

## **PROPOSED REGULATIONS ON ANTI-BULLYING LAW 603 CMR 49.00**

- Presented to the Board of Elementary and Secondary Education on June 22, 2010 for initial review and a vote to solicit public comment.
- Revised proposal contains additions and changes in response to public comment received through August 25, 2010.
- Final action by the Board of Elementary and Secondary Education anticipated on September 21, 2010.

### **Background:**

Chapter 92 of the Acts of 2010, *An Act Relative to Bullying in Schools*, was signed into law on May 3, 2010 and took effect immediately. The law requires each school district, charter school, non-public school, approved private special education day or residential school, and collaborative school to develop and implement a plan to address bullying prevention and intervention. The statute directs the Board of Elementary and Secondary Education to promulgate regulations addressing a principal's duties under one of the ten required elements of the bullying prevention and intervention plan, namely, notification to parents or guardians of the target and the aggressor of bullying or retaliation and the action taken to prevent further bullying, and notification to law enforcement of bullying or retaliation, when the aggressor's conduct may result in criminal charges. The law further provides that the regulations must be promulgated by September 30, 2010.

**This is a new regulation.**

**All of the language in the initial proposal is indicated by regular font and ~~overstrike~~ (deleted language).**

**The revised proposed language based on public comments received is indicated by underscore (new language).**

### **603 CMR 49.00**

#### **Notification to Parents and Law Enforcement of Bullying or Retaliation; Confidentiality of Student Records ~~Information~~**

##### **49.01: Authority**

603 CMR 49.00 is promulgated by the Board of Elementary and Secondary Education pursuant to M.G.L. c. 71, §-37O, as added by Chapter 92 of the Acts of 2010.

##### **49.02: Scope and Purpose**

603 CMR 49.00 governs the requirements related to the duty of the principal or leader of a public school, approved private day or residential school, collaborative school, or charter school to notify the parents or guardians of a ~~victim~~ target and an ~~perpetrator~~.

aggressor when there is an report incident of bullying or retaliation, and to notify the local law enforcement agency when criminal charges may be pursued against the perpetrator of bullying or retaliation aggressor. The regulations also addresses confidentiality of student record information related to notification of bullying and retaliation.

#### **49.03: Definitions and Terms**

**Aggressor** means perpetrator of bullying or retaliation as defined in G.L. c. 71, §37O.

**Approved private day or residential school** means a school that accepts, through agreement with a school committee, a child student requiring special education pursuant to M.G.L. c. 71B, §-10 and 603 CMR 28.09.

**Bullying**, pursuant to M.G.L. c. 71, §-37O, means 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 target that: (i) causes physical or emotional harm to the victim target or damage to the victim's target's property; (ii) places the victim target in reasonable fear of harm to himself or herself or damage to his or her property; (iii) creates a hostile environment at school for the victim target; (iv) infringes on the rights of the victim target at school; or (v) materially and substantially disrupts the education process or the orderly operation of a school. Bullying shall include cyberbullying.

~~**Bullying prevention and intervention plan**~~ means the plan required to be developed under M.G.L. c. 71, § 37O.

**Charter school**, pursuant to M.G.L. c. 71, §-37O, means a Commonwealth charter school or Horace Mann charter school established pursuant to M.G.L. c. 71, §-89.

**Cyberbullying**, pursuant to M.G.L. c. 71, §-37O, means bullying through the use of technology or any electronic communication, which shall include, but 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 facsimile communications. Cyberbullying shall also include: (i) the creation of a web page or blog in which the creator assumes the identity 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. Cyberbullying shall also include the distribution by electronic means of a 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 ~~of~~ or posting creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying.

**Collaborative school**, pursuant to M.G.L. c. 71, §-37O, means a school operated by an

educational collaborative established pursuant to M.G.L. c. 40, §-4E.

