal information when providing their information and explanations (Title 7 of the *Guidelines*). For example, in serious cases in public schools, the relevant school, their establishers (the board of education), and the investigative organization must follow the personal information protection ordinances of the local government.

Schools, their establishers, and investigative organizations must protect the privacy of students safeguard their personal information (Title 2, Chapter 4 (1) (ii), of the National Basic Policies). Many schools, their establishers, or investigative organizations have refused to share with bullying victims their bullies' personal and private information. For example, there have been cases in which those parties have chosen not to inform the victims about the circumstances behind the bullying—that is, such underlying problems: the bullies had been abused by their parents or other adults, the bullies had been victims themselves in the past and were not properly counseled, the bullies had some developmental disorder that precluded their adequate socialization, or the bullies were experiencing heightened stress (e.g., poverty, illness, etc.). Many think that the bullies' private information should remain private. In some egregious cases, schools, their establishers, or investigative organizations have treated the victims poorly, refusing to convey even the bullies' names to the victims.

However, regulations relating to the protection of personal information, including acts

and municipal ordinances, allow administrative organs to provide personal information to third parties when a statute requires it (for example, Article 8 (1) of the Act on the Protection of Personal Information Held by Administrative Organs<sup>31)</sup>). These statutes also stipulate that the personal information held by the administrative organs must be disclosed to the requester. Since the obligation to provide information to victims (Article 28 (2) the APMPB) is based on the APMPB, this means that a statute requires it, so schools, their establishers, or the investigative organizations must provide victims with the personal information about their bullies if it relates to the bullying.

Title 2, Chapter 4 (1) (ii), of the National Basic Policy and Title 7 of the *Guidelines* provide that schools, their establishers, or their investigative organizations must not fail to provide information and explanations to victims by citing without reasonable grounds the reason for protecting personal information. Only when such information is properly communicated can the victims know why the bullies abused them. By knowing the underlying reasons for the bullies' behavior (not, it should be clear, rationalizations or justifications but circumstantial background), the victims can recognize that the abuse was not their fault and begin recovering their self-esteem.

Investigative organizations are also required to explain the findings of their investigation to the bullies and their parents (Title 7 of the *Guidelines*).

### **(2) Reports and Explanations to the Heads of Local Government**

After schools, their establishers, or the investigative organizations have explained the findings of their investigation to the victims and the bullies, they must report and explain the findings and the policy for handling future bullying to the heads of the local government (Title 7 of the *Guidelines*). These reports and explanations are essential for the heads of local government to make decisions relevant to the investigation, such as whether to initiate a reinvestigation (Articles 29 (2), 30 (2), 30-2, 31 (2), 32 (2), and (5) of the APMPB). At this time, the victims may submit documents summarizing their opinions on the investigative findings—"opinions in writing"—to the heads of the local government (Title 2, Chapter 4 (1) (ii), of the National Basic Policy and Titles 7 and 10 of the *Guidelines*). The heads of the local government should hear from the victims directly if the victims wish.

### **(3) Explanations to Other Students, Their Parents, and the Mass Media**

According to Title 7 of the *Guidelines*, unless there is a particular problem, schools, their establishers, or the investigative organizations should make known their findings to other students, their parents, and the mass media. However, sensitive information about the victims should not be made public without their consent. It is up to the victims to decide whether (if at all) and with whom their information should be shared, such as what

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31) Act No.58 of 2003.

detail to release to the mass media or to other students and parents, in person, in print, or online.

When publicizing the results of an investigation, school, their establishers, or their investigative organizations are compelled to comply with all relevant statutes on the protection of personal information (Title 8 of the *Guidelines*). The range of personal information they can share publicly is more limited than what they can share with the victims. For example, in principle, they cannot disclose the bullies' names to other students, their parents, or the mass media. However, when a serious case has occurred in a public school, the name of any teachers who improperly handled the bullying may be disclosed because teachers are considered public officials (e.g., Article 14 (ii) (ha) of the Act on the Protection of Personal Information Held by Administrative Organs).

## **8. Management Based on the Findings of the Investigation**

The findings of the investigation are usually not legally binding. However, the school and its establishers should respond appropriately. When investigative organizations suggest providing support and consideration for the victims, schools and their establishers should follow through; they must provide the victims with ongoing psychological counseling and educational support (Title 9 of the *Guidelines*) and ensure that they have done everything possible to provide an environment in which students—particularly the victims—can lead safe and secure school lives, free from bullying. For example, they may arrange for the bullies to learn in classrooms separate from those of their victims. They may also make arrangements to avoid other occasions of proximity by considering the parties' daily movements and adjusting the location of the students' lockers, dictating which toilets each party should use, and planning contact-free transfers between classrooms. The schools and their establishers can also consider transferring the bully to another class or another school.

