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Questions?

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The New Bullying Statute: Best Practices and Frequently Asked Questions

INTRODUCTION

Public Act 11-232, An Act Concerning the Strengthening of School Bullying Laws, made significant changes in the bullying statute, Conn. Gen. Stat. § 10-222d, which was first adopted in 2002, amended in 2006 and again in 2008. The new statute broadened the definition of bullying, and imposed significant new responsibilities on school personnel. This document is intended to provide guidance on the implementation of some of the new provisions of this law and to address the practical challenges imposed by the new law. (Public Act 11-232 is available online at <ftp://ftp.cga.ct.gov/2011/act/PA/pdf/2011PA-00232-R00SB-01138-PA.PDF>).

WHO IS COVERED UNDER THE LAW?

1. **Can bullying occur between students attending different schools?**

Technically, no. The provisions of 10-222d apply only to students attending schools within the same school district. Bullying is defined as communications or acts “by one

or more students” which refer to, or are directed at, “another student attending school in the same district.” Thus, all individuals involved must be students and must attend school in the same school district. However, the students do not need to attend the same school within the district.

2. **Does this new law prohibit bullying by teachers or directed at teachers or other staff members?**

No. Public Act 11-232 addresses only bullying by “one or more students” directed at “another student in the same school district.” Teachers who are concerned about student behavior directed at teachers or other staff members should utilize existing protocols for reporting incidents of misconduct or making referrals for interventions. Students or parents who believe a teacher is acting inappropriately should bring such concerns to the administration.

3. **Does Public Act 11-232 apply to private schools?**

No. Public Act 11-232 continues to apply only to “local and regional boards of education.”

4. Does the new bullying law apply to magnet schools? Charter schools? Privately endowed academies?

Yes. Public Act 11-232 has not changed which schools must comply with the requirements of Conn. Gen. Stat.

§ 10-222d. As did prior law, the new bullying law continues to apply to all public schools, which include those operated by local or regional boards of education, or those which assume the responsibilities of a local or regional board of education, such as magnet and charter schools. Privately endowed academies which have been granted authority to act and serve as a board of education for certain towns are likewise required to comply with the mandates of Conn. Gen. Stat. § 10-223.

5. Does the new bullying law apply to adult education programs?

Yes. If the adult education program is operated by a local or regional board of education, the board is required to have a safe school climate plan which complies with the requirements of Conn. Gen. Stat. § 10-222d. However, given that most individuals who attend an adult education program may not constitute “students,” most of the provisions of the bullying law and the safe school climate plan will not apply to the students in the adult education setting.

DEFINING AND IDENTIFYING BULLYING

6. How do we define bullying?

Effective July 1, 2011, bullying is now defined as the:

. . . repeated use by one or more students of a written, verbal or electronic communication, such as cyberbullying, directed at or referring to another student attending school in the same school district, or a physical act or gesture by one or more students repeatedly directed at another student attending school in the same school district, that:

- a) causes physical or emotional harm to such student or damage to such student’s property;
- b) places such student in reasonable fear of harm to himself or herself, or of damage to his or her property;
- c) creates a hostile environment at school for such student;
- d) infringes on the rights of such student at school; or
- e) substantially disrupts the education process or the orderly operation of a school.

By statute, bullying also expressly includes, but is not limited to, a written, verbal or electronic communication or physical act or gesture based on any actual or perceived differentiating characteristics, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, socioeconomic status, academic status, physical appearance, or mental, physical, developmental or sensory disability, or by association with an individual or group who has or is perceived to have one or more of such characteristics.

7. When must school officials prohibit and investigate bullying?

School officials must investigate bullying when it occurs:

- a) On school grounds, at a school-sponsored or school-related activity, function or program whether on or off school grounds, at a school bus stop, on a school bus or other vehicle owned, leased or used by a local or regional board of education, or through the use of an electronic device or an electronic mobile device owned, leased or used by the local or regional board of education, and
- b) Outside of the school setting if such bullying:
 - i) creates a hostile environment at school for the student against whom such bullying was directed,
 - ii) infringes on the rights of the student against whom such bullying was directed at school, or
 - iii) substantially disrupts the education process or the orderly operation of a school.

8. Does the new definition of bullying include cyberbullying?

Yes. This is a change from prior law. Under the new law, bullying is defined to include cyberbullying, defined as “any act of bullying using the internet, interactive and digital technologies, cellular mobile telephone or other mobile electronic devices, or any electronic communications.”

9. Must the behavior happen at school in order for it to be bullying?

No. The definition of bullying does not depend

on where the behavior occurred. Districts are required by law to prohibit bullying both on and off campus. However, the standards for determining whether the behavior constitutes bullying are different for on campus and off campus behavior. Therefore, in determining whether conduct constitutes bullying, school officials must consider where such behavior is taking place and apply the appropriate statutory criteria.

