

**Analysis of Public Comments on Proposed New 603 CMR 49.00:
Notification of Bullying or Retaliation**

September 2010

Note: unless otherwise indicated, the regulations referred to are the proposed regulations as published for public comment after a vote by the Board of Elementary and Secondary Education on June 22, 2010. References to “370” or to “the statute” are to G.L. c. 71, §370 as added by section 3 of Chapter 92 of the Acts of 2010 (“an Act Relative to Bullying in Schools”). References to the “Model Plan” or “Plan” mean the *Model Bullying Prevention and Intervention Plan under M.G.L. c. 71, §370*, required by the statute and issued by the Department of Elementary and Secondary Education on August 24, 2010. References to “local plan” mean the bullying intervention and prevention plan that school districts and schools must develop under the statute.

Key to Abbreviations

ACLU (American Civil Liberties Union of Massachusetts)

ADL (Anti-Defamation League)

BESE or Board (Board of Elementary and Secondary Education)

Chair (Rep. Martha Walz, Co-Chair, Joint Committee on Education)

CPCS (Committee for Public Counsel Services)(Supports comments by ELTF)

ESE (MA Department of Elementary and Secondary Education)

ELTF (Education Law Task Force)

FRU (Frontier Regional and Union #38 School Districts)

GLAD (Gay & Lesbian Advocates & Defenders, MassEquality and Massachusetts Lesbian and Gay Bar Associations)

GLBTY (Massachusetts Commission on Gay, Lesbian, Bisexual and Transgender Youth)

GLSEN (Gay, Lesbian and Straight Education Network and GLSEN Massachusetts)

OAG (Office of the Attorney General)

PTA (Massachusetts PTA)

PFLAG (Greater Boston Parents, Families and Friends of Lesbians and Gays)

SCM (Stoneman, Chandler and Miller)

TPC (Massachusetts Transgender Political Coalition)

Public comment not referenced above: Michael Levi

General Comments		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>1. Chair: The proposed regulations should conform to the Model Plan.</p> <p>Reason: The regulations were proposed prior to the release of the Model Plan and are inconsistent with the definitions and other portions of the Plan. The two should be consistent and unambiguous so that school administrators may rely on both documents.</p>	<p>ESE agrees with the principle that the regulations and ESE's Model Bullying Prevention and Intervention Plan (Model Plan) should be consistent. It will be necessary to make stylistic and other changes to the Model Plan to conform to statutory and final regulatory requirements.</p>	<p>Multiple changes, as identified below.</p>
<p>2. GLAD: Appreciates opportunity to comment on 49.05 and 49.07, and encourages ESE to promulgate regulations in other areas of the statute including requirements for professional development and curriculum to address challenges faced by at-risk groups, including lesbian, gay, bisexual and transgender (LGBT) community.</p>	<p>§370 requires ESE to promulgate regulations in a limited area, i.e., a principal's duty to notify parents and law enforcement of bullying and retaliation. The recommendation refers to areas outside the scope of that charge. ESE recognizes the importance of addressing the effects of bullying on at-risk groups, including the LGBT community. Schools must focus on creating a safe, inclusive school climate and community for all students to feel they are welcome and respected for who they are; this principle is embedded throughout the Model Plan and will be reflected in emotional and social curricula that the statute requires ESE to develop by June 2011.</p>	<p>None.</p>
<p>3. GLSEN: Suggests that the Board adopt regulations for inclusive and comprehensive professional</p>	<p>See #2 in this section.</p>	<p>None.</p>

General Comments		
Source and Summary of Comment	ESE's Response	Recommended Revision
development and school district policies. Vital to successful implementation of the statute.		
<p>4. Michael Levi: Suggests that the Board add language such as the following:</p> <p><u>If either the victim or perpetrator is a student with an I.E.P., the principal shall send copies of all notifications to the I.E.P. team chair.</u></p> <p>Reason: Data are important since the law requires that risks of bullying be addressed within and Individualized Education Program (IEP) and by IEP Teams.</p>	<p>§37O requires ESE to promulgate regulations in a limited area, i.e., a principal's duty to notify parents and law enforcement of bullying and retaliation. ESE agrees that IEP Teams need to have information about bullying incidents in order to implement 37O's requirement to address at the Team meeting the needs of students with disabilities who engage in bullying or may be vulnerable to bullying. ESE will address this requirement in guidance.</p>	None.

49.02: Scope and Purpose		
Source and Summary of Comment	ESE's Response	Recommended Revision
No comments received.		N/A

49.03: Definitions and Terms		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>1. ACLU: Recommends that the Board adopt the following definition of "hostile environment":</p> <p><u>Hostile environment means a situation in which bullying causes the school environment to be permeated with</u></p>	<p>ESE agrees with this recommendation because it will assist in interpreting language in this section.</p>	<p>Revise section to add the following definition:</p> <p>Hostile environment means a situation in which bullying</p>