When bullying has been confirmed, the schools and their establishers must act to stop the bullying (Title 2, Chapter 4 (1) (i), of the National Basic Policy). In addition, the schools and their establishers must ask for the cooperation of the bullies' parents and provide them with guidance (Title 9 of the *Guidelines*). Bullies usually have underlying personal, psychological, or medical issues driving their behaviors. Schools and their establishers must provide ongoing counseling to bullies to help them deal with these issues, both for the bullies' well-being and to prevent future bullying incidents.

Schools and their establishers should seek professional assistance for their efforts to provide support and care for both victims and bullies. Specifically, they should provide access to school counselors, school social workers, and school lawyers, as well as specialized organizations such as child consultation centers, public health centers, municipal health centers, judicial juvenile support centers<sup>32)</sup> in juvenile classification

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32) Judicial juvenile support centers have been established under Article 131 of the Juvenile Classification

homes, and social welfare offices.

The schools' establishers are tasked with examining the measures taken by the school (and by the establishers themselves)—especially their actions to prevent bullying, detect bullying early, handle bullying incidents, share information, and forestall recurrence—with reference to the findings of the investigation (Title 9 of the *Guidelines*).

## 9. Reinvestigation

The heads of local government who receive reports of the findings of an investigation may, when they consider it necessary for handling serious cases or to prevent the occurrence of a similar case, investigate the findings of the investigation (reinvestigation) by establishing an affiliated organization (Articles 29 (2), 30 (2), 30-2, 31 (2), 32 (2), and (5) of the APMPB). The people who may decide to initiate a reinvestigation are the ones who receive such investigatory reports and explanations. For example, in public school cases, the head of the local government may initiate a reinvestigation under Article 30 (2); in private schools established by an incorporated educational institution, the governor may initiate a reinvestigation (Article 31 (2)).

The heads of local governments should consider initiating a reinvestigation in the following cases (see Title 1 of the *Guidelines*):

- (a) There are doubts about the fairness and neutrality of the members of the investigative organization (see Titles 4 and 5 of the *Guidelines*).
- (b) There was a serious problem with the investigative procedure of the investigative organization.
- (c) The investigative organization did not sufficiently investigate the information that it had confirmed with the victims before the investigation (Title 5 of the *Guidelines*).
- (d) The investigative organization did not conduct a sufficient investigation of the bullying incident's handling by the school and its establishers (see Article 28 (1) of the APMPB).
- (e) New and important facts have been discovered that the investigative organization did not find or have access to.

The procedural protections governing the original investigation apply to the reinvestigation. The organization conducting the reinvestigation and the reinvestigation itself must remain fair and neutral (Title 10 of the *Guidelines*). The members of the reinvestigative organization are obligated to be fair, neutral third parties with certain expertise, as spelled out in Title 10 of the *Guidelines*. The reinvestigation must also be conducted in compliance with the National Basic Policy and the *Guidelines* (Title 10 of the *Guidelines*).

As with the original investigation, the findings of reinvestigation are usually not legally

binding. However, schools and their establishers are expected to follow through on the findings as much as possible. When a reinvestigation is carried out, the implication is the original investigation under Article 28 (1) of the APMPB was insufficient. Therefore, it is assumed that the responses to the findings of the investigation were also insufficient, making it likely that the bullying situation will escalate since the problems and difficulties driving the bullies' abusive behavior will not have been properly addressed. Therefore, Title 2, Chapter 4 (2) (ii), of the National Basic Policy emphasizes that the purpose of the investigation is to ensure that the relevant school and its establishers will intensify their efforts to handle the situation in accordance with the findings of the reinvestigation.

When carrying out a reinvestigation of a serious case in a public school, the heads of the local government are required to report the new findings to the municipal assembly (Article 30 (3) of the APMPB), but they cannot convey any findings that relate to the victims' privacy without the victims' consent (Title 2, Chapter 4 (2) (ii), of the National Basic Policy. See also Title 10 of the *Guidelines*).

If it is not possible to resolve a serious case through a single reinvestigation, the head of the local government may conduct a third investigation. The APMPB does not prohibit such reinvestigations.

## IV. Discussion

### 1. Status Quo

In 2018, Japan recognized 543,933 cases of bullying, with 602 "serious cases." Does the framework based on APMPB work well? Unfortunately, the answer is "No." Many schools and their establishers, especially boards of education, have failed to comply with the APMPB, the National Basic Policy, and the *Guidelines*. In addition, they have often ignored the local basic policies and school basic policies they have established. For example, the following problems have occurred:

- (a) Victims' reports of bullying have been downplayed or ignored by their schools.
- (b) Victims have reported serious cases, but neither the schools nor their establishers recognized the severity, and no investigative organizations were established.
- (c) The members of investigative organizations were not fair or neutral or lacked expertise.
- (d) Established investigative organizations have disregarded or violated all or part of the procedures regulated by the National Basic Policy and the *Guidelines* (e.g., not explaining the matters sufficiently before an investigation).
- (e) Schools and their establishers have refused to cooperate with investigative organizations.
- (f) Schools or their establishers have unfairly put pressure on the students being investigated.
- (g) Schools or their establishers have refused to provide information to the victims.

