

**PROPOSED REGULATIONS ON
NOTIFICATION OF BULLYING OR RETALIATION
603 CMR 49.00**

- Presented to the Board of Elementary and Secondary Education for initial review and vote to solicit public comment: **June 22, 2010**
- Period of public comment: **through August 25, 2010**
- Final action by the Board of Elementary and Secondary Education anticipated: **September 21, 2010**

Background:

Chapter 92 of the Acts of 2010, *An Act Relative to Bullying in Schools*, was signed into law on May 3, 2010 and took effect immediately. The law requires each school district, charter school, non-public school, approved day or residential school, and collaborative school to develop and implement a plan to address bullying and intervention. The statute directs the Board of Elementary and Secondary Education to promulgate regulations addressing a principal's duties under one of the ten required elements of the bullying and intervention plan, namely, notification to parents or guardians of the victim and the perpetrator of bullying or retaliation and the action taken to prevent further bullying, and notification to law enforcement of bullying or retaliation, when the perpetrator's conduct also may result in criminal charges. The law further provides that the regulations must be promulgated by September 30, 2010.

This is a new regulation. All of the text below is new.

603 CMR 49.00

Notification of Bullying or Retaliation

49.01: Authority

603 CMR 49.00 is promulgated by the Board of Elementary and Secondary Education pursuant to M.G.L. c. 71, § 37O, as added by Chapter 92 of the Acts of 2010.

49.02: Scope and Purpose

603 CMR 49.00 governs the requirements related to the duty of the principal or leader of a public school, approved private day or residential school, collaborative school, or charter school to notify the parents or guardians of a victim and a perpetrator when there is a report of bullying or retaliation, and to notify the local law enforcement agency when criminal charges may be pursued against the perpetrator of bullying or retaliation. The regulation also addresses confidentiality of student record information related to notification of bullying and retaliation.

49.03: Definitions and Terms

Approved private day or residential school means a school that accepts, through agreement with a school committee, a child requiring special education pursuant to M.G.L. c. 71B, § 10 and 603 CMR 28.09.

Bullying, pursuant to M.G.L. c. 71, § 37O, means the repeated use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a victim that: (i) causes physical or emotional harm to the victim or damage to the victim's property; (ii) places the victim in reasonable fear of harm to himself or herself or damage to his or her property; (iii) creates a hostile environment at school for the victim; (iv) infringes on the rights of the victim at school; or (v) materially and substantially disrupts the education process or the orderly operation of a school. Bullying shall include cyberbullying.

Bullying prevention and intervention plan means the plan required to be developed under M.G.L. c. 71, § 37O.

Charter school, pursuant to M.G.L. c. 71, § 37O, means a Commonwealth charter school or Horace Mann charter school established pursuant to M.G.L. c. 71, § 89.

Cyberbullying, pursuant to M.G.L. c. 71, § 37O, means bullying through the use of technology or any electronic communication, which shall include, but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications. Cyberbullying shall also include: (i) the creation of a web page or blog in which the creator assumes the identity of another person, or (ii) the knowing impersonation of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying. Cyberbullying shall also include the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution of posting creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying.

Collaborative school, pursuant to M.G.L. c. 71, § 37O, means a school operated by an educational collaborative established pursuant to M.G.L. c. 40, § 4E.

Local law enforcement agency means a local police department, county district attorney, or any other public entity charged with investigation, apprehension, detention or prosecution of individuals suspected or convicted of a crime.

Parent means a student's father or mother, or guardian.

Perpetrator, pursuant to M.G.L. c. 71, § 37O, means a student who engages in bullying or retaliation.

Principal means the administrative leader of a public school, charter school, collaborative school, or approved private day or residential school, or his/her designee for the purposes of implementing the school's bullying prevention and intervention plan.

Retaliation means any form of intimidation, reprisal or harassment directed against a person in response to an action that person has taken or knowledge that the person has.

Student record has the meaning set forth in the Massachusetts Student Records Regulations, 603 CMR 23.02.

Victim, pursuant to M.G.L. c. 71, § 37O, means a student against whom bullying or retaliation has been perpetrated.