49.03: Definitions and Terms		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p><u>intimidation, ridicule or insult that is sufficiently severe or pervasive to alter the conditions of the student's education.</u></p> <p>Reason: The term "hostile environment" is used in the definition of bullying. For this reason, include the same definition in the regulations that is in the statute so that school officials do not have to guess at its meaning.</p>		<p>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.</p>
<p>2. ACLU: Recommends that the Board revise the definition of "Local law enforcement agency" as follows:</p> <p><u>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 individual's suspected or convicted of a crime."</u></p> <p>Reason: The local law enforcement agency is logically the local police, who should have the opportunity to determine whether the conduct is criminal in nature before the incident is turned over to prosecutors. The district attorney is arguably not local; remainder of proposed definition is vague and overbroad.</p>	<p>ESE agrees that the local police are the local law enforcement agency and that the proposed regulation is confusing.</p>	<p>Revise the definition to state:</p> <p>Local law enforcement agency means a local police department.</p>
<p>3. Chair: Recommends that the term "aggressor" replace "perpetrator" and the term "target" replace "victim" in the regulations consistent with the Model Plan.</p> <p>Reason: The Model Plan and regulations should be consistent.</p>	<p>ESE agrees with the Chair's suggestion that the Board uses the terms "target" for "victim" and "aggressor" for "perpetrator" wherever such terms appear.</p>	<p>1. Define "target." Delete the definition of "victim." Delete the word "victim" in the proposed regulations and insert the word "target" in its place.</p> <p>2. Define "aggressor." Delete</p>

49.03: Definitions and Terms		
Source and Summary of Comment	ESE’s Response	Recommended Revision
		the definition of “perpetrator.” Delete the word “perpetrator” in the proposed regulations and insert the word “aggressor” in its place.
<p>4. Chair: Recommends that the Board adopt the following definition of cyberbullying, which appears in the Model Plan:</p> <p><u>Cyberbullying is bullying through the use of technology or electronic devices such as telephones, cell phones, computers, and the Internet. It includes, but is not limited to, email, instant messaging, and Internet postings. See M.G.L. c. 71, §37O for the legal definition of bullying.</u></p> <p>Reason: The Model Plan and regulations should be consistent.</p>	<p>Because of the technical nature of the definition, ESE recommends that the definition in regulation be the same as the statutory definition to ensure conformity and legal precision. The definition of cyberbullying in the Model Plan does refer readers to the legal definition.</p>	<p>None.</p>
<p>5. Chair: Recommends that the Board adopt the following definition of “retaliation,” which appears in the Model Plan:</p> <p><u>Retaliation is any form of intimidation, reprisal, or harassment directed against a student who reports bullying, provides information during an investigation about bullying, or witnesses or has reliable information about bullying.</u></p> <p>Reason: The Model Plan and regulations should be consistent.</p>	<p>ESE agrees with the Chair’s recommendation to include a definition of “retaliation” in the regulations. However, while the word “student” is appropriate in the Model Plan, which is primarily focused on bullying of students, the regulatory definition should track the statutory language and refer to “person” to include students and others. This makes clear that retaliation against, for example, school staff who report bullying is unacceptable.</p>	<p>Revise 49.03 to include the following definition of “retaliation:”</p> <p>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.</p>

49.03: Definitions and Terms		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>6. ELTF: Recommends that the Board adopt the following definition of “hostile environment”:</p> <p><u>Hostile environment 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.</u></p> <p>Reason: Inclusion of the statutory definition assures that members of the public are informed of the definition.</p>	See #1 in this section.	See #1 in this section.
<p>7. ELTF: Recommends that the board adopt the following definition of “local law enforcement”:</p> <p><u>Local law enforcement means a local police department.</u></p> <p>Reason: County district attorneys and others included in the Board’s proposed definition are not “local.”</p>	See #2 in this section.	See #2 in this section.
<p>8. ELTF: Suggests that the Board adopt the following definition of “retaliation”:</p> <p><u>Retaliation means any form of intimidation, reprisal or harassment against a person who reports bullying, provides information during an investigation of bullying, or witnesses or has reliable information about bullying. Retaliation includes retaliation by students, former students, school staff and by any other individual.</u></p> <p>Reason: Incorporates language from the statute about retaliation that is not included in the proposed regulation.</p>	See #5 in this section.	See #5 in this section.

49.04: Bullying Prohibited		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>1. ACLU: Recommends that the Board add the following new 49.04(2) before, not in place of, currently proposed 49.04(2):</p> <p><u>(2) Bullying which occurs at a location, activity, function or program that is not school-related, or which is conducted 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 only if the bullying: (a) creates a hostile environment at school for the victim; (b) infringes on the rights of the victim at school; or materially and substantially disrupts the education process or the orderly operation of a school.</u></p> <p>Reason: Clarify that schools have authority to intervene and/or regulate student speech only if there is a nexus to school; language appears in the statute.</p>	<p>ESE agrees with the comment.</p>	<p>1. Revise 49.04 to include the following new subsection before proposed 49.04(2) that tracks statutory language:</p> <p>(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:</p> <p>(a) creates a hostile environment at school for the</p>

49.04: Bullying Prohibited		
Source and Summary of Comment	ESE's Response	Recommended Revision
		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. 2. Renumber proposed 49.04(2) as 49.04(3).
<p>2. Chair: Recommends that the Board include language similar to that included in the Model Plan clarifying that the prohibition on bullying without a school nexus and/or outside the school's jurisdiction is limited in scope. The Model Plan language states in relevant part at VII:</p> <p>Acts of bullying, which include cyberbullying, are prohibited:</p> <p style="text-align: center;">...</p> <p>(ii) at a location, activity, function or program that is not school-related, through the use of technology or an electronic device that is not owned, leased or used by a school district or school, if the acts creates a hostile environment at school for the target or witnesses, infringes on their rights at school, or materially and substantially disrupt the education process or the orderly operation of a school.</p> <p>Reason: The regulations and Model Plan should be consistent.</p>	<p>See #1 in this section.</p> <p>ESE has not included "witnesses" in its recommended revision because, under the statute, they may be victims of retaliation, not bullying. It will be necessary to make stylistic and other changes to the Model Plan to conform to statutory and final regulatory requirements.</p>	<p>See #1 in this section.</p>

