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CLIENT ALERT: Massachusetts Anti-Bullying Legislation Will Require Quick Action by School Districts

The new anti-bullying legislation, which was signed into law on May 3, 2010 by Governor Patrick, will take effect at the beginning of the next school year. School districts, charter and private schools (hereinafter "school districts") will need to quickly begin implementation plans in several areas.

First, school districts must establish and have in place professional development provisions by the start of the 2010-2011 academic year. The content of the professional development program must include: (1) developmentally appropriate strategies to prevent bullying incidents; (2) developmentally appropriate strategies for immediate, effective interventions to stop bullying incidents; (3) information regarding the complex interaction and power differential that can take place between and among a perpetrator, victim and witnesses to bullying; (4) research findings on bullying, including information about specific categories of students at risk for bullying in the school environment; (5) information on the incidence and nature of cyber-bullying; and (6) internet safety issues as they relate to cyber-bullying.

Second, school districts must establish a bullying and intervention plan which must be filed with the department of elementary and secondary education on or before December 31, 2010. (The department is required to develop a model bullying prevention program.) The law requires that development of the plan must be in consultation with teachers, school staff, professional support personnel, school volunteers, administrators, community representatives, local law enforcement agencies, students, parents and guardians. The consultation must include a notice and public comment period. (Non-public schools must only give notice to and provide a comment period for families that have a child attending the school.)

Each bullying prevention and intervention plan must include: (1) descriptions of and statements prohibiting bullying, cyber-bullying and retaliation; (2) clear procedures for students, staff, parents, guardians and others to report bullying and retaliation; (3) provision that reports may be made anonymously, provide however that no disciplinary action shall be taken against a student solely on the basis of an anonymous report; (4) clear procedures for promptly responding to and investigating reports of bullying and retaliation; (5) range of disciplinary actions that may be taken against a perpetrator for bullying or retaliation; (6) clear procedures for restoring a sense of safety for a violation and assessing that victim's need for protection; (7) strategies for protecting a person who reports bullying, provides information during an investigation or witnesses or has reliable information about an act of bullying; (8) procedures consistent with state and federal law for promptly notifying the parents or guardians of victims and perpetrators; (9) a provision that a student knowingly making a false accusation shall be subject to disciplinary action; and (10) a strategy for providing counseling or referral to appropriate services for perpetrators, victims and their family members.

The new legislation defines bullying as acts that cause physical or emotional harm or damage to a victim's property; that place students "in reasonable fear of harm" to themselves or their property;

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that create “a hostile environment at school for the victim”; that infringe on the rights of a victim at school; or that “materially and substantially disrupts the education process” or “orderly operation of a school”. A hostile environment” is defined as a situation in which bullying causes the school environment to be permeated with “intimidation, ridicule or insult… sufficiently severe or pervasive to alter the conditions of the student’s education.” The law prohibits bullying on school grounds or immediately adjacent thereto, school buses and school bus stops, school-sponsored or school-related activity or through the school’s technology and electronic devices. It also prohibits bullying at non-school locations or activities, as well as through non-school electronic and technological media if the bullying creates a hostile environment at school, infringes on the rights of a victim or “materially and substantially disrupts the education process or the orderly operation of a school.”

All school staff, including cafeteria workers, custodians, bus drivers, coaches, and advisors are obligated to report any instance of bullying or retaliation witnessed by them or which they become aware of to the principal and/or other school official identified as responsible for receiving such reports. (The law does not specify what actions a school district should take with respect to school staff members who fail to report instances of bullying or retaliation.)

The principal is charged with responsibility for the implementation and oversight of the bullying and intervention plan. Additionally, the principal and/or his/her designee is responsible for promptly investigating complaints of bullying or retaliation. If the principal or designee believes bullying or retaliation has occurred, he/she is responsible for (1) taking appropriate disciplinary action; (2) notifying the parents or guardians of the perpetrator; (3) notifying the parents or guardians of the victim, as well as notifying them to the extent consistent with state and federal law of the action taken to prevent further acts of bullying or retaliation; and (4) notifying local law enforcement if he/she believes that criminal charges may be pursued against the perpetrator.

The law requires schools to teach students in age-appropriate ways about bullying prevention each year, as well as train staff to recognize it. The law provides that IEPS must address skills and proficiencies needed to avoid and respond to bullying, harassment or teaching if the child has a disability that offsets social skills development or makes him/her vulnerable to such conduct.

This is a summary of many of the main features of the law. The law contains additional requirements. If you have any specific questions about these additional requirements or any aspect of the anti-bullying legislation, you should consult with your Morgan, Brown & Joy attorney or contact the undersigned author of this article.

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