10. When does a school need to intervene for student behavior which occurs off campus?

School districts are required to respond to bullying behavior if the behavior has a direct nexus or impact at school.

Specifically, the new law requires schools to prohibit and investigate bullying when it occurs outside of the school setting if such bullying:

- a) creates a hostile environment at school for the student against whom such bullying was directed;
- b) infringes on the rights of the student against whom such bullying was directed at school; or
- c) substantially disrupts the education process or the orderly operation of a school.

11. If a student is using a privately owned (not school provided) personal electronic device to engage in bullying behavior, is this considered on-campus or off-campus bullying?

It depends. If the device is being used on school grounds, or at a school-sponsored event, the behavior is considered to be

occurring on campus, regardless of the fact that the bullying behavior or message is being communicated through a privately owned electronic device. Likewise, if a student is using a school-provided electronic device (*i.e.* laptop) away from school to engage in bullying behavior, the fact that the device is provided through the school also makes the behavior part of a school-sponsored activity over which the school may assert greater authority.

However, if a student is using a privately owned electronic device off campus to engage in bullying behavior, this would be considered off-campus bullying and thus the school's authority to intervene is limited to situations where the bullying has demonstrated an impact at school (*i.e.* creates a hostile environment; infringes on the rights of the student; or substantially disrupts the education process).

12. What is the school district's responsibility for bullying behavior taking place before a child reaches a school bus stop?

Districts are required to prohibit bullying behavior on a school bus, and at a school bus stop. Districts are also required to prohibit bullying behavior which occurs outside of school (*i.e.* off campus), but only if such bullying creates a hostile environment at school for the victim, infringes on the rights of the victim at school, or substantially disrupts the education process or orderly operation of the school. Thus, if the behavior is happening before students arrive at the bus stop, it is considered off campus behavior and a school would be required to investigate and intervene to the same extent it would for other off-campus misconduct.

Parents should be advised to contact local law enforcement for additional assistance regarding behavior occurring in the community which may or may not affect a child in school, or otherwise affect the "orderly operation of the school."

13. Can one incident of misconduct constitute bullying?

No. By definition, bullying requires the "repeated use" of a "written, oral or electronic communication" directed at another student, or a physical act or gesture "repeatedly directed at another student."

14. Must the acts be perpetrated by the same individual or group of individuals in order to constitute bullying?

Bullying is defined to require repeated acts by "one or more students." The statute does not indicate if each act must be perpetrated by the same student or group of students. Accordingly, districts should consider whether the series of alleged acts represents concerted activity between and among the alleged perpetrators. Bullying is more likely to be found where the facts suggest concerted activity by one or more students in committed individual acts that cumulatively amount to bullying.

For example, if a school receives a complaint alleging three incidents of bullying, each allegedly perpetrated by different students against the same victim, the school should consider the frequency of the acts, whether the perpetrators had knowledge of the prior acts, and whether the location, timing or other facts suggest that the individual perpetrators acted in a concerted manner that suggests the acts were related. It is possible that

the first incident may not fit the definition of bullying, but that after repeated acts, the cumulative behavior may amount to behavior directed at, or referring to, a student in such a way that fits the definition of bullying.

15. Must the acts be directed at the same student in order to be bullying?

No. The definition of bullying merely requires that there be repeated communications, acts or gestures directed at or referring to “another student.” Thus, it is possible that an individual perpetrator could engage in bullying against multiple students if there is a pattern of behavior by the perpetrator that fits the definition of bullying.

16. May a school district consider a student’s intent or ability to knowingly engage in bullying conduct when deciding whether to verify bullying?

Yes. Although the new law revises the definition of bullying to remove prior language requiring “intent to ridicule, harass, humiliate, or intimidate,” this change does not mean that school officials are prohibited from exercising professional judgment when considering the totality of the circumstances and facts surrounding any individual complaint of bullying.

For example, when investigating bullying, it would be appropriate for school officials to consider factors such as:

- a) the relative ages of the students involved;
- b) the nature of the misbehavior;
- c) the impact on the targeted student;
- d) the frequency of the misconduct;
- e) the temporal proximity of alleged events;

f) a student’s capacity to understand and knowingly engage in bullying behavior;

g) the victim’s capacity to accurately perceive social situations and the conduct of others;

h) the context of the alleged bullying, and

i) the existence of a power imbalance between and among the students involved.

17. Is there a statute of limitations for bullying conduct, i.e. may conduct not be bullying because there was too much time between incidents?