49.04: Bullying Prohibited		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>3. Chair: Recommends that the Board revise 49.04(2) by deleting the word “incidents” and replacing it with “reports” as follows:</p> <p>Each school district, approved private day or residential school, collaborative school, or charter school shall have a procedure for receiving a report of bullying or retaliation; promptly responding to, investigating, and addressing all such <u>reports</u>; and reporting to parents and law enforcement as set forth in 603 CMR 49.05 and 49.06.</p> <p>Reason: “Such reports” refers to the words “reports of bullying and retaliation.”</p>	ESE agrees with the Chair’s comment.	<p>Revise proposed 49.04(2), (to be renumbered 49.04(3)), as follows:</p> <p>Each school district and school shall have 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; and reporting to parents and law enforcement as set forth in 603 CMR 49.05 and 49.06.</p>
<p>4. ELTF: Suggests that the Board add a new 49.04(2), to be inserted before, not in place of, the proposed 49.04 (2):</p> <p><u>(2) Bullying which occurs at a location, activity, function or program that is not school-related, or which is conducted through the use of technology or an electronic device that is not owned, leased or used by a school district or school, shall only be prohibited if the bullying: (a) creates a hostile environment at school for the victim; (b) infringes on the rights of the victim at school; or materially and substantially disrupts the</u></p>	See #1 in this section.	See #1 in this section.

49.04: Bullying Prohibited		
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<p><u>education process or the orderly operation of a school.</u></p> <p>Reason: Makes clear that prohibition on bullying without a school nexus is limited in scope; tracks statutory prohibition; students have free speech right and there are limits on schools' authority to control student speech that lacks a school nexus; without it, schools are vulnerable to litigation and liability.</p>		
<p>5. ELTF: Recommends that the Board add a new 49.04(3), which states:</p> <p><u>(3) No person shall be notified of any report or investigation of bullying or retaliation except as set forth herein.</u></p> <p>Reason: Emphasizes confidentiality requirement.</p>	<p>ESE does not agree that this provision is necessary in this section to emphasize confidentiality. The regulations describe the notification that must be provided to parents and law enforcement; section 49.07 addresses confidentiality.</p>	<p>None.</p>

49.05 Notice to Parents		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>1. ADL: Recommends that the Board insert the following sentence in the regulation:</p> <p><u>The principal shall provide the parent of the alleged victim of bullying and the alleged perpetrator of bullying or retaliation, information on counseling or referral to appropriate services, consistent with the school's plan.</u></p> <p>Reason: Impact of bullying is often severe and may be long-lasting. Statute recognizes importance of counseling or referral to appropriate services to victims</p>	<p>§37O and 49.05(3) direct school districts and schools to establish the requirements and procedures for communicating with parents and to include them in the local plan, which is developed with local input. Local plans will also include information about available services and referral resources. The local plan process should determine the specific</p>	<p>None.</p>

49.05 Notice to Parents		
Source and Summary of Comment	ESE's Response	Recommended Revision
and perpetrators and for their family members. Principal should provide as much information as possible to families about the incident and health and safety.	information that will be provided to the parent upon notification, and how other information will be communicated to parents.	
<p>2. Chair: Recommends that the Board revise 49.05(1) to require the obligation to notify parents of each incident of bullying or retaliation, not each report; reference to “report” should be changed to “incident” in 49.05(4). Suggests that the 49.05(1) repeat the following language from the Model Plan:</p> <p>Upon determining that bullying or retaliation has occurred, the principal or designee will promptly notify the parents or guardians of the target and aggressor of this, and of the procedures for responding to it. There may be circumstances in which the principal or designee contacts parents or guardians prior to any investigation. If the reported incident involves students from more than one school district, charter school, non-public school, approved private special education day or residential school, or collaborative school, the principal or designee first informed of the incident will promptly notify by telephone the principal or designee of the other school(s) of the incident so that each school may take appropriate action.</p> <p>Reason: Consistent with the statute; notification of each report will be burdensome to principals and unnecessarily upset parents. Principals may elect to notify parents before completion of the investigation but should not be required.</p>	<p>ESE agrees with the reasoning that the principal’s determination that bullying or retaliation occurred should trigger the parental notification requirement. ESE recognizes that principals may exercise discretion in notifying the parent after receiving a report, prior to investigation and/or determination as to whether bullying has occurred.</p> <p>ESE does not agree that the rest of the suggested language is necessary in this section. The recommended revised language is sufficiently broad to apply to all investigations and to assign responsibility for notification regardless of the school district or schools that the target and aggressor attend.</p>	<p>Revise 49.05(1) to read as follows:</p> <p>Upon investigation and determination that bullying or retaliation has occurred, the principal shall promptly notify the parents of the target and the aggressor of the determination and the school district or school’s procedures for 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.</p>

49.05 Notice to Parents		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>3. Chair: Recommends that the Board add a provision that the principal be required to notify the parents of the target and aggressor in the primary language of the home.</p> <p>Reason: Imperative that communications with parents be effective.</p>	<p>ESE agrees that the communication should be in the primary language of the home.</p>	<p>1. Revise regulation to add new 49.05(2): Notice required by this section shall be provided in the primary language of the home.</p> <p>2. Renumber remaining subsections.</p>
<p>4. Chair: Recommends that the Board include a provision that delineates obligations and approaches that a principal should take in communicating with parents.</p> <p>Reason: Communication with parents should be effective; specific instruction will help guide principals as they establish their own procedures to be included in their own bullying prevention and intervention plan.</p>	<p>§370 applies to a wide variety of school districts, schools and communities. The revised proposed regulations require at 49.05(3) that school districts and schools include requirements for communicating with parents in their local plan, consistent with other portions of their plan. Communication strategies and resources are an appropriate topic for local professional development.</p>	<p>None.</p>
<p>5. ELTF: Recommends that the Board add the following sentence to the end of 49.05(1):</p> <p><u>The principal shall promptly provide to the student's parent a copy of the school's bullying prevention and intervention plan.</u></p> <p>Reason: Appropriate time to provide to parents; plan should include information about counseling or referral to appropriate services.</p>	<p>See #4. School districts and schools should determine specific requirements and procedures for communication in their local planning process.</p>	<p>None.</p>

