



# LEGAL ALERT

July 2012

## **New York State Amends Dignity for All Students Act to Include Cyberbullying**

On June 18, 2012, the New York State Senate and Assembly passed Governor's Program Bill #43 to amend the education law in relation to prohibiting bullying and cyberbullying in public schools. Governor Cuomo signed the legislation on July 9, 2012. The full text of the new law is available online at: <http://open.nysenate.gov/legislation/bill/S7740-2011>. Although the previously adopted Dignity for All Students Act ("DASA") went into effect on July 1, 2012, the new amendment was proposed and passed within a matter of days in June 2012 and will become effective on July 1, 2013. As with the original DASA legislation, it remains unclear if this law could form the basis for a civil lawsuit.

Included in the law is an updated definition of harassment, contained in Education Law § 11(7). The new definition is for "harassment" and "bullying," and specifies that it applies to cyberbullying. This new definition maintains, with slight modifications, language about "the creation of a hostile environment by conduct or threats, intimidation or abuse" which (a) has or would have the effect of unreasonably and substantially interfering with a student's education performance, opportunities or well-being; or (b) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety. The definition also adds two new categories which prohibit similar conduct that "(c) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student" or "(d) occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property." The amendment also adds Education Law § 11(8) which defines cyberbullying to include all behaviors described in § 11(7)(a)-(d), "where the harassment or bullying occurs through any form of electronic communication."

In a further expansion of DASA, the definition of acts and harassment is no longer limited to actions based upon a person's actual or perceived characteristic related to the specifically listed categories. Rather, the legislature noted that "it is imperative to protect every student from such harm regardless of whether the student is a member of a specific category."

The amendment includes four significant obligations for school districts to implement by July 1, 2013, in addition to the fundamental changes described above.

First, school districts must develop not only policies but also procedures for the reporting of harassment, bullying and discrimination, as well as the procedures for investigating and responding to such complaints. Among other things, districts must create policies and procedures which "require the principal to make a regular report on data and trends related to harassment, bullying and discrimination to the superintendent;" require administrators to notify the appropriate local law enforcement when he/she believes that any harassment, bullying or discrimination constitutes criminal conduct; and require each school to provide written or electronic copies of the district's policies related to DASA to school employees, parents and students, as well as publish the policies on the district's website.

Second, school districts must expand the training they were already preparing to offer in accordance with DASA to include guidelines for training for the 2013-2014 school year that will “make school employees aware of the effects of harassment, bullying, cyberbullying and discrimination on students.” The guidelines for this training also must “address the social patterns of harassment, bullying and discrimination... including but not limited to those acts based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex, the identification and mitigation of harassment, bullying and discrimination, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.”

Third, school districts must develop “[g]uidelines relating to the development of measured, balanced and age-appropriate responses to instances of harassment, bullying or discrimination by students, with remedies and procedures following a progressive model that make appropriate use of intervention, discipline and education, vary in method according to the nature of the behavior, the developmental age of the student and the student’s history of problem behaviors, and are consistent with the district’s code of conduct.”

Finally, school districts must expand the “Instruction in civility, citizenship and character education” provided to students to emphasize “discouraging acts of harassment, bullying, discrimination” and to include instruction on “safe, responsible use of the internet and electronic communications.”

The new law also indicates that districts can anticipate new regulations from the Commissioner of Education regarding the changes, including a regulation creating a requirement that school professionals applying for certificates and licenses complete training regarding “the social patters of harassment, bullying and discrimination.” The Commissioner will also be providing “guidance and educational materials... regarding the best practices in addressing cyberbullying and helping families and communities work cooperatively with schools in addressing cyberbullying, whether on or off school property or at or away from a school function.”

In summary, this amendment not only broadens the underlying definitions upon which the original DASA was based, but also adds several new items to school districts’ plans for implementation.

### **Interaction with Local Laws**

Several counties in the state, including Erie, Niagara, and Monroe counties, have already adopted laws that make cyberbullying a criminal offense. It is important that administrators are aware of these local laws because, as mentioned above, the new law requires districts to communicate with law enforcement when it is believed that harassment, bullying or discrimination constitutes criminal conduct. It remains to be seen how these laws will be enforced and whether, and to what extent, they will impact or be impacted by DASA.

For more information please contact Laura Purcell at (585) 419-8731 / [lpurcell@harrisbeach.com](mailto:lpurcell@harrisbeach.com), or the Harris Beach attorney with whom you usually consult.

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