

Appendix C: Independent Reports and Documents

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E-Alerts

Far-reaching Anti-bullying Law Enacted In Massachusetts

May 2010 by [Sara Goldsmith Schwartz](#)

On May 3, 2010, Massachusetts Governor Deval Patrick signed into law "An Act Relative to Bullying in Schools" (the "Act"), a measure aimed at preventing bullying in all of the Commonwealth's public and independent schools. Support for the Act, which the Massachusetts legislature unanimously passed, was bolstered by the recent suicides of two Massachusetts students who apparently endured bullying and harassment from fellow students prior to their deaths.

The Act's most significant provision requires each Massachusetts school, by December 31, 2010, to develop a bullying prevention and intervention plan that complies with certain mandates, discussed below. The absence of such a plan not only will violate the Act but also could make a school vulnerable to various potential lawsuits. For instance, a bullied student could sue the school for negligent infliction of emotional distress based on the school's failure to provide protection against bullying. Similarly, a student disciplined by a school for allegedly bullying a classmate could sue the school for failing to have implemented and conducted the required investigation.

As these points illustrate, a clear and detailed bullying prevention and intervention plan is not merely a technical legal requirement. It is an important tool that will allow the school to protect its students, faculty and staff – and to confidently impose appropriate sanctions on violators.

Notably, the Massachusetts law is arguably the most far-reaching anti-bullying law in the country. While forty-four (44) states, including Massachusetts, now have laws that prohibit bullying of students in school and on-line, the Massachusetts statute includes private schools within its mandate. Most of the other states have excluded private schools from their anti-bullying laws. In addition, anti-bullying laws in other states generally ban bullying that targets individuals based on race, national origin, gender and other protected categories. The Massachusetts law is not limited to bullying based on protected categories. While there may be free speech challenges to the far-reaching nature of this law, we do not expect the law to be overturned.

Bullying Prevention And Intervention Plans

Each bullying prevention and intervention plan must, among other things:

- include descriptions of and statements prohibiting bullying and retaliation;
- establish procedures for reporting bullying and retaliation;
- allow reports of bullying and retaliation to be made anonymously;
- establish procedures for promptly responding to and investigating reports of bullying and retaliation;
- establish procedures for restoring a sense of safety to the victim; and
- establish procedures for promptly notifying the parents of both the victim and the perpetrator of the allegedly bullying conduct.

In developing its plan, each school must consult with teachers, school staff, professional

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support personnel, administrators, students and parents – and, in the course of such consultation, provide the community with notice and an opportunity to comment. A school must update its bullying prevention and intervention plan every two years and file each plan with the Massachusetts Department of Elementary and Secondary Education (“MDESE”). If the school maintains an internet website, it must post the plan.

Each school must provide annual written notice of its bullying prevention and intervention plan to all students, parents and employees; provide annual training on the plan to its faculty, staff and administration; and include relevant sections of the plan in its employee handbook. Each school also must provide age-appropriate instruction on bullying prevention to each grade and incorporate this instruction into its curriculum. As to this requirement, MDESE is mandated to publish guidelines by June 30, 2011.

Expansive Definition Of “Bullying”

The Act defines “bullying” broadly – as the severe or repeated use by one or more students of a written, verbal, or electronic expression, or a physical act or gesture, or any combination thereof, directed at another student that has the effect of:

- (i) causing physical or emotional harm to the other student or damage to the other student’s property;
- (ii) placing the other student in reasonable fear of harm to himself/herself or of damage to his/her property;
- (iii) creating a hostile environment at school for the other student;
- (iv) infringing on the rights of the other student at school; or
- (v) materially and substantially disrupting the education process or the orderly operation of a school.

“Cyber-bullying,” defined as bullying undertaken through the use of technology or any electronic means, is explicitly prohibited under the Act.

The proscription against bullying extends beyond school grounds to school-sponsored and school-related activities, functions and programs; school bus stops; school buses and other vehicles owned, leased or used by the school; and school computers and other technologies. Bullying at a location or function that is not school-related, or via technology or an electronic device that is not owned, leased or used by the school is also prohibited if the bullying creates a hostile environment for the victim while he or she is at school. Thus, a student who sends a harassing text message to another student will be considered to have engaged in bullying if the recipient of the text message is placed in reasonable fear of physical harm while at school, even if the message was sent and received outside of school hours and off school property.

Given this expansive definition of bullying, schools must be diligent in staying current with constantly changing technologies. Otherwise, it will be difficult to effectively prevent and intervene in evolving bullying tactics.

Other Key Features Of The Act

The Act goes so far as to make certain types of bullying a criminal offense. Specifically, the Act:

- amends the criminal statute regarding Stalking (M.G.L. c. 265, § 43) to cover acts or threats made via instant messaging (computer) and text messaging (cell phone);
- amends the criminal statute regarding Criminal Harassment (M.G.L. c. 265, § 43A) to cover these kinds of threats; and
- amends the criminal statute regarding Annoying Telephone Calls (M.G.L. c. 269, § 14A) to cover harassing or annoying behavior made via electronic communications.

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The Act also establishes a seven-member commission—composed of the Attorney General and a representative from each of several state associations, including the District Attorneys Association and Chiefs of Police Association—for the purposes of making an investigation and study relative to bullying and cyber-bullying. The commission is charged with determining whether additional criminal laws should be amended to sufficiently address this problem.

Recommendations For Schools

Our attorneys are already assisting schools with these compliance obligations, and we urge all schools to promptly take the following measures:

- Draft and implement a bullying prevention and intervention plan;
- Ensure that the school's actual practices comport with the bullying prevention and intervention plan;
- Review all student and personnel policies and update them for compliance (we recommend that this be done each year);
- Implement and/or update an internal complaint process to comport with best practices for protecting the entire school community;
- Train faculty, staff and administration on the bullying prevention and intervention plan, as well as on how to prevent, identify and remedy hazing, harassment and bullying; and
- Implement annual acknowledgment forms with respect to these issues.

The Firm has already developed and presented a compliance training program, and we would be pleased to assist schools in any way with all of these compliance tasks. As always, please contact us if you have questions about the Act or need compliance assistance.