49.05 Notice to Parents		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>6. ELTF: Proposes that the Board amend 49.05(2) to state:</p> <p>The principal, <u>after conducting a full investigation of the report of bullying or retaliation, shall promptly inform the parent of the alleged victim and the parent of the alleged perpetrator of the outcome of the investigation, and of actions that school officials will take to prevent further acts of bullying or retaliation.</u></p> <p>Reason: Clarifies prompt notice of outcome of investigation and that notice will be provided to parents of both victim and perpetrator.</p>	See #2 in this section.	See #2 in this section.
<p>7. ELTF: Suggests that the Board add two new provisions:</p> <p><u>(5) Notice to the parent shall be oral and written and shall be in simple and commonly understood words.</u></p> <p>(6) Notice to the parent shall be in both English and the primary language of the home if such primary language is other than English.</p> <p>Reason: Modeled on section 28.07(8) of the Massachusetts special education regulations.</p>	See #3. ESE supports giving notice to parents in their primary language, but recommends that school districts and schools determine the manner in which the information will be communicated through their local plan process, which includes community input. (See 49.05 (3).)	None.
<p>8. GLAD: Recommends that the Board include the following provision:</p> <p><u>Notwithstanding the previous provisions of this section, a principal's notification to a parent about a report of bullying or retaliation shall not include any information that a) would be likely to endanger the mental or</u></p>	Parents have a right to notice under §37O. Additionally, under state law and regulations, parents have access to student record information concerning their child, including information about bullying.	None.

49.05 Notice to Parents		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p><u>physical health or safety of the victim or perpetrator; or, b) would reveal the actual or perceived gender identity or expression or sexual orientation of the victim or perpetrator, unless the victim or perpetrator provides express written consent to disclosure of his or her gender identity or sexual orientation.</u></p> <p>Reason: Some students may not be “out” to their parents, and disclosing the student’s sexual orientation or gender identity to a parent in the bullying context violates the student’s privacy and risks harm to the student’s emotional or physical safety or wellbeing; will protect many students due to prevalence of bullying on the basis of sexual orientation or gender identity; consistent with the public safety aspects of the statute.</p>	<p>ESE understands the special circumstances of LGBT students and how this statutory requirement may affect them, and will work with LGBT groups to develop guidance and provide technical assistance on this issue.</p>	
<p>9. GLSEN: Recommends that the Board make explicit the potentially sensitive aspects of parental notification in the case of LGBT students. Endorses GLAD comments above.</p>	<p>See #8 in this section.</p>	<p>None.</p>
<p>10. PFLAG: Requests that the Board revise the regulation to require:</p> <ul style="list-style-type: none"> • A parental notification plan (PNP) before giving notice to a victim’s parents whenever the bullying is on the basis of actual or perceived sexual orientation, expression or identity of the victim. • Establish a procedure for identifying appropriate support organizations for the victim’s parents. • Require the training of all principals, guidance counselors, school nurses, teachers and other 	<p>See #8 in this section.</p>	<p>None.</p>

49.05 Notice to Parents		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>professionals in specified areas.</p> <ul style="list-style-type: none"> ESE to study and make recommendations for other regulations that would allow the principal to withhold notification to parents in certain circumstances. <p>Reason: Bullying LGBT youth is one of the most common forms of bullying; parental notification presents unique set of problems for youth not out to their families; LGBT students may not report bullying if they perceive greater risks if they do so; notice to parents unaware of the student's sexual orientation may expose the student to violence and harm within the home.</p>		
<p>11. SCM: Recommends that the Board eliminate the first sentence of this section and replace it with the following language:</p> <p><u>Upon a determination that bullying or retaliation has occurred, the principal or designee will promptly notify the parents or guardians of the victim and the aggressor of this and of the procedures for responding to it. Nothing in this provision prohibits the principal or designee from contacting parents or guardians prior to an investigation.</u></p> <p>Reason: Language aligns with statutory language regarding reporting of incidents of bullying, currently proposed language does not; unlike current language, allows principals to exercise discretion in reporting, appropriate to investigations that are often fluid. Similar</p>	<p>See #2 in this section. ESE agrees with the comment and recommends similar language.</p>	<p>See #2 in this section.</p>