- (h) Schools or their establishers have rejected the findings of investigations and refused to manage situations in accordance with the findings.

The Ministry of Internal Affairs and Communications (MIAC) has conducted an administrative audit of the execution of the APMPB. In March 2018, the MIAC minister made the following recommendations<sup>33)</sup> to the MEXT:

Although serious cases occurred, many boards of education and schools did not take the measures required by the APMPB, and they have not managed appropriately based on the National Basic Policy. This inappropriate management may lead to further deterioration of the cases, such as serious damage to bullied students and mistrust of their parents.

MEXT acknowledged the correctness of the recommendations, acknowledging that in the handling of serious cases by schools and their establishers, there had been numerous violations of the APMPB, the National Basic Policy, and the *Guidelines* throughout Japan.

## 2. Solutions

How should this situation be resolved and normalized? The first option would be to provide detailed and rigorous investigative procedures in an amended APMPB or through new legislation. Currently, the APMPB does not stipulate specific investigative procedures; however, the National Basic Policy and the *Guidelines* do regulate such procedures. Schools and their establishers are expected to obey any procedures established by an act.

The second option would be to amend the APMPB so that violations of the Act or investigation procedure rules may be punished. Currently, the Act does not provide penalties for violations. Penalties could deter schools and their establishers from violating the Act or investigation procedure rules more or less, although their past record of compliance has been unsatisfactory. For example, provisions could be added such that failure to comply would lead to the punishment of the principal of the school or a representative of its establishment; this might encourage them to set up their investigation organizations in accordance with the Act. If there were provisions to punish the principal of a school or a representative of its establishers for noncompliance—for example, not appointing fair and neutral third parties to their investigative organization, failure to provide appropriate information to victims—that might deter violations more or less.

The third (and probably most effective) option would be to amend the APMPB to allow an independent organization to conduct all investigations of bullying. It takes time and effort to set up a new investigative organization comprising fair, neutral, and professional

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33) Ministry of Public Management, Home Affairs, Posts and Telecommunications, Recommendations Based on Investigative Findings on the Promotion of Measures to Prevent Bullying (2018).

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third parties. Moreover, current investigative organizations have no mandatory authority to collect much evidence, and the findings are usually not legally binding. It seems likely that the best way to solve the problem of investigative shortcomings would be to establish an experienced professional body tasked solely with bullying investigations (and perhaps prevention efforts). The most appropriate body would be a family court. In Japan, family courts have jurisdiction over juvenile delinquency cases and domestic relations cases (Article 31-3 of the Court Act<sup>34</sup>). Their staff includes family court investigating officers (Articles 61-2 of the Court Act) with expertise in law, psychology, sociology, and education.

In juvenile delinquency cases, family court investigating officers collect evidence, information, and supporting materials on juvenile development, family environments, and juveniles' specific difficulties and problems (see Articles 8 (2) and 9 of the Juvenile Act). They speak with not only the juvenile delinquents and their parents but also to the teachers and any victims and their parents (see Article 9-2 of the Act). Family courts have fair, neutral professionals who specialize in children and young persons.

In Japan, family courts promptly decide on measures or sanctions for juvenile delinquents, because juvenile delinquents are committed to juvenile classification homes (Article 17 (1) (ii) of the Juvenile Act; Article 3 of the Juvenile Classification Home Act<sup>35</sup>) until decisions are made about how to proceed. In ordinary cases, the period for these decisions is up to two weeks in principle (Article 17 (3) of Juvenile Act) and, even if the period is renewed, it can be extended by only up to two more weeks (the main clause of Article 17 (4)). In exceptional cases, the period can be further renewed twice, meaning that the maximum period is eight weeks (Proviso to Article 17 (4)). Family courts are accustomed to promptly collecting and investigating evidence, materials, and information on cases involving juvenile delinquents (Articles 8, 9, 9-2, and 11–16), holding open hearings (Articles 21 and 22), and deciding on correctional measures or sanctions (Article 24).

In juvenile delinquency cases, family courts have the authority to collect evidence and investigate (Articles 11–16 of the Juvenile Act). In procedures concerning serious cases of bullying, if the family court were to be authorized by a statute to collect evidence, it could collect any evidence or information deemed necessary. Since Japan's family court is a judicial branch, its decisions would be legally binding. In serious cases of bullying, if the family courts were given the authority to decide how best to deal with the bullies, the schools or their establishers would be legally obligated to obey its decisions, including transferring to bullies to classrooms or schools separate from their victims.

Japan's family courts would be superior to third-party committees at investigating serious cases of bullying because they have a proven record of fairness, neutrality,

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34) Act No.59 of 1947.

35) Act No.59 of 2014.

expertise, promptness of judgments, authority to collect evidence, and legally binding decisions. Therefore, the APMPB should be amended establishing that family courts become the primary investigatory bodies in serious cases of bullying.