The statute does not set forth a “statute of limitations” or other requirement concerning how close in time actions must be in order to be bullying, and the previous reference to “the school year” was deleted in the 2011 revisions. However, it is reasonable to interpret the statutory element of “repeated” conduct to require that conduct be reasonably related in time or nature. One incident in fourth grade and another in seventh grade may not be related so as to be repeated. Each situation must be considered on its own facts.

18. Is bullying different from protected class harassment?

Yes. The definition of bullying does not require that behavior be targeted toward a student on the basis of a legally protected, differentiating characteristic in order to fit the definition of bullying. While the law recognizes that bullying may include communications, acts and gestures directed at a student based on any actual or perceived differentiating characteristic (such as race, color, socioeconomic status, academic status, physical appearance etc.) bullying represents

a power imbalance between students that is not dependent upon the victim's classification or inclusion in any particular class of individuals.

In contrast, there are other laws which prohibit discrimination on the basis of enumerated protected characteristics, including race, color, disability, national origin, religion, sexual orientation and gender identity or expression. Protected class harassment is a form of discrimination based on at least one of these protected characteristics. Typically, in order to be considered discriminatory, harassment must be either severe or pervasive and must, in the aggregate, have the effect of impacting a student's ability to participate in a district's educational programs. Unlike bullying (which must be repeated) a single incident of protected class harassment, if sufficiently severe, may constitute protected-class harassment. When investigating reports of bullying that may also involve protected-class harassment/discrimination, school officials should keep in mind applicable investigation protocols under other board policies, such as those addressing Title IX, Section 504 and Nondiscrimination. See United States Department of Education, "Dear Colleague" Letter, dated October 26, 2010.

Regardless of how behavior is characterized, however, school districts have a responsibility to address any inappropriate behavior that violates school rules, or impacts another student's ability to effectively participate in school programs.

19. How can we distinguish between bullying other student-student conflict that may be developmentally "typical"?

Districts and parents alike should be careful about being quick to label student behavior as bullying, particularly with early elementary-aged students. In receiving a report of alleged bullying, care should be taken to emphasize age-appropriate intervention and education, regardless of whether behavior fits the statutory definition of bullying.

In determining whether behavior meets the statutory definition of bullying, school administrators must exercise a degree of professional judgment in evaluating the objective reasonableness of student response and perception as well as the subjective response of each student involved. In addition to the statutory criteria, the Safe School Climate Specialist (or designee) should consider the totality of the circumstances, including

- a) the relative ages of the students involved;
- b) the nature of the misbehavior;
- c) the impact on the targeted student;
- d) the frequency of the misconduct;
- e) the temporal proximity of alleged events;
- f) a student's capacity to understand and knowingly engage in bullying behavior;
- g) the victim's capacity to accurately perceive social situations and the conduct of others;
- h) the context of the alleged bullying, and
- i) the existence of a power imbalance between and among the students involved.

Even after consideration of the totality of these factors, parents and school officials may not agree as to whether the allegations constitute bullying, as defined. More

importantly, however, regardless of the conclusion, school officials, parents and students should work cooperatively to develop appropriate interventions and supports in recognition of the fact that social dynamics between and among students evolve and may escalate over time.

INVESTIGATION OF BULLYING REPORTS

20. Must a district investigate an anonymous report of bullying?

Yes, to the extent possible. The statute provides that school officials must “review” anonymous complaints. However, it also provides that students may submit anonymous reports of bullying and/or may request that their identity not be shared in connection with an investigation. While this may have the practical effect of hindering a district’s ability to conduct a thorough investigation, some investigation is advisable because, of course, the goal is to deal with bullying if and when it occurs. No disciplinary action may be taken solely on the basis of an anonymous report. It is therefore important to ensure that the district has information to corroborate such anonymous report before imposing discipline, although the school may take other measures to intervene that are not disciplinary in nature.

21. Are there timelines for reporting bullying?

Yes. A school employee who receives a bullying complaint must orally notify the safe school climate specialist within one school day after witnessing bullying or receiving a complaint. The school employee must also file a written report (presumably with the safe

school climate specialist) within two school days of making the oral report.

22. Is there a timeline for parents/student to report allegations of bullying?

No. As discussed in Question # 17, there is no “statute of limitations” for bullying conduct; nor does the new law impose a requirement that parents and/or students report bullying within a certain timeframe in order to be investigated. From a practical perspective, school districts and parents should work collaboratively to ensure timely reporting of bullying complaints in order to effectively address misconduct in an effective and meaningful manner.

School officials who receive reports of bullying that relate to prior school years should endeavor, to the extent possible, to investigate the reports and consider any prior history between or among students. Parents should be advised that untimely reports make it difficult for school officials to conduct thorough investigations. When determining whether reported incidents constitute bullying, school officials should consider the frequency of the reported incidents, the proximity in time of each report and whether prior incidents are related to current allegations.