**Hostile environment**, pursuant to G.L. c. 71, §37O, means 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.

**Local law enforcement agency** means a local police department, ~~county district attorney, or any other public entity charged with investigation, apprehension, detention or prosecution of individuals suspected or convicted of a crime.~~

**Local plan** means the bullying prevention and intervention plan required to be developed under G.L. c. 71, §37O.

**Parent** means a student's father or mother, or guardian.

**Perpetrator**, pursuant to M.G.L. c. 71, § 37O, means a student who engages in bullying ~~or retaliation.~~

**Principal** means the administrative leader of a public school, charter school, collaborative school, or approved private day or residential school, or his/her designee for the purposes of implementing the school's bullying prevention and intervention plan.

**Retaliation** means any form of intimidation, reprisal or harassment directed against a person who reports bullying, provides information during an investigation about bullying, or witnesses or has reliable information about bullying in response to an action that person has taken or knowledge that the person has.

**School** means an approved private day or residential school, collaborative school, or charter school.

**School district**, pursuant to G.L. c. 71, §37O, means the school department of a city or town, a regional school district or a county agricultural school.

**Student record** has the meaning set forth in the Massachusetts Student Records Regulations, 603 CMR 23.02.

**Target** means a student victim of bullying or retaliation as defined in G.L. c. 71, §37O.

**Victim**, pursuant to M.G.L. c. 71, § 37O, means a student against whom bullying or retaliation has been perpetrated.

#### **49.04: Bullying and Retaliation Prohibited**

(1) Bullying of a student is prohibited, ~~and retaliation against a person who reports bullying, provides information during an investigation about bullying, or witnesses or has reliable information about bullying is prohibited as provided in G.L. c. 71, §-37O.~~

Retaliation is also prohibited.

(2) Bullying shall be prohibited on school grounds, property immediately adjacent to school grounds, at a school-sponsored or school-related activity, function or program whether on or off school grounds, at a school bus stop, on a school bus or other vehicle owned, leased or used by a school district or school, or through the use of technology or an electronic device owned, leased or used by a school district or school. Bullying at a location, activity, function or program that is not school-related, or through the use of technology or an electronic device that is not owned, leased or used by a school district or school, shall be prohibited if the bullying: (a) creates a hostile environment at school for the target; (b) infringes on the rights of the target at school; or (c) materially and substantially disrupts the education process or the orderly operation of a school.

(23) Each school district and school, ~~approved private day or residential school, collaborative school, or charter school~~ shall have a procedures for receiving reports of bullying or retaliation; promptly responding to, and investigating such reports, and determining whether bullying or retaliation has occurred; responding to incidents of bullying or retaliation; ~~addressing all such incidents;~~ and reporting to parents and law enforcement as set forth in 603 CMR 49.05 and 49.06.

#### **49.05: Notice to Parents**

(1) Upon investigation and determination that bullying or retaliation has occurred, ~~The~~ principal shall promptly notify the parents of the ~~alleged victim target~~ and the ~~alleged perpetrator aggressor~~ of ~~the determination report of bullying or retaliation~~ and of the school district or school's procedures for ~~investigating the report~~ responding to the bullying or retaliation. The principal shall inform the target's parent of actions that school officials will take to prevent further acts of bullying or retaliation. Nothing in this provision prohibits the principal from contacting a parent of a target or aggressor about a report of bullying or retaliation prior to a determination that bullying or retaliation has occurred. If the alleged victim and alleged perpetrator attend different schools, the principal receiving the report shall inform the principal of the other student's school, who shall notify the student's parent of the report and procedures.

(2) ~~The principal shall inform the parent of a victim of bullying or retaliation of actions that school officials will take to prevent further acts of bullying or retaliation.~~ Notice required by this section shall be provided in the primary language of the home.

(3) Each ~~public school district, approved private day or residential school, collaborative school, and charter school~~ shall include the requirements and procedures for communicating with the parents of the ~~victim and perpetrator~~ aggressor and target of bullying or retaliation in the ~~bullying prevention and intervention~~ local plan ~~required by M.G.L. c. 71, § 37O.~~

(4) A principal's notification to a parent about an incident or a report of bullying or retaliation must comply with confidentiality requirements of the Massachusetts Student

Records Regulations, 603 CMR 23.00, and the Federal Family Educational Rights and Privacy Act Regulations, 34 CFR Part 99, as set forth in 603 CMR 49.07, ~~below~~.