49.05 Notice to Parents		
Source and Summary of Comment	ESE's Response	Recommended Revision
to Model Plan language.		

49.06 Notice to Law Enforcement Agency		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>1. ACLU: Recommends that the Board revise 49.06(1) in the following manner:</p> <p>(1) Upon receipt and review of a report of bullying or retaliation, the principal shall make a preliminary determination <u>conduct a full investigation of the reported incident. After conducting a full investigation, the principal shall make a decision</u> whether to notify the local law enforcement agency of the reported incident. The principal shall notify the law enforcement agency <u>only</u> if the principal has a reasonable basis to believe that the incident may result in criminal charges against the alleged perpetrator <u>a student's behavior in the reported incident constitutes a crime or crimes under Massachusetts law for which the student may be charged and prosecuted.</u></p> <p><u>(a) A student between the ages of seven and fourteen may not be criminally charged and prosecuted under Massachusetts law. Such a juvenile may be brought before the court only in delinquency proceedings, which are not criminal proceedings.</u></p> <p><u>(b) A student between the ages of fourteen and seventeen may be criminally charged and prosecuted under Massachusetts law only when the Commonwealth</u></p>	<p>(1) ESE agrees that the required notification to law enforcement should occur after an investigation. However, if circumstances warrant it, school officials may exercise their discretion in notifying law enforcement before concluding their investigation.</p> <p>(a)-(c) ESE recognizes that school districts and schools require guidance on ways to meet their obligation to notify law enforcement in certain circumstances. However, it is appropriate to do that in a guidance memorandum, not through regulation. ESE will work with its partners to issue guidance on implementation of the requirement.</p> <p>(d) ESE agrees with the comment.</p> <p>(e) ESE agrees that parents should be aware of law enforcement involvement, but recommends that decision-making around how and when this occurs should be determined</p>	<p>1. Amend proposed 49.06(1) and rename it as 49.06(2), to read as follows:</p> <p>At any point after receipt of a report of bullying or retaliation, including after an investigation, the principal 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. 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</p>

49.06 Notice to Law Enforcement Agency		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p><u>is authorized to proceed against the student as a youthful offender in the particular circumstances specified in M.G.L. Ch. 119, §54. In all other circumstances, a student between the ages of fourteen and seventeen may not be criminally charged and prosecuted under Massachusetts law.</u></p> <p><u>(c) For actions to constitute criminal conduct, an individual must have acted intentionally and, for many offenses, with a specific intent to cause harm. "Bullying," as defined in M.G.L. c. 71, §37O and in these regulations, include a wide variety of behaviors that are <i>never</i> criminal in nature, as well as some actions which, with the requisite intent, could constitute criminal acts for which a student might be charged and prosecuted. The principal shall notify the local law enforcement agency only if the student who has been identified as "bullying" acted intentionally.</u></p> <p><u>(d) In making a determination whether the particular bullying behavior constitutes a crime and the local law enforcement agency should be notified, the principal shall may, consistent with school policy and procedures, consult with the school resource officer, if any and such other individuals the principal deems appropriate in making such determination. Nothing in this section shall be interpreted to require reporting to a law enforcement in such situations in which bullying and retaliation can be appropriately handled within the school district.</u></p> <p><u>(e) (a) If, after conducting a full investigation of the reported incident, the principal decides to notify the local</u></p>	<p>through the local plan process. See #4 in this section.</p> <p>(f) ESE agrees that the school district and school must act in accordance with the local plan and that disciplinary actions should balance the need for accountability with the need to teach appropriate behavior.</p> <p>(g) ESE is evaluating data collection procedures regarding bullying prevention and intervention; it is premature to require reporting of bullying in the regulations.</p>	<p>and retaliation can be handled appropriately within the school district or school.</p> <p>2. (a-c) None.</p> <p>3. (d) Revise proposed 49.06(1)(a) (which would become final 49.06(2)(a)) to read as follows: In making the determination whether notification to law enforcement is appropriate, the principal may consult with the school resource officer and any other individuals the principal deems appropriate. See also last sentence of revised proposed 49.06(2) above.</p> <p>4. (e) None.</p> <p>5. (f) Revise proposed 49.06 (1)(b) and (c), (which would become final regulation 49.06(2)(b) and (2)(c)), as follows: (b) Nothing in this section shall prevent the principal</p>

49.06 Notice to Law Enforcement Agency		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>law enforcement agency, the principal shall document the reasons for the decision, in writing, and immediately contact the local law enforcement agency to discuss the incident and the law enforcement agency's involvement. <u>The principal shall also immediately notify the parent of the alleged perpetrator of the notification to the law enforcement agency and provide the parent with the reasons for the principal's decision in writing. Nothing in this section shall prevent the principal from taking appropriate disciplinary or other action pursuant to state policy (sic) and state law.</u></p> <p><u>(f) Whether or not the principal decides to notify local law enforcement about an incident of bullying or retaliation, take such actions as are consistent with the bullying and intervention plan, provided that any disciplinary action shall balance the need for accountability with the need to teach appropriate behavior.</u></p> <p>-(b) 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 and intervention plan. If the principal subsequently determines facts that cause him to believe that the perpetrator's conduct may be criminal, the principal shall notify the local law enforcement agency.</p> <p>-(g) Each school district shall include in the annual report the district files with the Department of</p>		<p>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.</p> <p>(c) The principal shall respond to the incident as set forth in relevant provisions of the local plan consistent with this section.</p> <p>6. (g) None</p>

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<p><u>Elementary and Secondary Education under M.G.L. c. 69, §1I statistics relative to notification of law enforcement regarding incidents of bullying and retaliation.</u></p> <p>Reason: 49.06(1) clarifies that a “full investigation” is conducted before determining whether to report to law enforcement, consistent with the statute.</p> <p>Because referral to law enforcement has serious consequences and inappropriate referrals may overburden local law enforcement, (a) through (c) are needed to guide principals in their determination.</p> <p>Change to (d) permits, rather than requires, the principal to consult with the school resource officer, among others, as appropriate in deciding whether to report to law enforcement.</p> <p>Last sentence of (d) clarifies that principal should not report to law enforcement incidents that the school has successfully handled on its own in the past; modeled after Maryland anti-bullying regulation.</p> <p>Revised (e) restates full investigation requirement and also requires notification to perpetrator if the principal notifies law enforcement of bullying.</p> <p>New (f) requires the school to respond in accordance with its bullying and intervention plan and that disciplinary action should balance accountability with teaching appropriate behavior as required by statute.</p> <p>New (g) requires reporting of statistics regarding notice</p>		