23. Who may make reports of bullying?

Students may make reports (including anonymous reports) to any school employee. Parents or guardians of students may make written reports; and teachers and any other school employees who witness or receive reports of bullying are required to report such information to the safe school climate specialist.

24. Who must report bullying?

Under the new law, any school employee who witnesses acts of bullying or receives reports of bullying must report the allegation to the Safe School Climate Specialist. By definition, a school employee means “(A) a teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or working in a public elementary, middle or high school; or (B) any other individual who, in the performance of his or her duties, has regular contact with students and who provides services to or on behalf of students enrolled in a public elementary, middle or high school, pursuant to a contract with the local or regional board of education.” This definition excludes volunteers, but is quite broad and may include non-certified personnel such as bus drivers, cafeteria staff and non-teaching personnel who interact with students on a regular basis.

25. Given that behavior must be repeated in order to meet the definition of bullying, how will a school employee know if witnessed behavior constitutes bullying?

A school employee may not necessarily know if mean-spirited behavior directed towards another student will ultimately be verified as bullying, or whether the behavior will meet the required elements to constitute bullying. However, any school employee who witnesses behavior directed towards another student, which if repeated might constitute bullying, should intervene and consider whether a report should be made. Factors to consider include the relative ages

of the students involved, the nature of the behavior, the impact on the targeted student, any particular vulnerabilities of the targeted student (to the extent known), and whether there is reason to believe the acts represent a pattern of behavior that is occurring over time.

26. Are school districts responsible for investigating cyberbullying?

Yes, under certain circumstances. School districts are explicitly required to prohibit and investigate reports of bullying and Connecticut’s bullying prevention and intervention legislation now expressly recognizes cyberbullying as a form of bullying. Cyberbullying is defined as “any act of bullying through the use of the Internet, interactive and digital technologies, cellular mobile telephone or other mobile electronic devices or any electronic communications.” Cyberbullying is merely one form of bullying and may take place either on or off campus, using school-provided technology or personal electronic devices.

27. How should a school official investigate a complaint of cyberbullying?

A school official should first focus on the threshold issue of whether the cyberbullying is “on campus,” *i.e.* happening at school, or school grounds or otherwise using the school’s computers. If the allegation is related to “off-campus” cyberbullying, the school official should consider the impact on the victim in school. Specifically:

- a) Does the cyberbullying create a hostile environment for the student at school?
- b) Does the cyberbullying infringe on the rights of the victim at school?

c) Does the cyberbullying substantially disrupt the educational process or the orderly operation of a school?

As part of the investigation process, school officials should ask for any printouts of any text messages, instant messages, or electronic postings and meet with the alleged perpetrator(s) to present evidence of any such messages or postings. School officials should invite the alleged perpetrator(s) to provide other evidence of such interactions. School officials should consider reporting any allegation that potentially threatens the health or safety of a student to local law enforcement. Regardless of whether the school's authority extends to alleged off-campus behavior, parents should be advised of their ability to contact local law enforcement if a child is being targeted outside of school or is being subjected to bullying behavior outside of the scope of the school's authority to intervene, as law enforcement is often better suited to conduct such investigations.

28. When should a school official verify bullying?

School officials must determine if the facts fit the statutory definition of bullying:

- a) Was there concerted activity by "one or more students?"
- b) Did the conduct cause physical or emotional harm to the student or damage the student's property?
- c) Did the conduct place the student in reasonable fear of harm to him/herself or of damage to his/her property?
- d) Did the conduct create a hostile environment at school for the student?

e) Did the conduct infringe on the rights of the student at school?

f) Did the conduct substantially disrupt the educational process or orderly operation of the school?

Off campus bullying should be verified only if one or more of the last three questions is answered "yes" (d-f).

29. Who determines whether the conduct caused harm or whether the student's "fear of harm" was "reasonable?"

The Safe School Climate Specialist (or designee) is responsible for the investigation of bullying reports. In making decisions about bullying, the Specialist (or other administrative designee) must exercise a degree of professional judgment. Factors to consider when determining the reasonableness of any perceived harm include:

- a) the relative ages of the students involved;
- b) the nature of the behavior;
- c) the actual impact on the targeted student;
- d) the frequency of the misconduct and temporal proximity of alleged events;
- e) the perpetrator's capacity to understand and knowingly engage in bullying behavior;
- f) the victim's capacity to accurately receive social situations and the conduct of others;
- g) the overall context of behavior;
- h) the existence of a power imbalance between and among the students involved;
- i) any particular vulnerabilities of the targeted student (to the extent known), and
- j) whether there is reason to believe the

acts represent a pattern of behavior which is occurring over time.

