

## New York Human Rights Law Expanded to Cover Discrimination and Harassment Claims by Students Against Public School Districts and BOCES

On July 25, 2019, Governor Cuomo signed a [bill](#) amending the New York Human Rights Law to include discrimination and harassment claims filed by students against public school districts and boards of cooperative educational services (“BOCES”). The legislation is effective immediately.

The Human Rights Law formerly covered discrimination and harassment claims by students against “an education corporation or association which holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of article four of the real property tax law.” In 2012, the [New York Court of Appeals held](#), in two cases that were consolidated on appeal, that this provision only applied to private not-for-profit educational institutions and that the Division of Human Rights therefore did not have jurisdiction over discrimination and harassment claims filed by students against public school districts. In one of those Court of Appeals cases (*Kearney v. Ithaca City School District*), Bond successfully represented the school district.

This legislation reverses the 2012 Court of Appeals decisions. The legislation amends the Human Rights Law to state that “it shall be an unlawful discriminatory practice for an educational institution to deny the use of its facilities to any person otherwise qualified, or to permit the harassment of any student or applicant, by reason of his race, color, religion, disability, national origin, sexual orientation, military status, sex, age, or marital status.” The legislation further defines the term “educational institution” to include not only education corporations or associations, but also “any public school, including any school district, board of cooperative educational services, public college or public university.”

Accordingly, the Division of Human Rights now has jurisdiction over administrative complaints filed by students against public school districts and BOCES, alleging discrimination and harassment based on a protected characteristic. Students may also bypass the administrative process and file complaints under the Human Rights Law directly in court. Public school districts and BOCES should keep in mind that this expansion of the scope of the Human Rights Law is not limited to just complaints by students of alleged discrimination and harassment by school district or BOCES employees. This expansion of the statute also includes complaints by students of harassment allegedly perpetrated by fellow students that the school district or BOCES was aware of but did not respond to by taking adequate corrective action.

School districts and BOCES already have obligations under the Dignity for All Students Act (“DASA”) to investigate and satisfactorily address student complaints of harassment, so this amendment to the Human Rights Law does not necessarily impose any new obligations on school districts and BOCES. However, now that students have another procedural avenue to challenge the sufficiency of a school district’s or BOCES’ response to allegations of harassment,

all school districts and BOCES must be especially conscious of these obligations. Furthermore, although the current case law holds that students do not have a private right of action and cannot recover monetary damages for an alleged DASA violation, this amendment to the Human Rights Law offers the potential for students to receive monetary damages for a school district's or BOCES' alleged failure to respond adequately to harassment by other students. School districts and BOCES should also make sure that any disciplinary actions imposed upon students for engaging in prohibited harassment are severe enough to deter future harassing conduct and that appropriate staff training is conducted.

If you have any questions about this Information Memo, please contact [Subhash Viswanathan](#), any of the [attorneys](#) in our [School Districts Practice](#), or the attorney in the firm with whom you are regularly in contact.



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