#### **49.06: Notice to Law Enforcement Agency**

(1) Before the first day of each school year, the superintendent or designee of a school district and the school leader or designee of an approved private day or residential school, collaborative school, or charter school shall communicate with the chief of police or designee of the local police department about the implementation of this section. Such communication may include agreeing on a method for notification, a process for informal communication, updates of prior written agreements, or any other subject appropriate to the implementation of this section.

~~(12) Upon~~ At any point after receipt and review of a report of bullying or retaliation, including after an investigation, the principal shall make a preliminary determination whether to notify the local law enforcement agency of the reported incident. The principal shall notify the law enforcement agency if the principal has a reasonable basis to believe that the incident may result in criminal charges may be pursued against the alleged perpetrator aggressor. Notice shall be consistent with the requirements of 603 CMR 49.00 and established agreements with the local law enforcement agency. The principal shall document the reasons for his or her decision to notify law enforcement. Nothing in this section shall be interpreted to require reporting to a law enforcement agency in situations in which bullying and retaliation can be handled appropriately within the school district or school.

(a) In making the determination whether notification to law enforcement is appropriate, the principal may, consistent with school policy and procedure, consult with the school resource officer, if any, and any such other individuals the principal deems appropriate in making such determination.

~~(ab) If the principal decides to notify the local law enforcement agency, the principal shall document the reasons for the decision and immediately contact the local law enforcement agency to discuss the incident and the law enforcement agency's involvement. Nothing in this section shall prevent the principal from taking appropriate disciplinary or other action pursuant to school district or school policy and state law, provided that disciplinary actions balance the need for accountability with the need to teach appropriate behavior.~~

~~(bc) If the principal decides not to notify the local law enforcement agency, or the local law enforcement agency determines that its involvement is not necessary under the circumstances, the principal shall respond to the incident of bullying or retaliation as provided in the bullying prevention and intervention plan. If the principal subsequently determines facts that cause him or her to believe that the perpetrator's conduct may be criminal, the principal shall notify the local law enforcement agency. The principal shall respond to the incident as set forth in relevant provisions of the local plan consistent with this section.~~

(23) If an incident of bullying or retaliation ~~The principal shall notify the local law enforcement agency of a report of bullying or retaliation consistent with 603 CMR 49.06(1) if bullying or retaliation occurs on school grounds and involves a former student under the age of 21 who is no longer enrolled in the school district or school, the principal of the school informed of the bullying or retaliation shall notify the local law enforcement agency if the principal has a reasonable basis to believe that criminal charges may be pursued against the aggressor.~~

(34) ~~Each public-school district, approved private day or residential school, collaborative school, and charter school shall include the requirements and procedures for communicating with the local law enforcement agency in the bullying prevention and intervention local plan required by M.G.L. c. 71, § 37O.~~

#### **49.07: Confidentiality of Records**

(1) A principal may not disclose ~~to a parent any student record information from a student record of a target or aggressor to a parent unless the information is about regarding an alleged victim or perpetrator who is a student and who is not the parent's own child.~~

(2) A principal may disclose a ~~report~~ determination of bullying or retaliation to a local law enforcement agency under 603 CMR 49.0607(1)(a) without the consent of a student or his/her parent. The principal shall communicate with law enforcement officials in a manner that protects the privacy of ~~victims~~ targets, student witnesses, and ~~perpetrators~~ aggressors to the extent practicable under the circumstances.

(3) A principal may disclose student record information about a ~~victim~~ target or ~~perpetrator~~ aggressor to appropriate parties in addition to law enforcement in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals as provided in 603 CMR 23.07(4)(e) and 34 CFR 99.31(a)(10) and 99.36. This provision is limited to instances in which the principal has determined there is an immediate and significant threat to the health or safety of the student or other individuals. It is limited to the period of emergency and does not allow for blanket disclosure of student record information. The principal must document the disclosures and the reasons that the principal determined that a health or safety emergency exists.

#### **Regulatory Authority:**

603 CMR 49.00: M.G.L. 71, §37O, as added by Chapter 92 of the Acts of 2010