

Children's Issues Series: Anti-Bullying Laws

What laws protect students against bullying?

Two Massachusetts laws are designed to help students and schools prevent bullying and deal with it when it happens. The Massachusetts laws are MGL c.71 § 37O which pertains to all school districts and students in the state, and MGL 71B §3 which pertains to students with disabilities who are vulnerable to bullying

The federal laws are Section 504 of the Rehabilitation Act, Title II of the ADA, Title VI of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972 which prohibit discrimination on the basis of disability, sex, race, color or national origin. Sec 504 and Title II pertain to all students with disabilities, not just those who have IEP's.

What is the Massachusetts Anti-Bullying Law?

The Massachusetts Anti-Bullying Law is new law (enacted May 3, 2010) designed to prevent bullying in schools. The law has two parts; one applies to all students and schools and one applies to students who are eligible for special education.

MGL c.71 §37O defines "bullying" very broadly, including cyber-bullying, and requires schools to do certain things to try to prevent bullying. Many people say it is one of the strongest anti-bullying laws in the country.

- Most parts of the law apply to all types of schools—public, charter and even private schools.
- Every district must have a bullying prevention and intervention plan.
- Unfortunately, it may prove to be difficult to enforce some parts of the law since it contains some broad definitions and specifically states it creates no private right of action.

MGL c. 71B sec 3 states that districts must consider how to help a student avoid bullying if they have autism or a disability that makes them vulnerable to bullying or teasing.

What is the federal anti-harassment law?

Sec 504 and Title II of the ADA and Titles VI and IX prohibit bullying and harassment that create a "hostile environment" and interfere with the student's ability to access the educational program. OCR's Dear Colleague letter of 10/26/10 clearly states what constitutes bullying

and what the school's obligations are under these laws,
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

What is bullying under the Massachusetts law?

The law defines bullying as:

1. the **repeated** use
2. by one or more **students**
3. of a written, verbal or electronic **expression** **OR** a physical **act** or gesture (or any combination)
4. **directed** at a **victim**
5. that **causes**:
 - a. **physical or emotional harm** to the victim or damage to the victim's property,
 - b. places the victim in **reasonable fear** of harm to himself or of damage to his property,
 - c. creates a **hostile environment** at school for the victim,
 - d. **infringes on the rights** of the victim at school, **OR**
 - e. materially and substantially **disrupts** the education process or the orderly operation of a school.

What is bullying under the federal laws?

“Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.” (OCR DCL:Bullying and Harassment, 10/26/2010)

Where does the law prohibit bullying?

The law says that **bullying is prohibited** both

1. on, or immediately adjacent to **school property**, on a schoolbus, at a school bus stop, or at a school-related event anywhere; or through the use of technology owned, leased or used by the school, **AND**
2. **off school grounds** or through use of technology **if** it creates a hostile environment at school for the victim, or infringes on the rights of the victim at

school, or materially and substantially disrupts the education process or orderly operation of the school. Ch. 71, §370(b).

What do schools have to do under the new Massachusetts law?

- Schools must **develop, adhere to and update** (at least twice a year) **a plan** to address bullying prevention and intervention. The school must develop the plan in consultation with teachers, staff, professional support personnel, school volunteers, administrators, community representatives, local law enforcement agencies, students, parents and guardians.
- Most schools must include in the plan a provision for ongoing professional development to build the skills of all staff members (except for some private schools).
- In addition, most schools must provide age-appropriate instruction on bullying in each grade (again, the exception is some private schools).
- For students with disabilities who have autism and/or are vulnerable to bullying, the IEP Team must consider and address why the student is a target and how to help the student by goals and services in the IEP.

Are there certain things the school's bullying prevention plan must contain?

Yes. The plan must include:

1. description of bullying and a **prohibition** on bullying, cyber-bullying and retaliation,
2. clear **procedures for reporting** bullying,
3. provision for **anonymous** reporting of bullying (but no disciplinary action may be taken solely on an anonymous report),
4. **clear procedures for responding to and investigating** reports of bullying,
5. the range of **disciplinary actions** that may be taken against a perpetrator,
6. **clear procedures for restoring a sense of safety** for the victim and **assessing** the victim's needs for protection,
7. strategies for protecting a person who reports bullying, provides information during an investigations, or who has reliable information about an act of bullying,
8. **procedures** consistent with other laws **for notifying parents** or guardians of a victim and a perpetrator **AND** a provision saying that the victim's parents must be notified of the action taken to prevent further bullying **AND** a

provision saying the principal must immediately the local police when criminal charges may be brought,

9. provisions for informing parents about the school's bullying prevention plan, and how parents can reinforce the curriculum at home.
10. a provision subjecting a student who knowingly makes a **false accusation** to disciplinary action,
11. a provision for providing **counseling and referral** to services for victims and perpetrators and their families.

What does it mean to “create a hostile environment”?

- The Massachusetts law defines “hostile environment” as “a situation in which bullying causes the school environment to be permeated with intimidation, ridicule or insult that is **sufficiently severe or pervasive** to alter the conditions of the student’s education.” Ch. 71, §370(a) (emphasis added).
- Under the federal laws, discriminatory harassment creates a hostile environment when the harassing action is severe, persistent or pervasive enough to prevent a student from enjoying the benefits of the school program..

What is cyber-bullying?

The law defines cyber-bullying to include just about every kind of bullying through use of technology or electronic communication that can be imagined. It includes creating a web page or blog in which the creator assumes the identity of someone else, writing messages pretending to be someone else, and posting material on an electronic medium such as Facebook. §370(a)

Where can I find a copy of the plan?

The plan must be posted on the school’s website.

What happens when teachers or staff learn about an incident of bullying?

- When a teacher or staff member (including a nurse, janitor or cafeteria worker) witnesses or becomes aware of an incident of bullying, they shall immediately report the incident to the principal or designee, and the principal or designee shall promptly conduct an investigation.
- If the principal or designees determines that the bullying has occurred, the principal or designee shall notify local law enforcement if the principal or designee believes that criminal charges may be pursued against a perpetrator, take disciplinary action, notify the parents of the perpetrator, notify the parents of the victim, and notify them of the action taken to prevent any further acts of bullying or retaliation.

- If the student has a disability that makes them vulnerable to bullying and/or if they have autism, the IEP team must consider goals and services to be added to the student's IEP.
- The investigation of the incident(s) must consider if discriminatory harassment has occurred. If so, a school must promptly take steps to end the harassment.

Who is responsible for carrying out the bullying prevention plan?

The school principal or the person who holds a comparable position. All faculty and staff must be trained every year.

Does the law protect people who report bullying?

Yes. The law explicitly prohibits retaliation against a person who reports bullying or gives information during an investigation or “who has reliable information about bullying” (which seems to protect from retaliation even a person who says nothing). Section 5(b). The law says only that it prohibits retaliation—it provides no other information (no procedure, no remedy, no definition, etc.).

Resources

Massachusettslegalservices.org page on bullying and harassment -
<http://www.Masslegalservices.org/node/34081>

Gay and Lesbian Advocates and Defenders (GLAD) information on bullying -
<http://www.glad.org/rights/massachusetts/c/students-rights-in-massachusetts/>

A website managed by the US Department of Health and Human Services-
<http://www.stopbullying.gov>

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