30. What is a “hostile environment” for purposes of determining bullying?

The statute defines “hostile environment” as “a situation in which bullying among students is sufficiently severe or pervasive to alter the conditions of the school climate.” The statute defines “school climate” as “the quality and character of school life with a particular focus on the quality of the relationships within the school community between and among students and adults.” In determining whether bullying creates a “hostile environment,” school officials should consider whether the bullying behavior denies or limits the ability of a student(s) to participate in, or otherwise benefit from, school programs and activities.

31. How should a report of bullying be investigated?

Reports should be investigated promptly, with care to protect the confidentiality of student information. School officials must be vigilant about student confidentiality concerns. Under the Family Educational Rights and Privacy Act (“FERPA”), the identity of the student (or parents) as the complainant is personally identifiable information that can be disclosed only with the consent of the parent (or eligible student).

Relevant individuals should be interviewed (*i.e.* witnesses, students, teachers).

Obtaining student written statements may be appropriate, depending on the age of the students. Students should be admonished that the investigation is a confidential matter that they should not discuss with other students. Anonymous reports must

be reviewed, but they may be investigated, provided that no disciplinary action may be taken solely on the basis of an anonymous report. School officials should document the investigation.

32. What is the timeline for the completion of the investigation?

The statute provides that the investigation must be completed “promptly.”

RECORD KEEPING AND DOCUMENTATION

33. Are bullying reports considered public records?

Not likely. Any record maintained by the district which contains personally identifiable student information is considered confidential and is protected from disclosure under FERPA, the federal law governing access to and privacy of education records.

However, even if such records are not generally available to the public, school staff should keep in mind that parents have the right to access their child’s education records. In addition, even documents protected under FERPA may be subject to disclosure under certain circumstances, such as in response to a subpoena or in the event of a health or safety emergency. Accordingly, school employees completing incident reports or other bullying reports should be educated as to appropriate information to include in reports.

34. What information must be maintained in the public log?

The law continues to require that each school

“maintain a list of the number of verified acts of bullying in such school” and that each school “make such list available for public inspection.” Consistent with the district’s obligations under FERPA, the log should not contain any personally identifiable student information, or any information that alone, or in combination, would allow a reasonable person in the school community to identify the students involved. Accordingly, the log should be limited to basic information such as the number of verified acts of bullying, name of school and/or grade level and relevant date(s) of verified acts. Given that any determination of bullying involves repeated acts, each investigation that results in a verified act of bullying for that school year should be tallied as one verified act unless the specific actions that are the subject of each report involve separate and distinct acts of bullying. The list should be limited to the number of verified acts of bullying in each school and should not set out the particulars of each verified act, including but not limited to any personally identifiable student information.

35. *What is the status of a school staff member’s personal notes from the investigation?*

The personal notes (as compared to a report shared with others, even if handwritten) made by the Safe School Climate Specialist or other administrator, are not subject to disclosure under Connecticut’s Freedom of Information Act. Personal notes that are not shared with anyone else are also not subject to disclosure under FERPA. They may be subject to subpoena, however, if they are retained by the staff member.

36. *Does the school district have to prepare a written report for every allegation of bullying?*

No. The statute does not explicitly require that the school generate a formal written report for each allegation of bullying. However, the new law does require that the district’s safe school climate plan must “establish a procedure for each school to document and maintain records relating to reports and investigations of bullying in such school and to maintain a list of the number of verified acts of bullying in such school and make such list available for public inspection.” Thus, some written evidence of the investigation is required. School officials should develop forms and procedures to ensure consistent practices with respect to documenting bullying investigations.

37. *What must the school do to notify parents of the results of the investigation?*

If bullying is verified, school officials must notify the parents of the perpetrator and the parents of the targeted student within forty-eight hours of the completion of the investigation. There is no explicit notification requirement if bullying is not verified. The statute also does not require that the notice to parents be written. However, districts should develop protocols and forms to provide written confirmation of the investigation outcome (bullying or not) in order to provide consistency in the investigation process. In developing standard forms, a district must keep in mind its FERPA obligation not to disclose personally identifiable information about either child to the other family involved, without written consent. Thus, it would

be advisable to have different forms for notification to the perpetrator and the victim to avoid inadvertent disclosure regarding the other student.

In addition to providing parent notice, both sets of parents must also be invited to a meeting “to communicate to such parents or guardians the measures being taken by the school to ensure the safety of the student against whom such act was directed and to prevent further acts of bullying.” Each of the meetings should be separate. There is no requirement that parents attend such meetings. Notifications to parents concerning these meetings should be documented in writing.

38. Can the district share the results of the investigation (or report) with the parents of the victim or of the perpetrator?