49.04: Bullying Prohibited

(1) Bullying, and retaliation against a person who reports bullying, provides information during an investigation about bullying, or witnesses or has reliable information about bullying is prohibited as provided in G.L. c. 71, § 37O.

(2) Each school district, approved private day or residential school, collaborative school, or charter school shall have a procedure for receiving reports of bullying or retaliation; promptly responding to, investigating, and addressing all such incidents; and reporting to parents and law enforcement as set forth in 603 CMR 49.05 and 49.06.

49.05: Notice to Parents

(1) The principal shall promptly notify the parent of the alleged victim and the alleged perpetrator of a report of bullying or retaliation and of the school's procedures for investigating the report. If the alleged victim and alleged perpetrator attend different schools, the principal receiving the report shall inform the principal of the other student's school, who shall notify the student's parent of the report and procedures.

(2) The principal shall inform the parent of a victim of bullying or retaliation of actions that school officials will take to prevent further acts of bullying or retaliation.

(3) Each public school district, approved private day or residential school, collaborative school, and charter school shall include the requirements and procedures for communicating with the parents of the victim and perpetrator of bullying or retaliation in the bullying prevention and intervention plan required by M.G.L. c. 71, § 37O .

(4) A principal's notification to a parent about a report of bullying or retaliation must comply with confidentiality requirements of Massachusetts Student Records Regulations,

603 CMR 23.00, and the Federal Family Educational Rights and Privacy Act Regulations, 34 CFR Part 99, as set forth in 603 CMR 49.07, below.

49.06: Notice to Law Enforcement Agency

(1) Upon receipt and review of a report of bullying or retaliation, the principal shall make a preliminary determination whether to notify the local law enforcement agency of the reported incident. The principal shall notify the law enforcement agency if the principal has a reasonable basis to believe that the incident may result in criminal charges against the alleged perpetrator. The principal shall, consistent with school policy and procedure, consult with the school resource officer, if any, and such other individuals the principal deems appropriate in making such determination.

(a) If the principal decides to notify the local law enforcement agency, the principal shall document the reasons for the decision and immediately contact the local law enforcement agency to discuss the incident and the law enforcement agency's involvement. Nothing in this section shall prevent the principal from taking appropriate disciplinary or other action pursuant to school policy and state law.

(b) If the principal decides not to notify the local law enforcement agency, or the local law enforcement agency determines that its involvement is not necessary under the circumstances, the principal shall respond to the incident of bullying or retaliation as provided in the bullying prevention and intervention plan. If the principal subsequently determines facts that cause him or her to believe that the perpetrator's conduct may be criminal, the principal shall notify the local law enforcement agency.

(2) The principal shall notify the local law enforcement agency of a report of bullying or retaliation consistent with 603 CMR 49.06(1) if bullying or retaliation occurs on school grounds and involves a former student under the age of 21.

(3) Each public school district, approved private day or residential school, collaborative school, and charter school shall include the requirements and procedures for communicating with the local law enforcement agency in the bullying prevention and intervention plan required by M.G.L. c. 71, § 37O.

49.07: Confidentiality of Records

(1) A principal may not disclose to a parent any student record information regarding an alleged victim or perpetrator who is a student and who is not the parent's child.

(2) A principal may disclose a report of bullying or retaliation to a local law enforcement agency under 603 CMR 49.07(1)(a) without the consent of a student or his/her parent. The principal shall communicate with law enforcement officials in a manner that protects

the privacy of victims, student witnesses, and perpetrators to the extent practicable under the circumstances.

(3) A principal may disclose student record information about a victim or perpetrator to appropriate parties in addition to law enforcement in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals as provided in 603 CMR 23.07(e) and 34 CFR 99.31(10) and 99.36. This provision is limited to instances in which the principal has determined there is an immediate and significant threat to the health or safety of the student or other individuals. It is limited to the period of emergency and does not allow for blanket disclosure of student record information. The principal must document the disclosures and the reasons that the principal determined that a health or safety emergency exists.

Regulatory Authority:

603 CMR 49.00: M.G.L. 71, §37O, as added by Chapter 92 of the Acts of 2010