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Source and Summary of Comment	ESE's Response	Recommended Revision
to law enforcement so ESE can measure the frequency of such involvement.		
<p>2. ACLU: Recommends that the Board revise 49.05(2) as follows:</p> <p>(2) The principal shall notify the local law enforcement agency of a report of bullying or retaliation consistent with 603 CMR 49.06(1) if <u>If an incident of bullying or retaliation occurs on school grounds and involves a former student under the age of 21 who is no longer enrolled in a local school district, charter school, non-public school, approved private day or residential school or collaborative school, the school district or school informed of the bullying or retaliation shall follow the same procedure outlined under 603 CMR 49.06(1) regarding notification of law enforcement.</u></p> <p>Reason: Statute does not require law enforcement notification of every incident of bullying or retaliation involving a former student under 21 who is no longer a student; statute references following the same process for determining whether notification to law enforcement is appropriate.</p>	ESE agrees that this section should clarify that notification to law enforcement when former students under 21 are involved in an incident is subject to the same determination by the principal that he/she uses in deciding to notify law enforcement for incidents involving current students.	Revise proposed 49.06 (2), (which would be final 49.06(3)), to state: If an incident or 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.
<p>3. ACLU: Proposes that the Board add a new 49.06(4), which states:</p> <p><u>(4) A principal's notification to a local law enforcement agency about a report of bullying or retaliation shall comply with confidentiality requirements of</u></p>	Confidentiality in the context of notification to law enforcement is addressed in 49.07.	None.

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Source and Summary of Comment	ESE's Response	Recommended Revision
<p><u>Massachusetts Student Records Regulations, 603 CMR 23.00, and the Family Educational Rights and Privacy Act Regulations, 34 CFR Part 99.</u></p> <p>Reason: Places notification to law enforcement in context of current confidentiality regulations.</p>		
<p>4. ADL: Recommends that the section provide more detailed guidance as to when notification might be required and the manner in which notification should be made. States that consultation with a school resource officer may constitute “notifying law enforcement.”</p>	See #1 in this section. ESE will provide guidance outside of the regulatory process.	None.
<p>5. Chair: Suggests that the Board provide greater clarity and detailed guidance. Suggests that regulation clarify that once an incident is reported to law enforcement, it is law enforcement’s task to determine whether criminal charges will be brought.</p>	See #1 in this section.	None.
<p>6. Chair: Suggests that the Board revise 49.06(1)(a) to state that the principal shall respond to the incident of bullying as provided in the bullying prevention and intervention plan.</p> <p>Reason: The principal is responsible for addressing the bullying; law enforcement determines criminal charges.</p>	See #1(f) in this section.	See #1(f) in this section.
<p>7. Chair: Pleased that proposed regulations direct the principal to consult with others, including the school resource officer. Encourage or require districts to establish a Memorandum of Understanding with local law enforcement or meet before school year to review the bullying and intervention response plan.</p>	See #13 in this section below.	See #13 in this section below.

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Source and Summary of Comment	ESE's Response	Recommended Revision
<p>Reason: Communication and collaboration between school officials and law enforcement are necessary for response plan to be effective.</p>		
<p>8. ELTF: Recommends that the Board revise the proposed regulation as follows:</p> <p>(1) Upon receipt and review of a report of bullying or retaliation, the principal shall <u>conduct a full investigation of the reported incident. After conducting a full investigation</u>, the principal shall make a decision whether to notify the local law enforcement agency of the reported incident. The principal shall notify the law enforcement agency <u>only</u> if the principal has a reasonable basis to believe that <u>a student's behavior in the reported incident constitutes a crime or crimes under Massachusetts law for which the student may be charged and prosecuted.</u></p> <p><u>A student between the ages of seven and fourteen may not be criminally charged and prosecuted for committing an offense against a Massachusetts law. Those juveniles may be brought before the court only in delinquency proceedings, which are not criminal proceedings. M.G.L. Ch. 119, section 53.</u></p> <p><u>A student between the ages of fourteen and seventeen may be criminally charged and prosecuted for committing an offense against a Massachusetts law only when the Commonwealth is authorized to proceed and chooses to proceed by indictment against the student as a youthful offender only under the particular</u></p>	<p>See #1 in this section.</p>	<p>See #1 in this section.</p>

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Source and Summary of Comment	ESE's Response	Recommended Revision
<p>circumstances specified by M.G. L. Ch. 119, section 54. <u>In all other circumstances, a student between the ages of fourteen and seventeen may not be criminally charged and prosecuted for committing an offense against a Massachusetts law.</u></p> <p><u>For actions to be criminally chargeable, an individual must have acted intentionally and, for many criminal offenses, with a specific intention to cause harm. "Bullying," as defined in the statute and in these regulations, includes behaviors which are not criminal, as well as some intentional actions which could constitute criminal acts, for which a student might be charged and prosecuted. In making any determinations that particular bullying behavior constitutes a crime and that the local law enforcement agency should be notified, the principal may, consistent with school policy and procedure, consult with individuals the principal deems appropriate. Nothing in this section shall be interpreted to require reporting to a law enforcement agency in situations in which bullying and retaliation can be appropriately handled within the school district.</u></p> <p>Reason: Clarifies that a report is made to law enforcement only after a full investigation of a report, and after consideration of the law under which a student may be charged; principal may consult, but is not required to consult, with other individuals – school resource office (SRO) is not singled out; reporting to law enforcement not required if traditionally handled in district.</p>		