The law requires that the parents of the perpetrators and victims be “notified” if bullying is verified. As noted above, there is no explicit requirement that a formal report be generated or that this notification be in writing. If a formal report is generated, any report would likely include personally identifiable student information. Disclosure of such information to the persons other than the parent (or eligible student) would violate FERPA.

When a record relates to more than one student, access can be granted only to information that can be separated (e.g., disciplinary action taken should be documented separately). Moreover, FERPA simply requires that parents (or eligible students) have access to student records;

and to preserve the confidentiality of such information more generally, it is inadvisable to provide a copy of any completed internal report to the parents.

39. How long does a school district have to maintain bullying records?

Neither the statute nor the applicable retention schedule for education records sets forth a minimum retention period for bullying records. Under the new law, school districts are directed to “establish a procedure for each school to document and maintain records relating to reports and investigations of bullying in each school.”

Therefore, school districts should develop standard report forms, investigation summary forms and develop a process for identifying where such records shall be maintained in district. Particular care should be given to ensuring the transfer of records to new schools as students advance from grade to grade within the district to ensure that information about prior history between students is shared with a receiving school. Given that there is no timeline for bullying reports, it is advisable to maintain prior written reports of bullying, as well as formal investigation summaries, for individual students consistent with timelines for maintaining other incident reports. Current record retention guidelines for educational records may be found at: Office of the Public Records Administrator, Retention Schedule M8-Education Records, Revised 2/2005, available at <http://www.cslib.org/retschedules.htm>.

INTERVENTIONS AND CONSEQUENCES

40. What is a school district's responsibility for intervention?

When acts of bullying are verified, school officials must develop "student safety support plans for students against whom an act of bullying was directed that address safety measures the school will take to protect such students against further acts of bullying." When there are repeated, verified acts of bullying against a single individual student or recurrently perpetrated bullying incidents by the same individual, school officials must develop case-by-case interventions that may include both counseling and discipline. Even if bullying is not verified, school officials should consider whether appropriate measures should be taken to provide support, counseling and/or other interventions to prevent bullying.

41. If bullying is verified, does this mean the school must suspend or expel the perpetrator?

No. Under the law, when bullying is verified, the notice to the parents of the student who committed a verified act of bullying must include "a description of the response of school employees to such acts and any consequences that may result from the commission of further acts of bullying." Disciplinary action is not always required, and may not be appropriate given the totality of the circumstances. As with any decision to impose discipline, school officials must continue to follow existing law and policies governing the imposition of traditional disciplinary measures such as in-school suspensions, suspension and expulsion.

Of particular note is the fact that Public Act 11-232 does not change the requirements of current law with respect to the conditions under which a school district may suspend or expel students for off campus misconduct. Therefore, school officials are reminded that (with the exception of a few enumerated exceptions requiring mandatory expulsion) pursuant to Conn. Gen. Stats. §§ 10-233a-10-233e, school officials may suspend or expel a student for behavior that occurs off campus only when the student has violated a publicized policy of the board and such behavior is seriously disruptive to the educational process of the school. The term "seriously disruptive of the educational process" has been interpreted to mean conduct which "markedly interrupts the day-to-day operations of the school." In making such determination, school officials may consider factors such as whether the incident occurred in close proximity to the school, whether it involved other students or gang involvement, whether it involved violence, threats of violence or unauthorized use of weapons, whether injuries occurred and whether or not it involved the use of alcohol.

Finally, it should be noted that discipline against the perpetrator may not be an adequate response. The Office of Civil Rights of the United States Department of Education has advised that bullying conduct may constitute discrimination under federal law, and sometimes other interventions to remedy such civil rights violations may be necessary, including training for the perpetrator(s) and the larger school community, additional services to the victim(s), issuance of new policies or procedures for reporting harassment, and wide distribution of the

contact information for the district's Title IX and Section 504/Title II Coordinator. See United States Department of Education, "Dear Colleague" Letter dated October 26, 2010.

42. How should a school district address bullying if the perpetrator or victim is a child with a disability?

In addition to following bullying investigation procedures applicable to all students, reports of bullying involving students with disabilities should also be considered through the respective Section 504 Team or Planning and Placement Team process to determine if changes to a student's accommodation plan or individualized education program ("IEP") are necessary for the district to continue to provide a free, appropriate public education.

In addition, it is imperative that school districts adhere to state and federal law, and to refrain from disciplining a student for behavior that is caused by or directly related to his/her disability. Therefore, prior to any significant change in placement, PPTs and Section 504 teams must consider whether any misconduct, including behavior related to bullying, is a manifestation of a student's disability. If the answer is yes, the district may not discipline a student for such behavior.

