New Legislation in Massachusetts to Combat Cyber-Bullying

by Devon Grierson

On May 3, 2010, in response to highly publicized incidents of school children committing suicide due to bullying, the governor of Massachusetts signed into law a bill designed to combat both bullying and cyber-bullying. This bill expanded and defined the roles of several state agencies dealing with these issues, including school districts, law enforcement, and the Department of Elementary and Secondary Education (hereinafter “The Department”). Prior to enactment, Massachusetts did not have a specific law designed to combat bullying in schools.1

The unfortunate events that prompted the legislation were seen, primarily, as a failure of the school system. The major thrust of the legislation, therefore, was to reform the way that schools respond to situations of bullying. Accordingly, the majority of the bill focuses on educating students and staff about the effects of bullying, as well as increasing school sanctions when incidences of bullying occur. While criminal sanctions were not the main focus of the bill, severe cases of bullying trigger criminal consequences, including criminal harassment and stalking.

The portion of the bill dedicated to raising awareness and educating children about the effects of bullying begins with the creation of a “No Name Calling Day.” The stated purpose of “No Name Calling Day” was to “increase public awareness of the devastating effects of verbal bullying.”4 The bill also amended the academic standards that The Department promulgates to include “teen dating violence” and “bullying prevention.”5

The legislation also provides broad definitions for both “bullying” and “cyber-bullying.” The law defines bullying as a repeated act that (1) causes physical or emotional harm; (2) creates a reasonable fear of personal harm or harm to property; (3) creates a hostile school environment; (4) infringes on the rights of a student at school; or (5) “materially and substantially disrupts the education process or the orderly operation of a school.” Similarly, cyber-bullying includes conduct defined as bullying through the use of technology.6 This conduct includes the creation of web pages, blogs, or postings on web pages or blogs.7

One of the most important components of the bill is the creation of a prohibition on bullying. The legislation prohibits bullying on school grounds, on property bordering school grounds, at school-sponsored events, at a school bus stop, on a school bus, or through the use of technology owned, leased or used by a school.8 Bullying is also prohibited if there is a nexus between the bullying and school. The prohibition on bullying extends to locations, activities, functions, or programs that are not school related, “if the bullying creates a hostile environment at school for the victim, infringes the rights of the victim at school or materially and substantially disrupts the education process or the orderly operation of a school.”9

As a corollary to the prohibition on bullying, the Massachusetts law requires teachers and other staff to participate in ongoing professional development programs to build skills on the appropriate techniques to properly intervene on student’s behalves in order to prevent bullying.10 The training will be designed to explore the causes of bullying, as well as the advent of cyber-bullying.11 School staff must also be instructed on information about specific categories of students who have been shown to be particularly at risk for bullying.

An equally important aspect of the legislation creates new mandatory responsibilities for both school staff and principals. Any school or staff member aware of any bullying; either personally or from others, are required to act as mandated reporters under the new law.12 Once a report is received by the principal, he or she is required to then (1) conduct an investigation, (2) determine whether bullying or retaliation has occurred, (3) notify a local law enforcement agency if they believe criminal charges may be pursued, (4) take appropriate disciplinary action, and (5) notify the parents or guardians of both the bully and the victim.13 If inter-school bullying is discovered, the principal or administrator first notified of bul-
lying is also required to notify the principal or administrator of the other school involved.16

The legislation also expands the scope of stalking, harassment, and the use of telephones to make annoying calls statutes. Originally the statutes included provisions for harassment and stalking “conducted by mail or by use of a telephonic or telecommunication device including, but not limited to, electronic mail, internet communications or facsimile communications.”17 The 2010 amendments revised the original definitions of stalking and harassment to include “signals, writing, images, sound, data, or intelligence of any nature” transmitted by “wire, radio, electromagnetic, photo-electronic or photo-optical system.”18 Similarly, the bill expands the crime of the use of telephones to make annoying calls to include “electronic communications.”19

Within the latter provisions of the bill are reporting and review requirements for The Department and schools under their purview. The Department is tasked with periodically reviewing schools to ensure that they are in compliance with the bill. Accordingly, schools are required to establish anti-bullying policies and submit them to The Department by the end of 2010. Furthermore, this policy shall be posted on the website of the school, and made freely available by school administrators.

Finally, the legislation establishes a seven member “special commission” to investigate and study bullying and cyber-bullying.20 This special commission’s purpose is to act as a reviewing body to monitor issues in bullying and cyber-bullying and, if needed, provide recommendations for further legislative action. Specifically, the commission shall investigate at the possibility of imposing liability, both civil and criminal, on parents for the conduct of their children. The bill mandates that the special commission forward any suggestions to the legislature June 30, 2011.

This legislation signifies a new paradigm of thinking in how schools and school officials cope with the issues of adolescents and children engaged in bullying and cyber-bullying. It creates a tiered system of reporting, from children, to teachers, to principals, to law enforcement. By passing this bill the legislature recognized that bullying could no longer be tolerated in schools. As a result, Massachusetts’ stringent new law now serves as an example of effective legislation combating bullying and cyber-bullying.

1 Law Clerk, NDAA’s National Center for Prosecution of Child Abuse.
2 See Erik Eckholm & Katie Zeezma, Court Documents Detail a Teenage Girl’s Final Days of Fear and Bullying, N.Y. TIMES, APR., 9, 2010, AT A12; Milton Valenca, Constantly Bullied, He Ends His Life at Age 11, Mother Vows to Expose Dangers of Harassment, BOSTON GLOBE, Apr. 20, 2009, at 1.
3 In the Phoebe Prince case charges ranging from criminal harassment to disturbance of a school assembly were brought against defendants whose bullying led to a suicide. Eckholm, supra note 1 at 1.
4 MASS. GEN. LAWS ch. 6, § 15NNNNNN (2010).
5 MASS. GEN. LAWS ch. 69, § 1D (2010).
6 See MASS. GEN. LAWS ch. 71, § 370(a) (2010).
7 Id.
8 Id.
9 See id.
10 MASS. GEN. LAWS ch. 71, § 370(b) (2010).
11 Id.
12 MASS. GEN. LAWS ch. 71, § 370(d) (2010).
“`The content of such professional development shall include, but not be limited to: (i) developmentally appropriate strategies to prevent bullying incidents; (ii) developmentally appropriate strategies for immediate, effective interventions to stop bullying incidents; (iii) information regarding the complex interactions and power differential that can take place between and among a perpetrator, victim and witnesses to the bullying; (iv) research findings on bullying, including information about specific categories of students who have been shown to be particularly at risk for bullying in the school environment; (v) information on the incidence and nature of cyber-bullying; and (vi) internet safety issues as they relate to cyber bullying.’”Id.
13 Id.
14 MASS. GEN. LAWS ch. 71, § 370(g) (2010).
“A member of a school staff, including, but not limited to, an educator, administrator, school nurse, cafeteria worker, custodian, bus driver, athletic coach, advisor to an extracurricular activity or paraprofessional, shall immediately report any instance of bullying or retaliation the staff member has witnessed or become aware of to the principal . . . .” Id. (emphasis added).
15 Id.
16 MASS. GEN. LAWS ch. 71, § 370(b) (2010).
19 MASS. GEN. LAWS ch. 269, § 14A(2010).