

ALERTS

NY State Legislature Amends Dignity Act to Expand Definition of Harassment and Bullying

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The New York State legislature recently passed amendments to the Dignity for All Students Act (the “Dignity Act”) to expand the definition of harassment and bullying under the law to explicitly include cyberbullying and other forms of off-school-property conduct. The Dignity Act took effect on July 1, 2012, and the newly passed amendments will become effective on July 1, 2013.

Section 11(7) of the New York State Education Law will be amended to clarify that harassment and bullying have the same definition under the law, to expand that definition to cover some conduct that occurs off school property and to explicitly include cyberbullying. The expanded definition of harassment and bullying includes “the creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying, that (A) has or would have the effect of unreasonably and substantially interfering with a student’s educational performance, opportunities or benefits, or mental, emotional or physical well-being; or (B) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or (C) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or (D) occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property. Acts of harassment and bullying shall include, but not be limited to, those acts based on a person’s actual or perceived race, color, weight, national origin, ethnic

group, religion, religious practice, disability, sexual orientation, gender or sex.”

For purposes of the definition of harassment and bullying, the term “threats, intimidation or abuse” shall include verbal and non-verbal actions. Additionally, according to the new definition above, acts of harassment and bullying are not limited to actions based upon an actual or perceived characteristic specifically listed. All students are protected from harm regardless of whether they are a member of a specific category.

The amendments add Section 11(8) which defines cyberbullying as harassment or bullying as defined above in section 11(7)(A)-(D) “where such harassment or bullying occurs through any form of electronic communication.”

The amendments also specify that the policies and procedures which school districts must develop to address cyberbullying, bullying, harassment, and discrimination should (A) identify a school official charged with receiving reports of such acts; (B) enable students and parents to make a report; (C) require school employees who witness or receive a report to promptly notify the appropriate school official orally within one school day and in writing within three school days; (D) require a school official to lead or supervise a prompt and thorough investigation of all reports and to notify law enforcement when appropriate; (E) take prompt responsive action when an investigation reveals harassment, bullying or discrimination; (F) prohibit retaliation against any individual who assists in an investigation; (G) establish a strategy to prevent harassment, discrimination and bullying; (H) require schools to make a regular report on harassment, bullying and discrimination data and trends to the district superintendent; (I) make appropriate references to the code of conduct; (J) inform all school community members of the policies; and (K) post the policies on the school’s website. School districts are also directed to develop guidelines related to “measured, balanced and age-appropriate” responses to harassment, bullying or discrimination by students, with remedies and procedures following a progressive model. Additionally, the trainings already required by the Dignity Act should address the identification, effects and mitigation of harassment, bullying, cyberbullying and discrimination, as well as social patterns of bullying and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings. Finally, Education Law 801-a will be amended to

require that the “civility, citizenship and character education” requirement includes components emphasizing discouraging acts of harassment, bullying and discrimination, and teaching safe, responsible use of the Internet and electronic communications.

The amendments direct the New York commissioner of education to promulgate regulations to assist school districts in developing guidelines relating to measured, balanced and age-appropriate responses, as well as guidance and educational materials related to best practices and engaging families and communities in addressing cyberbullying. The commissioner has not yet issued these regulations.

The amendments to the Dignity Act, like the original Dignity Act, and the implementing regulations, do not apply to private, religious or denominational institutions. Nonetheless, we continue to advise all schools to review the Dignity Act — along with the amendments, the regulations and the guidance that the State Education Department continues to issue — in addressing bullying, harassment, cyberbullying and discrimination, and in crafting related policies, procedures and codes of conduct.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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