49.06 Notice to Law Enforcement Agency		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>9. ELTF: Suggests that Board revise 49.06(1)(a) as follows: (1)(a) If, <u>after conducting a full investigation of the reported incident</u>, the principal decides to notify the local law enforcement agency, the principal shall document the reasons for the decision, in writing, and immediately contact the local law enforcement agency to discuss the incident and the law enforcement agency's involvement. <u>The principal shall also immediately notify the parent of the alleged perpetrator of the notification to the law enforcement agency, consistent with 603 CMR 49.05(5), and provide the parent with the reasons for the principal's decision.</u> Nothing in this section shall prevent the principal from taking appropriate disciplinary or other action pursuant to state policy and state law, <u>provided, however, that the disciplinary actions shall balance the need for accountability with the need to teach appropriate behavior.</u></p> <p>Reason: Reiterates report made only after full investigation; requires notice to parent of alleged perpetrator if notification to law enforcement; requires disciplinary action balance accountability with teaching appropriate behavior.</p>	See #1 in this section.	See #1 in this section.
<p>10. ELTF: Suggests that Board revise 49.06(1)(b) as follows: (1)(b) If the principal, <u>pursuant to the bullying prevention and intervention plan</u>, decides not to notify the local law enforcement agency, or the local law enforcement agency determines that its involvement is</p>	See #1(f) in this section.	See #1(f) in this section.

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Source and Summary of Comment	ESE's Response	Recommended Revision
<p>not necessary under the circumstances, the principal shall respond to the incident of bullying or retaliation as provided <u>in the relevant section of the bullying prevention and intervention plan.</u></p> <p>Reason: Clarifies requirement.</p>		
<p>11. ELTF: Recommends that the Board substitute the following language for currently proposed paragraph (2):</p> <p><u>(2) If an incident of bullying or retaliation occurs on school grounds and involves a former student under the age of 21 who is no longer enrolled in a local school district, charter, school, non-public school, approved private day or residential school or collaborative school, the school district or school informed of the bullying or retaliation shall take the same action provided under 603 CMR 49.06(1).</u></p> <p>Reason: Tracks statute.</p>	See #2 in this section.	See #2 in this section.
<p>12. ELTF: Recommends that the Board add the following new provision:</p> <p><u>(4) A principal's notification to a local law enforcement agency about a report of bullying or retaliation shall comply with confidentiality requirements of Massachusetts Student Records Regulations, 603 CMR 23.00, and the Federal Educational Rights and Privacy Act Regulations, 34 CFR Part 99, as set forth in 603 CMR 49.07.</u></p> <p>Reason: Emphasizes confidentiality.</p>	See #3 in this section.	None.

49.06 Notice to Law Enforcement Agency		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>13. OAG: Recommends that the Board add the following new provision to the regulation:</p> <p><u>49.06(4) Before the first day of each school year, the school principal or his/her designee shall communicate with the chief of police of the local police department or his/her designee to discuss and plan for the implementation of this Section. Such communication may include agreeing on a method for notification, a process for informal communication, or any other subject appropriate to the implementation of this Notice to Law Enforcement Agency provision.</u></p> <p>Reason: This provision provides a basis upon which to build and enhance communication between the schools and law enforcement.</p>	<p>ESE agrees that communication with law enforcement prior to the school year will assist in implementation of this provision.</p>	<p>Insert the following as new 49.06(1) and renumber the remaining provisions in the section:</p> <p>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.</p>
<p>14. SCM: Recommends that the Board delete 49.06(1) in its entirety and replace it with the following language:</p> <p><u>At any point after receipt of a report of bullying or</u></p>	<p>See #1 in this section.</p>	<p>See #1 in this section.</p>

49.06 Notice to Law Enforcement Agency		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p><u>retaliation, including after an investigation, if the principal or designee has a reasonable basis to believe that criminal charges may be pursued against the aggressor, the principal will notify the local law enforcement agency. Notice will be consistent with locally established agreements with the local law enforcement agency. In making this determination the principal will consult with the school resource officer and any other individual the principal or designee deems appropriate.</u></p> <p>Reason: Allows principal discretion to determine timing of the report to the police, which is critical to matters of school safety; proposed language places police in the role of supporting principal's efforts to create safe environment, as opposed to placing the principal at risk of becoming an arm of the criminal justice system. Language is similar to Model Plan language.</p>		

49.07 Confidentiality of Records		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>1. ACLU: Suggests that the Board change the regulation to read as follows:</p> <p>(1) A principal may not disclose to a parent any student record regarding an alleged perpetrator <u>to a parent, unless the record belongs to that parent's own child.</u></p> <p>Reason: Primarily stylistic but also clarifying.</p>	<p>ESE agrees that changing the language will clarify its meaning.</p>	<p>Revise 49.07(1) as follows:</p> <p>A principal may not disclose information from a student record of a target or aggressor to a parent unless the information is about the parent's own child.</p>

