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THE NEW BULLYING STATUTE: BEST PRACTICES

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I. INTRODUCTION:

Public Act 11-232 makes significant changes in the bullying statute, Conn. Gen. Stat. § 10-222d, which was first adopted in 2002 and amended in 2006 and again in 2008. The new statute broadens the definition of bullying, and it imposes significant new responsibilities on school personnel. In the following, we will describe the changes in the statute and review 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>).

II. THRESHOLD QUESTIONS:

Before reviewing the receipt, investigation and disposition of bullying complaints, we must answer some threshold questions:

- ***How do we define bullying?***

- ✓ Old definition:

Any OVERT acts by a student or group of students directed against another student with the INTENT to ridicule, harass, humiliate, or intimidate the other student while on SCHOOL GROUNDS, AT A SCHOOL SPONSORED ACTIVITY, OR ON A SCHOOL BUS, which acts are committed MORE THAN ONCE against any student DURING THE SCHOOL YEAR.

- ✓ New definition:

REPEATED USE by one or more students of a WRITTEN, VERBAL, OR ELECTRONIC COMMUNICATION, such as CYBERBULLYING, or a PHYSICAL ACT OR GESTURE REPEATEDLY DIRECTED AT OR REFERRING TO another student attending school in the same school district that:

(A) causes PHYSICAL OR EMOTIONAL HARM to the student or DAMAGE to the student's property;

- (B) places the student in REASONABLE FEAR OF HARM to himself or herself, or of DAMAGE to the student's property;
- (C) creates a HOSTILE ENVIRONMENT at school for such student (bullying among students is sufficiently severe and pervasive as to alter the conditions of the school climate);
- (D) infringes on the RIGHTS of the student at school; or
- (E) SUBSTANTIALLY DISRUPTS the educational process or the orderly operation of a school.

Bullying explicitly includes, but is not limited to:

A written, verbal, or electronic communications, or physical acts or gestures that are based on any ACTUAL OR PERCEIVED DIFFERENTIATING CHARACTERISTICS, such as race, 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 is perceived to have one or more of such characteristics.

CYBERBULLYING DEFINED:

Any act of bullying using the INTERNET, INTERACTIVE and DIGITAL technologies, CELLULAR MOBILE TELEPHONE or other MOBILE ELECTRONIC DEVICES, or any ELECTRONIC COMMUNICATIONS.

- ***When must school officials 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.

- ***Who may report bullying:***

- ✓ Students:

Written reports.
Anonymous reports.

NOTE: There are two kinds of anonymous reports -- those when the student wishes to remain anonymous and those that are truly anonymous. The safe school climate specialist must review anonymous reports, but no disciplinary action may be taken solely on the basis of any anonymous report.

- ✓ Parents: Written reports only.
- ***Who must report bullying?***
 - ✓ School employees who:

witness acts of bullying or

receive reports of bullying.

“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.
- ***What notification requirements are imposed?***
 - ✓ Student codes of conduct must include language concerning bullying.
 - ✓ Students and parents or guardians of students must be notified annually of the process by which they may file complaints of bullying.
 - ✓ No later than thirty days after the local or regional board of education approves its safe school climate plan as specified by the statute (no later than January 1, 2012), the plan must be (a) published on the Internet website of the school district and of each individual school, and (b) included in the school district’s publication of the rules, procedures and standards of conduct for schools and in all student handbooks.
 - ✓ At the beginning of each school year, each school must provide all school employees with a written or electronic copy of the school district's safe school climate plan.
- ***What new positions must be created?***

- ✓ Safe school climate coordinator, to be appointed from existing school staff by July 1, 2012 and for every school year thereafter.

“The district safe school climate coordinator shall: (1) Be responsible for implementing the district's safe school climate plan (2) collaborate with the safe school climate specialists, the board of education and the superintendent of schools to prevent, identify and respond to bullying in the schools of the district, (3) provide data and information, in collaboration with the superintendent of schools of the district, to the Department of Education regarding bullying as required by statute, and (4) meet with the safe school climate specialists at least twice during the school year to discuss issues relating to bullying in the school district and to make recommendations concerning amendments to the district's safe school climate plan.”

- ✓ Safe school climate specialist, either the school principal or his/her designee, to be appointed by July 1, 2012 and for every school year thereafter.

The safe school climate specialist must “(1) investigate or supervise the investigation of reported acts of bullying in the school in accordance with the district's safe school climate plan, (2) collect and maintain records of reports and investigations of bullying in the school, and (3) act as the primary school official responsible for preventing, identifying and responding to reports of bullying in the school.”

