

New Legislation Expands Protection Against Bullying And Cyberbullying In New York Public Schools

On July 9, 2012, Governor Cuomo signed legislation to protect students from bullying and cyberbullying in public schools. The legislation expands the provisions of the Dignity for All Students Act ("DASA"), which went into effect on July 1st of this year. DASA's new bullying and cyberbullying provisions will go into effect on July 1, 2013.

DASA currently protects public school students from discrimination and harassment that occurs on school property or at school functions, based on a student's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, or sex. The new legislation adds "bullying" and "cyberbullying" as prohibited conduct. Under the amendments to DASA, "harassment" and "bullying" are defined as the creation of a hostile environment by conduct or by threats, intimidation, or abuse (including cyberbullying) that

- 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;
- reasonably causes a student to fear for his/her physical safety;
- reasonably causes physical injury or emotional harm to a student; or
- 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.

"Cyberbullying" is defined as any harassment or bullying that occurs through any form of electronic communication. Thus, harassment and bullying of students off school property, including such harassment and bullying through the use of social media and other electronic communications (such as Facebook, email, instant messaging, blogs, texting, etc.), will be covered under DASA to the extent that it is foreseeable that the conduct might create a substantial disruption to the school environment.

In addition, the new legislation specifically provides that acts of harassment and bullying "shall include, but not be limited to" acts based on a student's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, or sex. Accordingly, the new legislation requires school districts to respond to all forms of discrimination, harassment, bullying, and cyberbullying, regardless of the underlying motive.

The new legislation also requires school districts to develop policies, procedures, and guidelines to respond to reports of harassment, discrimination, and bullying. As part of those policies, each school district must designate a school official who is charged with receiving and promptly investigating complaints of harassment, discrimination, and bullying. If an investigation reveals that harassment, discrimination, or bullying occurred, the school district's policies must provide for prompt corrective action reasonably calculated to end the inappropriate conduct, and must ensure the safety of the student who was subjected to the inappropriate conduct. Each school district's policies and procedures must require school employees who witness or receive a report of harassment, discrimination, or bullying to notify school officials orally within one school day and submit a written report no later than two school days after making the oral report. The new legislation also requires school districts to have a policy requiring school officials to report incidents of harassment, discrimination, or cyberbullying to law enforcement when there is reason to believe that the conduct rises to the level of criminal conduct.

The new legislation also imposes some new training requirements on school districts. School districts will be obligated to train school employees on how to prevent and respond to harassment, bullying, and discrimination. The training must address the social patterns of harassment, discrimination, and bullying, and must include potential strategies for effectively addressing the problems of exclusion, bias, and aggression in educational settings. Students will be required to receive instruction on the safe, responsible use of the internet and electronic communications.

If you have any questions regarding your school district's obligations under DASA, or need any assistance in revising and updating your school district's policies to comply with these DASA amendments, please contact:

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