In cases where traditional disciplinary measures would not appropriate, it would be important for a 504 Team or PPT to review current plans to ensure that appropriate behavior supports, services and educational placement remain appropriate to meet the child's needs and minimize recurrence of such behavior. For "victims," school officials must also understand that, even if another student of the same age or grade level might

not be offended or experience feelings of fear or harm, if a disabled child is perceiving situation in a negative way due to his/her particular disability, it is important to address such perceptions through regular and special education supports, as appropriate. For example, a team may consider a student's need for social skills groups, social skills instruction, access to counseling or similar interventions designed to help a disabled student cope with difficult social situations.

Finally, districts must again be mindful of FERPA obligations when responding to reports of bullying involving students with disabilities. School officials may not disclose personally identifiable student information, including whether a child has a disability or the nature of such disability, without written parental consent.

43. How do school districts know if an act constitutes criminal conduct? When must a school district report such misconduct to the police?

Public Act 11-232 requires that when the principal or his/her designee believe that any acts of bullying "constitute criminal conduct, he/she must notify the appropriate local law enforcement agency."

School administrators are not required to determine that a crime has in fact been committed, as this decision is left to the appropriate law enforcement authorities. Rather, once a school has verified that the conduct is bullying, then principals or their designees must consider whether the conduct could also constitute a crime under state law, such as the following:

a) Assault – An individual commits assault when he or she acts with the intent to cause physical injury to another person, and causes such injury to that person (or a third person); when an individual recklessly causes serious physical injury to another person, or when an individual acts with criminal negligence, causing physical injury to another person by means of a deadly weapon, a dangerous instrument or an electronic defense weapon. Conn. Gen. Stat. § 53a-61.

b) Bias Crimes – A person commits intimidation based on bigotry or bias when such person maliciously, and with specific intent to intimidate or harass another person because of the actual or perceived race, religion, ethnicity, disability, sexual orientation or gender identity or expression of the other person, causes serious physical injury to such other person or to a third person. Conn. Gen. Stat. § 53a-181j. An individual also commits intimidation based on bigotry or bias when such person maliciously, and with specific intent to intimidate or harass another person because of the actual or perceived race, religion, ethnicity, disability, sexual orientation or gender identity or expression of such other person:

- i) causes physical contact with such other person;
- ii) damages, destroys or defaces any real or personal property of such other person, or
- iii) threatens, by word or act, to do either (i) or (ii), if there is reasonable cause to believe that an act described in either (i) or (ii) will occur. Conn. Gen. Stat. § 53a-181k.

c) Harassment – An individual criminally harasses another person when, by telephone, he or she addresses another in or uses indecent or obscene language; or when, with the intent to harass, annoy or alarm another person, he or she communicates with a person by telegraph or mail, by fax, by computer network, or by any other form of written communication, in a manner likely to cause annoyance or alarm; or, with the intent to harass, annoy or alarm another person, he or she makes a telephone call, whether or not a conversation ensues, in a manner likely to cause annoyance or alarm. Conn. Gen. Stat. § 53a-183.

d) Larceny – A person commits larceny when, with the intent to deprive another of property or to appropriate the same to himself or a third person, he or she wrongfully takes, obtains or withholds such property from an owner. Conn. Gen. Stat. § 53a-119. If, during the course of committing a larceny, the individual uses or threatens the immediate use of physical force upon another person for the purpose of preventing or overcoming resistance to the larceny, the individual commits robbery. Conn. Gen. Stat. § 53a-133.

e) Sexting/Child Pornography – Possession of, or transmission of, any visual depiction of child pornography (any visual depiction of an individual under sixteen years of age engaging in sexually explicit conduct) is a crime. Conn. Gen. Stat. 53a-196h.

f) Criminal Threats – An individual commits criminal threatening when, by physical threat, he or she intentionally places or attempts to place another in fear of imminent serious physical injury; when an individual threatens

to commit a crime of violence with the intent to terrorize another person, or when an individual threatens to commit such a crime of violence in reckless disregard of the risk of causing such terror. Conn. Gen. Stat. § 53a-62.

Excerpt from “*When Bullying Behavior May Also be Criminal Behavior*,” Leander A. Dolphin, March 2012, available at CAS/CIAC website: http://www.casciac.org/scripts/show_pics.cgi?BULLYINGLEANDERMAR12

MISCELLANEOUS

44. What training requirements are imposed by the new law?

All certified school employees must complete training on school violence prevention, conflict resolution, the prevention of and response to youth suicide and the identification and prevention of and response to bullying, except that those boards of education that implement any evidence-based model approach that is approved by the State Department of Education and is consistent with statutory obligations shall not be required to provide in-service training on the identification and prevention of and response to bullying.