49.07 Confidentiality of Records		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>2. ACLU: Recommends that the Board revise the regulation as follows:</p> <p>(2) A principal must disclose a report of bullying or retaliation to a local law enforcement agency under 603 CMR 49.067(1)(a) without the consent of a student or his/her parent, <u>provided that the principal immediately provide notice of such disclosure to the parent of the alleged perpetrator consistent with 603 CMR 49.06(1)(e).</u> The principal shall communicate with law enforcement officials in a manner that protects the privacy of victims, student witnesses, and perpetrators. to the extent practicable under the circumstances.</p> <p>Reason: Reiterates principal's obligation to notify parents of perpetrator of notice to law enforcement and strengthens language about protecting student privacy.</p>	<p>ESE agrees that parents should be aware of law enforcement involvement, but decision-making around how and when this occurs should be determined through the local plan process.</p>	<p>None.</p>
<p>3. ACLU: Recommends that the Board revise the regulation to add the following sentence at the end of 49.07(3):</p> <p><u>In the event of a disclosure based on a health or safety emergency, the principal shall promptly notify the parent of any student whose records were disclosed and explain the reasons for the disclosure.</u></p> <p>Reason: Requires notice and explanation to parent of any student whose records were disclosed in the event of a health or safety emergency.</p> <p>Also recommends technical corrections to citations in</p>	<p>See #2 in this section.</p>	<p>None.</p>

49.07 Confidentiality of Records		
Source and Summary of Comment	ESE's Response	Recommended Revision
the first sentence of 49.07(3) so they read: 603 CMR 23.07(4)(e) and 34 CFR 99.31(a)(10) and 34 CFR 99.36.		
4. Chair: Notes technical correction needed in 49.07(2): revise 603 CMR 49.07(1)(a) to 603 CMR 49.06(1)(a).	Noted.	Citations corrected.
<p>5. ELTF: Suggests that the Board revise 49.07(1) as follows:</p> <p>(1) A principal may not disclose to a parent any student record information regarding an alleged victim or perpetrator <u>if the alleged victim or perpetrator is a student, unless disclosure is to the parent of an alleged minor victim or perpetrator.</u></p> <p>Reason: Clarifies requirement.</p>	The parent has the legal right to information from his/her child's student record.	None. See #8 in section 49.05 above.
<p>6. ELTF: Recommends that the Board revise 49.07(2) as follows:</p> <p>(2) A principal may disclose a report of bullying or retaliation to a local law enforcement agency under 603 CMR 49.06(1)(a) without consent of a student or his/her parent, <u>provided that the principal immediately provide notice of such disclosure to the parent of the alleged perpetrator consistent with 603 CMR 49.06(1)(a).</u> The principal shall communicate with law enforcement officials in a manner that protects the privacy of victims, student witnesses, and perpetrators.</p> <p>Reason: Reiterates requirement to inform the parent of alleged perpetrator when law enforcement is notified.</p>	See #2 in this section.	None.
7. ELTF: Proposes that the Board amend the last	See #2 in this section.	None.

49.07 Confidentiality of Records		
Source and Summary of Comment	ESE's Response	Recommended Revision
<p>sentence of 49.07(3) to read as follows:</p> <p>The principal must document the disclosures and the reasons that the principal determined that a health or safety emergency exists <u>and shall promptly notify the parent of the alleged victim and the parent of the alleged perpetrator of the disclosure and the principal's reasons consistent with 603 CMR 49.05(5).</u></p> <p>Reason: Notification of disclosure to third party.</p>		
<p>8. GLAD: Recommends that the Board add the following new provision:</p> <p>(4) A principal may not disclose information about a student's actual or perceived sexual orientation or gender identity or expression to the student's parent without that student's written consent.</p> <p>Reason: Some students may not be "out" to their parents, and disclosing the student's sexual orientation or gender identity to a parent in the bullying context violates the student's privacy and risks harm to the student's emotional or physical safety or wellbeing; will protect many students due to prevalence of bullying on the basis of sexual orientation or gender identity; consistent with the public safety aspects of the statute.</p>	<p>ESE recognizes the reason for the comment. However, if the information is relevant to the bullying incident, then allowing it to be withheld would be inconsistent with the notice requirements of the statute, and the right under student record law for parents to access their child's records.</p>	<p>None.</p>
<p>9. GLSEN: Endorses GLAD comments set out above.</p>		

Additional Comments Regarding the Bullying Prevention and Intervention Law and the Model Plan

1. GLBTY: Understands limited scope of regulations; disappointed that other mandates of the law (e.g., research-based prevention, professional development, monitoring and compliance) are not yet available for public review.

Calls on ESE to: ensure that professional development includes pertinent research on youth development; on racism, homophobia and transphobia; and on GLBT victimization and its consequences; monitor curricula to ensure developmentally appropriate inclusion of racism, homophobia and transphobia.

Asks that section 5(g) of the statute be amended to allow school authorities to exercise discretion in reporting bullying on the basis of perceived sexual orientation and gender identity to parents/guardians and others involved in the incident.

2. GLSEN: Applauds ESE for enumerating categories of students and characteristics most likely to be targets of bullying; suggests adding language in the Model Plan that states bullying is also prohibited based on “any other distinguishing characteristics that may be defined by the local education agency or school.”

Urges that the professional development section of Model Plan clarify that LGBT students are a specific category of students who are particularly at risk for bullying in school and assure that research findings about LGBT students are included in required professional development.

Asks that GLSEN be identified as a potential resource for professional development and training; thanks ESE for including GLSEN research and materials on ESE web-site. GLSEN has partnered with districts to provide LGBT student awareness and anti-bullying.

3. PTA: Supportive of initiatives that address prevention, intervention, and elimination of bullying and foster a safe, supportive school climate, and policies and programs that teach respect for diversity; supportive of enumeration in bullying policies.

4. MTPC: Requests that the Board assure that forthcoming bullying prevention and intervention plans include issues pertaining to students who are transgender and/or gender non-conforming, and students who may be targeted because they are children of and/or siblings of transgender people.