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LEGAL NOTE

APRIL 2014 AMENDMENTS TO SCHOOL BULLYING LAW

I. INTRODUCTION

On April 24, 2014, Governor Patrick signed into law “An Act Relative to Bullying in Schools,” Chapter 86 of the Acts of 2014, which legislation expands the protections of the 2010 anti-bullying law. The law goes into effect 90 days after April 24, that is, July 25, 2014. The new law revises certain provisions of the current anti-bullying law, G.L. c. 71, § 38O, and adds several new subsections to that statute.

There are four main components of the new law: (1) it requires schools’ anti-bullying plans to recognize that certain enumerated categories of students may be more susceptible to bullying, including LGBTQ students; (2) it requires school districts to annually report bullying incident data to DESE; (3) it requires DESE to develop and school districts to administer surveys at least once every four years on the climate of the school district and prevalence of bullying; and (4) it grants DESE the power to investigate certain alleged incidents of bullying. The law also permits school districts to “adopt an anti-bullying seal to represent the district’s or school’s commitment to bullying prevention and intervention.”

The four main components of the law are discussed in turn below.

II. IDENTIFICATION OF CATEGORIES OF VULNERABLE STUDENTS

The new law expands the language of the 2010 anti-bullying law by requiring schools' anti-bullying plans to "recognize that certain students may be more vulnerable to becoming a target of bullying or harassment based on actual or perceived differentiating characteristics." Chapter 86 of the Acts of 2014 at Section 1(3). The new law goes on to identify categories of "differentiating characteristics" that may make certain students more vulnerable to bullying, including:

race, color, religion, ancestry, national origin, sex, socioeconomic status, homelessness, academic status, gender identity or expression, physical appearance, pregnant or parenting status, sexual orientation, mental, physical, developmental or sensory disability or by association with a person who has or is perceived to have 1 or more of these characteristics.

The law also permits schools to establish separate discrimination or harassment policies that include additional categories of students.

This revision revises and expands the language of the 2010 law, which states that a school "may establish separate discrimination or harassment policies that include categories of students," without specifically identify categories of more vulnerable students. G.L. c. 71, § 38O. Because the new law specifically recognizes that LGBTQ students generally are more vulnerable to bullying, it is being lauded by gay-rights groups.

In addition, the new law requires schools' anti-bullying plans to include the "specific steps" the school will take "to support vulnerable students and to provide all students with the skills, knowledge and strategies needed to prevent or respond to bullying or harassment."

Practice Note: In practice, this revision to the law should not have a major impact on school districts since districts have been implementing anti-bullying plans for several years and those plans intrinsically should have addressed the needs of more vulnerable students. The only real change for most school districts will be to revise their anti-bullying plans to specifically reference the categories of more vulnerable students and to enumerate the steps for bullying prevention and to support vulnerable students. We expect DESE to revise its model plan to reflect these revisions.

III. ANNUAL REPORTING TO DESE

Under the second main component of the new law, school districts will be required to report bullying incident data to DESE annually. This is an additional requirement of the current bullying law, G.L. c. 71, § 38O. DESE is tasked with establishing the form and manner for reporting the data, which shall include at least the following information: “(i) the number of reported allegations of bullying or retaliation; (ii) the number and nature of substantiated incidents of bullying or retaliation; (iii) the number of students disciplined for engaging in bullying or retaliation; and (iv) any other information required by the department.” Chapter 86 of the Acts of 2014 at Section 4(k). DESE will then collect and analyze the data and file an annual report.

DESE has not yet published the requirements for reporting the bullying incident data. Therefore, the impact on school districts is not yet known. It is worth noting, however, that the new law states that DESE “shall minimize costs and resources needed to comply with said reporting requirement” and that DESE may use existing data collection and reporting mechanisms to collect this information. Given those directives,

we would not be surprised if DESE instructed districts to report bullying information along with other data, such as conduct/discipline reports.

Practice Note: The new law revises the existing language of G.L. c . 71, § 38O by requiring that bullying prevention plans now include procedures for “collecting, maintaining and reporting bullying incident data” pursuant to the provision described in this section. Thus, once DESE announces the data collection and reporting requirements, Districts will have to revise their plans.

IV. STUDENT SURVEY

In addition to collecting yearly data from schools, DESE is also required, under the new law, to develop a student survey to assess the climate of schools and the prevalence of bullying. DESE must develop the survey within 12 months of the effective date of the new law for its administration in the 2016 school year. Chapter 86 of the Acts of 2014 at Sections 4(1) & 5. School districts will be responsible for administering the survey at least once every four years, with the person identified in the bullying prevention plan as responsible for receiving reports also responsible for the completion of the surveys. Surveys may be done anonymously and will be forwarded to DESE. DESE will analyze the survey results, including comparing them against the bullying data collected yearly. As with the bullying data described above, DESE has not yet released any details on the survey.

V. DESE INVESTIGATIONS

The final main component of the new law is a provision that states DESE “may investigate certain alleged incidents of bullying.” Chapter 86 of the Acts of 2014 at Section 4(n). If, after the investigation, DESE finds that a school has not properly

implemented its bullying prevention plan, DESE may require the district to properly implement the plan “or take other actions to address the findings of the investigation.”

Id. The law does not define precisely which alleged claims of bullying DESE may investigate or what “other actions” it may take to address the findings of its investigation.

In a similar vein, the new law revises G.L. c. 71, § 38O to add a requirement that the school principal or designee notify the parents or guardian of a victim about DESE problem resolution system, currently administered by PQA, and the process for seeking assistance or filing a claim under the problem resolution system. The principal or designee is required to provide that information when he or she notifies the parent or guardian about the bullying incident.

VI. CONCLUSION

The new law expands the current bullying law and creates several new requirements for school districts. Although the precise impact on these revisions to G.L. c. 71, § 38O are unclear at the present, and likely will remain nebulous until DESE implements its initial requirements under the law, the changes should have a relatively low impact on school districts that have properly implemented the bullying prevention programs under the 2010 law. At the same time we expect a positive impact on LGBTQ students who can be assured they will have access to the protections of the law.

Districts should review their anti-bullying policies over the next several weeks and prepare necessary amendments in conjunction with district counsel. Necessary changes must be in place when students return in the fall.