



# MTA Division of Legal Services

## THE MASSACHUSETTS SCHOOL BULLYING PREVENTION AND INTERVENTION LAW

Questions & Answers

### *Which laws apply to bullying in schools?*

In 2010, the Legislature passed *An Act Relative to Bullying in Schools* in the wake of a tragic case of repeated and aggressive bullying of a student that resulted in her suicide. The law, Massachusetts General Laws Chapter 71, § 370, known as the *Massachusetts School Bullying Prevention and Intervention Law*, mandates that districts establish a school policy to protect student victims through prevention, reporting, investigation and intervention.

Other laws also address conduct generally described as bullying.

- The criminal harassment law, M.G.L. c. 265, § 43A, punishes “[w]hoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress.” That law embraces a broad array of conduct and provides substantial criminal fines and imprisonment, with enhanced penalties for repeat offenders.
- The anti-stalking statute, M.G.L. c. 265, § 43, punishes “[w]hoever (1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury.” Violation of the anti-stalking statute carries potentially heavy criminal penalties.
- The anti-hazing statute, M.G.L. c. 269, § 17, prohibits initiation rituals for student organizations that impose extreme mental stress or create a risk of physical harm to the initiate, and imposes criminal penalties on those found in violation thereof. Aside from those laws targeted at very specific types of bullying-related conduct, “bullying,” as the term is generally used, may also include garden-variety assault or assault and battery, which may be addressed as criminal and/or civil matters.

### *What constitutes bullying within the meaning of the school bullying law?*

For conduct to be considered bullying under the statute, one or more students must subject a victim (the term used by the statute) to *repeated* written, verbal or electronic expression, a physical act or gesture or a combination thereof that causes physical or emotional harm to the victim or his/her property, causes the victim to reasonably fear harm to one’s self or property, creates a hostile school environment for the victim, infringes upon the victim’s rights at school, or “materially and substantially disrupts the education process or the orderly operation of a school.”

The law expressly includes cyberbullying in the definition of bullying. *Cyberbullying* is the use of electronic and/or telephonic communication that results in any of the conditions the law targets (i.e., fear of harm on the part of the victim, a hostile school environment, etc.)

A single instance of insensitive behavior does not constitute bullying under the statute. While one instance of offending behavior may not label a first offender as a perpetrator under the statute, that one instance may be part of a pattern involving other perpetrators and other instances.

### *What does the School Bullying Prevention and Intervention Law require and/or prohibit?*

M.G.L. c. 71, § 370 requires that each school district adopt a bullying prevention and intervention plan, updated at least every two years. Plans adopted pursuant to M.G.L. c. 71, § 370 must include, among other items:

- A procedure for reporting bullying incidents to the district that must allow for anonymous reporting.

- A procedure for investigation of alleged bullying incidents.
- The possible discipline that may be imposed in connection with substantiated reports of bullying.
- A procedure for relaying reports to law enforcement when circumstances warrant and a warning that false reports of bullying may subject the reporter to punishment.

The law requires that students in each grade receive instruction on bullying prevention. Every district must provide students annually with notice of those parts of the plan that are relevant to them.

Further, every plan must provide for training of all school personnel on bullying prevention and intervention, research on the causes and effects of bullying behavior, and awareness of cyberbullying and safe practices on the Internet.

### ***Who may be the subject of a report of bullying and subject to investigation under the law?***

In its original form as enacted in 2010, the law only addressed student-on-student bullying. In 2014, the Legislature amended M.G.L. c. 71, § 37O to include all members of school administration, faculty and staff as potential perpetrators of bullying against a student. (Note that the law does not address so-called “workplace bullying,” which is bullying in which faculty or staff are themselves subjected to bullying by administrators, supervisors, colleagues, parents or students.)

### ***Will I be dismissed from employment if I am accused of bullying a student?***

The definition of *bullying* is the same for alleged teacher-on-student bullying as it is for student-on-student bullying. If an educational employee is accused of bullying a student, the district must investigate the allegation before imposing discipline on the employee. An employee who is interviewed by the administration in connection with such an investigation has a right to have a union representative present if the investigation could lead to discipline. This is known as a *Weingarten right* and is the subject of another Legal Division Q&A.

All job security rights that faculty or staff enjoy under state law or under a bargaining agreement would apply to any resulting disciplinary decision.

### ***What obligations do faculty and staff have under the School Bullying Prevention and Intervention Law?***

The law requires that school faculty and staff receive training annually on the contents of their district’s plan.

Faculty and staff are required to report incidents of bullying immediately upon becoming aware of such to the principal or person identified in the bullying prevention plan as responsible for receipt of such reports. Failure to report an instance of a student being bullied, either by another student or a member of the faculty or staff, may result in employment discipline.

### ***What if I am not sure whether misbehavior toward a student constitutes bullying?***

There is an element of professional judgment that must be exercised in deciding whether to make a report of bullying. As noted, not every instance of misbehavior directed at a student will constitute legal bullying. Educators and support professionals should be familiar with the legal definition of bullying so that they can exercise proper judgment in deciding whether to report it. Doubt should be resolved in favor of reporting.

The law prohibits retaliation against any person who reports bullying or provides information as part of an investigation of bullying.

### ***What resources are available for a better understanding of bullying and bullying prevention and intervention training?***

The Department of Elementary and Secondary Education, as required by the statute, has developed a Model Bullying Prevention and Intervention Plan, which districts may adopt in whole or with modifications. Districts may choose to develop their own plans without reference to the model as long as they incorporate the elements required by law, as mentioned above.

The DESE also recommends as a reference a joint report from the Governor's Task Force on Hate Crimes, the Massachusetts Commission on Gay, Lesbian, Bisexual and Transgender Youth and the Massachusetts Department of Public Health titled "Direct From the Field: A Guide to Bullying Prevention." This report may be helpful in identifying bullying behavior and planning strategies for bullying prevention.

### ***Can students and/or parents sue a school district or a member of the faculty or staff for alleged bullying?***

No. The law does not create a private right of action for enforcement, as it expressly states. However, well-established causes of action, such as those for assault and battery, could be available to students who are bullied depending on the facts of an individual case.

### ***Is the anti-bullying law only in effect on school premises and during school time?***

The law prohibits bullying on school grounds and property immediately adjacent to school grounds, at all school-sponsored or school-related activities regardless of the premises, at all school bus stops and on all buses and other transportation controlled by the district, and by means of any communications device controlled by the district. However, bullying is also prohibited at any location or time and by any electronic means regardless of its ownership or control if it creates a hostile school environment for the victim, infringes on the victim's rights at school or "materially and substantially disrupts the education process or the orderly operation of a school."

School personnel must understand that their district's policy does not lose effect at the schoolhouse doors, and they must be mindful of their reporting obligations where events outside of the school building are concerned. However, the statute does include a proviso that states, "Nothing contained herein shall require schools to staff any nonschool-related activities, functions, or programs."

### ***Must a district's proposed policy be bargained with the local association before it can be implemented?***

Because a bullying prevention and intervention plan will affect the terms and conditions of employment for faculty and staff, the district must bargain with a local association of those employees concerning the impact of the plan on those terms and conditions.

*Example:* If a district's policy makes the guidance counselor the recipient and investigator of reports of bullying, that would affect the guidance counselor's workload and therefore be subject to bargaining.

*Example:* If a district's proposed plan sought to alter the established employee discipline process where alleged misconduct concerned bullying of a student, such changes would be subject to bargaining.

*Example:* If the faculty and staff training on bullying intervention and prevention required by the statute were planned outside of regular work hours, the district would be required to bargain whether work would be done outside of regular work hours and under what terms (i.e., compensation).

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