

**PROPOSED TECHNICAL AMENDMENT TO REGULATIONS ON
NOTIFICATION OF BULLYING OR RETALIATION, 603 CMR 49.00**

- * Presented to the Board of Elementary and Secondary Education for initial review and vote to solicit public comment: **August 15, 2022**
- * Period of public comment: **through September 23, 2022**
- * Final action by the Board of Elementary and Secondary Education anticipated: **October 25, 2022**

Summary: The proposed technical amendment conforms the regulatory definition of bullying to the statutory definition in G.L. c. 71, §370, as amended by St. 2013, c. 38, s. 72, and makes non-substantive changes in formatting and numbering.

This clean copy incorporates the proposed technical amendment. (See redlined copy for details of the proposed changes.) For the complete text of the current Notification of Bullying or Retaliation Regulations, 603 CMR 49.00, see <https://www.doe.mass.edu/lawsregs/603cmr49.html>.

49.01: 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 target and an aggressor (when the aggressor is a student) when there is an incident of bullying or retaliation, and to notify the local law enforcement agency when criminal charges may be pursued against the aggressor. 603 CMR 49.00 also addresses confidentiality of student record information related to notification of bullying and retaliation.

49.02: Definitions and Terms

Aggressor means perpetrator of bullying or retaliation as defined in M.G.L. c. 71, §370.

Approved private day or residential school means a school that accepts, through agreement with a school committee, a 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, §370, means the repeated use by one or more students or by a member of a school staff including, but not limited to, an educator, administrator, school nurse, cafeteria worker, custodian, bus driver, athletic coach, advisor to an extracurricular activity or paraprofessional of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a target that:

- (a) causes physical or emotional harm to the target or damage to the target's property;
- (b) places the target in reasonable fear of harm to himself or herself or damage to his or her property;
- (c) creates a hostile environment at school for the target;
- (d) infringes on the rights of the target at school; or

Note: Regulatory changes are subject to approval by Executive Office of Administration & Finance

(e) materially and substantially disrupts the education process or the orderly operation of a school. Bullying shall include cyberbullying.

Charter school, pursuant to M.G.L. c. 71, §370, means a Commonwealth charter school or Horace Mann charter school established pursuant to M.G.L. c. 71, § 89.

Collaborative school, pursuant to M.G.L. c. 71, §370, means a school operated by an educational collaborative established pursuant to M.G.L. c. 40, §4E.

Cyberbullying, pursuant to M.G.L. c. 71, §370, 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:

(a) the creation of a web page or blog in which the creator assumes the identity of another person, or

(b) the knowing impersonation of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions in 603 CMR ~~49.03~~ 49.02:

Bullying(a) through (e). 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 or posting creates any of the conditions in 603 CMR ~~49.03~~ 49.02: Bullying(a) through (e).

Hostile environment, pursuant to M.G.L. c. 71, §370, 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.

Local plan means the bullying prevention and intervention plan required to be developed under M.G.L. c. 71, §370.

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

Principal means the administrative leader of a public school, charter school, collaborative school, or approved private day or residential school, or his or 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.

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

School district, pursuant to M.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 M.G.L. c. 71, §37O.

49.03: Bullying and Retaliation Prohibited

(1) Bullying of a student is prohibited as provided in M.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.

(3) 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 49.04 and 49.05.

49.04: Notice to Parents

(1) Upon investigation and determination that bullying or retaliation has occurred, the principal shall promptly notify the parents of the target and the aggressor (when the aggressor is a student) 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 603 CMR 49.04 prohibits the principal from contacting a parent of a target or aggressor (when the aggressor is a student) about a report of bullying or retaliation prior to a determination that bullying or retaliation has occurred.

(2) Notice required by 603 CMR 49.04 shall be provided in the primary language of the home.

(3) Each school district and school shall include the requirements and procedures for communicating with the parents of the aggressor (when the aggressor is a student) and target of bullying or retaliation in the local plan.

(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 49.06.

49.05: 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 603 CMR 49.05. 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 603 CMR 49.05.

(2) 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 603 CMR 49.05 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 consult with the school resource officer and any other individuals the principal deems appropriate.

(b) Nothing in 603 CMR 49.05 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.

(c) The principal shall respond to the incident as set forth in relevant provisions of the local plan consistent with 603 CMR 49.05.

(3) 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 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.

(4) Each school district and school shall include the requirements and procedures for communicating with the local law enforcement agency in the local plan.

49.06: Confidentiality of Records

(1) 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.

(2) A principal may disclose a determination of bullying or retaliation to a local law enforcement agency under 603 CMR 49.05 without the consent of a student or his or her parent. The principal shall communicate with law enforcement officials in a manner that protects the privacy of targets, student witnesses, and aggressors to the extent practicable under the circumstances.

(3) A principal may disclose student record information about a target or 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. 603 CMR 49.06(3) 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 amended by St. 2013, c. 38, and St. 2014, c. 86.