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**Massachusetts Becomes the 42nd State to Pass
Anti-Bullying Legislation**

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On Monday, May 3, 2010, Governor Deval Patrick signed the much anticipated anti-bullying bill into law. The bill was passed unanimously by both the Senate and House of Representatives after it emerged from a joint conference committee. Massachusetts is now the forty-second state in the country to have anti-bullying legislation. The law is aimed at addressing the issue of bullying and cyber-bullying in schools. While Massachusetts lawmakers have been considering versions of this bill for quite some time, two recent bullying-related suicides in South Hadley and Springfield caused this legislation to receive top priority.

The law, which includes strict mandates for reporting all suspected incidents of bullying and cyber-bullying, is being heralded as one of the toughest anti-bullying laws in the country. Where school districts up until now have not had a clear blue print to follow when incidents of bullying and cyber-bullying were suspected, this new law will guide school districts in the identification, investigation and response to incidents as they arise. With the vast increase in the use of technology and social networking by students, much of which occurs off school grounds during non-school hours, administrators have rightly questioned the extent to which a school district has a right, and indeed an obligation, to intervene. This new law provides much needed guidance.

While there has been much support for this law, some critics have alleged that the new law does not go far enough because, while there are reporting mandates, the act contains no penalties for school employees who fail to report bullying. Also, it has been noted that the new reporting mandates are likely to increase the volume of disciplinary sanctions imposed on students. Some administrators also worry about the logistic as well as fiscal implications, citing a lack of state funding to support these new requirements.

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There are numerous provisions of the law about which school personnel should be aware. Among them are the following:

- “Bullying” is defined as “the 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 a victim that: (i) causes physical or emotional harm to the victim or damage to the victim’s property, (ii) places the victim in reasonable fear of harm to himself or of damage to his property, (iii) creates a hostile environment at school for the victim; (iv) infringes on the rights of the victim at school; or (v) materially and substantially disrupts the education process or the orderly operation of a school. For the purposes of this section, bullying shall include cyber-bullying.”
- “Cyber-bullying” is defined as “bullying through the use of technology or any electronic communication, which shall include, but shall not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimiles communications. Cyber-bullying shall also include (i) the creation of a web page or blog in which the creator assumes the identify of another person or (ii) the knowing impersonation of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying. Cyber-bullying shall also include the distribution by electronic means of the communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying.”
- The act applies not only to “school districts,” but also to charter schools, “approved private day or residential schools,” and schools run by educational collaboratives. Major portions of the act also apply to “non-public” schools.
- As expected, bullying and cyber-bullying are prohibited on school grounds and at school functions, as well as on property adjacent to school grounds, at bus stops and on school buses or on any school owned or leased vehicle. Additionally, the law states explicitly that bullying and cyber-bullying that is transmitted through the use of technology or an electronic device that is not owned or operated by the



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school and that occurs at a location or activity that is not school related will constitute prohibited bullying “if the bullying creates a hostile environment at school for the victim, infringes on the rights of the victim at school or materially and substantially disrupts the education process or the orderly operation of a school. Nothing contained herein shall require schools to staff any non-school related activities, functions, or programs.”

In other words, if bullying and cyber-bullying occurs off of school grounds through the use of students’ private electronic devices, it will constitute bullying for school purposes if the action results in a hostile school environment for the victim(s). The term “hostile environment” is defined in the law as “a situation in which bullying causes the school environment to be permeated with intimidation, ridicule or insult that is sufficiently severe or pervasive to alter the conditions of the student’s education.”

- Each school district or school shall develop and adhere to a bullying prevention plan that is developed through consultation with administrators, teacher, staff, students, parents and law enforcement. The plan must include a notice and public comment period and must be updated at least biennially. The law very explicitly details what elements must be included in the plan, which include but are not limited to how to report bullying, clear procedures for responding and investigating, the range of disciplinary sanctions available, strategies for protecting the victim(s), notification to the parents of the victim(s) and bully(ies), and ongoing professional development for all staff members. School districts must file their bullying prevention plan with the Department of Elementary and Secondary Education (“DESE”) on or before December 31, 2010.
- Any member of a school staff must immediately report any instance of bullying or retaliation that the staff member has witnessed or becomes aware of to the building principal or the school official identified as receiving such reports.
- Upon receipt of such a report, the school principal or designee will immediately conduct an investigation. If it is determined that bullying or retaliation has occurred, the principal or designee shall notify local law enforcement if it is thought that criminal charges may be pursued against the perpetrator, shall take appropriate disciplinary action, and shall notify the parents or guardians of the victim(s) and perpetrator(s). The law also requires that, “to the extent consistent with state and federal law” (which seemingly is a recognition of the restrictions



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imposed by FERPA and by state student record regulations) the parents or guardians of the victim are to be notified of the action taken to prevent further acts of bullying or retaliation.

- Each school district shall provide age-appropriate instruction on bullying prevention in each grade. This instruction shall be incorporated into the curriculum and shall be “evidence-based.”
- The law requires that professional development be provided to all educators, administrators, school nurses, cafeteria workers, custodians, bus drivers, athletic coaches, advisors, advisors to extracurricular activities, and to paraprofessionals in the prevention, identification, and response to bullying. DESE is charged with identifying and offering alternative methods of meeting this professional development requirement with at least one option being available at no cost to the school districts. Under the law, professional development is supposed to be in place at the start of the 2010-2011 school year.
- The law creates new criminal statutes, both felony and misdemeanor in nature, for bullying activities.
- The law creates a 7 member “special commission”, one member of which will be the Attorney General or designee who will act as chair, to focus on bullying on an on-going basis.

The law delegates to DESE the task of publishing a model plan for school districts to consider as they are developing their own plan. Additionally, DESE is charged with promulgating regulations and with compiling a list of bullying prevention and intervention resources, evidence-based curricula, and best practices and academic-based research. These resources will all become available to school districts as they begin the task of coming into compliance with the requirements of this new law.

In summary, this law provides both guidance and challenges to school districts moving forward. However, once the prevention plan is in place and staff are trained, it is hoped and anticipated that this law will have the intended effect of reducing the incidents of bullying and cyber-bullying in schools by sending students the clear message that such behavior will not be tolerated as schools continue in their mission to ensure a safe and secure learning environment for all students.



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Murphy, Hesse, Toomey and Lehane will be happy to assist school districts in complying with this law, including the development of materials and/or the training of staff.

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