Other school employees must complete training provided by the State Department of Education “within available appropriations” on the prevention, identification and response to school bullying and the prevention of and response to youth suicide. “Such training may include, but not be limited to,

a) developmentally appropriate strategies to prevent bullying among students in school and outside of the school setting,

b) developmentally appropriate strategies for immediate and effective interventions to stop bullying,

c) information regarding the interaction and relationship between students committing acts of bullying, students against whom such acts of bullying are directed and witnesses of such acts of bullying,

d) research findings on bullying, such as information about the types of students who have been shown to be at risk for bullying in the school setting,

e) information on the incidence and nature of cyberbullying,

f) Internet safety issues as they relate to cyberbullying, or

g) information on the incidence of youth suicide, methods of identifying youths at risk of suicide and developmentally appropriate strategies for effective interventions to prevent youth suicide. Such training may be presented in person by mentors, offered in state-wide workshops or through on-line courses.”

45. What is the role of a safe school climate committee?

Under the new law, starting with the 2012-2013 school year (and for each school year thereafter), the principal of each school is required to establish a committee (or designate at least one existing committee in the school) to be responsible for “developing and fostering a safe school climate and addressing issues relating to bullying in the school.” Each school must have such committee and it must include at least one

parent/guardian of a student enrolled in the school.

The safe school climate committee shall:

- a) received copies of completed reports following bullying investigations;
- b) identify and address patterns of bullying among students in their school;
- c) review and amend school policies related to bullying;
- d) review and make recommendations to the safe school climate coordinator regarding the safe school climate plan based on issues and experiences specific to the school;
- e) educate students, school employees and parents/guardians on issues relating to bullying;
- f) collaborate with the coordinator in the collection of data regarding bullying, and
- g) perform any other duties as determined by the principal that are related to the prevention, identification and response to school bullying.

46. *May members of the safe school climate committee have access to individual reports and documentation related to bullying investigations?*

No. In fact, Public Act 11-232 specifically prohibits parents serving on this committee from participating in any activity “which may compromise the confidentiality of any student, including, but not limited to, receiving copies of investigation reports, or identifying patterns of bullying among students in the school.”

Even beyond the provision pertaining to parents, school officials must adhere to the requirements under FERPA when sharing any

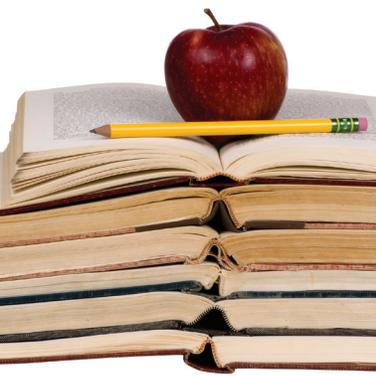
data, reports or other personally identifiable student information with any member of the committee. Under FERPA, personally identifiable student information may not be shared without written parental consent, although an exception exists which allows a district to share information with “school officials” who have a “legitimate educational interest” in having such information in order to fulfill their professional responsibilities. Despite this exception, however, it is clear that the role of the committee is not to investigate or make independent decisions regarding individual reports or allegations of bullying. Given the size of many schools and school districts within the state, school officials must be cautious when disseminating information for the committee’s review to ensure that any personally identifiable student information is removed in order to protect student privacy.

47. *What are the rights of students, parents and staff who report bullying?*

Safe school climate plans must include a prohibition against discrimination and retaliation against a person who reports or assists in the investigation of a bullying complaint.

48. *If despite a school’s best efforts, a student is harmed through bullying, will an individual school employee or the school district be liable?*

The statute provides for immunity from damage claims for a school employee (and for the school district) when the school employee or the board of education “reports, investigates and responds to bullying, in accordance with the provisions of the safe



school climate plan, if such school employee was acting in good faith in the discharge of his or her duties or within the scope of his or her employment.” However, this immunity is lost if the actions of the school employee constitute “gross, reckless, willful, or wanton misconduct.”

More generally, the provisions of Conn. Gen. Stat. § 10-235 protect school employees by indemnifying them from liability for actions taken in the scope of their employment, as long as their actions are not wanton, reckless or malicious.

The statute also confers immunity from liability for “a student, parent or guardian of a student or any other

individual who reports an act of bullying to a school employee, in accordance with the provisions of the safe school climate plan . . . if such individual was acting in good faith.” However, this immunity is lost if the actions of the school employee constitute “gross, reckless, willful, or wanton misconduct.”

QUESTIONS OR ASSISTANCE?

If you have any additional questions, please contact Julie Fay at jfay@goodwin.com or 860-251-5009 or Tom Mooney at tmooney@goodwin.com or 860-251-5710.

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