III. RECEIVING AND INVESTIGATING BULLYING COMPLAINTS:

- ***Who may receive bullying complaints?***

Any school employee (as defined above) may receive and must report any bullying complaint received, whether anonymous or by an identified parent or student.

- ***What must be done upon receipt?***

The school employee who receives a bullying complaint must:

within one school day of receipt orally notify the safe school climate specialist of the complaint.

within two school days of such notification file a written report (presumably with the safe school climate specialist).

NOTE: That report may be subject to public disclosure. Employees should be trained, and less may be better. Consider asking for such reports in draft form in the first instance.

- ***How should the complaint be investigated?***

- ✓ Be vigilant about FERPA concerns. 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).
- ✓ Student 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.
- ✓ Document your investigation.

- ***How do I investigate complaints of cyberbullying?***

- ✓ Focus on the threshold issue first: what is the impact on the victim in school:

Does the cyberbullying create a hostile environment for the student at school?

Does the cyberbullying infringe on the rights of the victim at school?

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

- ✓ Ask for printouts of any IMs or postings.
- ✓ Confront the alleged perpetrator(s) with the IMs or postings and invite the alleged perpetrator(s) to provide other evidence of such interactions.

- ***What is the status of my personal notes from the investigation?***

Your personal notes (as compared to a report shared with others, even if handwritten) are not subject to disclosure under the Freedom of Information Act (“FOIA”) or the Family Educational Rights and Privacy Act (“FERPA”). They may be subject to subpoena, and you should retain them.

- ***What is the timeline for the completion of the investigation?***

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

- ***When should I verify bullying?***

- ✓ Focus on the definition of bullying:

Was the conduct repeated?

Did students act in concert?

QUERY: Is concerted action by “one or more students” required?

Did the conduct cause physical or emotional harm to the student or damage to the student’s property?

QUERY: Who decides whether the conduct caused emotional harm?

Did the conduct place the student in reasonable fear of harm to him- or herself, or of damage to his/her property?

Did the conduct create a hostile environment at school for such student?

NOTE: 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.”

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

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

NOTE: Cyberbullying should be verified only if one or more of the last three questions are answered yes.

IV. DISPOSITION OF BULLYING COMPLAINTS:

- ***Do I have to prepare a written report?***

- ✓ The statute requires 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.”

NOTE: The report of findings in the bullying investigation should be different from the list, and it should follow district guidelines for such reports.

Consistent with district obligations under state and federal law regarding student privacy, the list 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. The list should be limited to basic information such as the number of verified acts, name of school and/or grade level and relevant date.

- ✓ Some written evidence of the investigation is therefore required.

- ***Can I share my report with the parents of the victim or of the perpetrator?***

- ✓ The statute simply requires that parents of perpetrators and victims be “notified” if bullying is verified.
- ✓ 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 cannot 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 report to the parents.

- ***What must I do to notify parents of the results of the investigation?***

- ✓ ***Within forty-eight hours of the completion of the investigation***, school officials must notify parents of any student who commits a verified act of bullying and the parents of any student against whom any such act of bullying was committed.

- ✓ Such parents must 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.
- ✓ Annually, the number of verified acts of bullying in a school district must be reported to the State Department of Education in such manner as the Commissioner of Education may prescribe.
- ***What are my responsibilities 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.
- ***How may I take appropriate disciplinary action when acts of bullying are verified?***
 - ✓ The notification to parents of a 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.
 - ✓ Where appropriate, disciplinary action is authorized, including in-school suspension, suspension or expulsion.
 - ✓ Be cautious about hearsay, *i.e.* statements about what a person said made by another to prove the truth of the matter asserted. Use of hearsay in expulsion hearings raises due process concerns.
 - ✓ Note 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.](#)

- ***When must I report to the police?***
 - ✓ 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.

V. OTHER GENERAL REQUIREMENTS:

- ***What training requirements are imposed?***
 - ✓ 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 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, (1) developmentally appropriate strategies to prevent bullying among students in school and outside of the school setting, (2) developmentally appropriate strategies for immediate and effective interventions to stop bullying, (3) 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, (4) 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, (5) information on the incidence and nature of cyberbullying, (6) Internet safety issues as they relate to cyberbullying, or (7) 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.”
- ***What is a prevention and intervention strategy?***
 - ✓ The safe school climate plan must include a “prevention and intervention strategy,” as defined in Conn. Gen. Stat. § 10-222g.

- ✓ Conn. Gen. Stat. § 10-222g provides that the term “prevention and intervention strategy” may include, but is not limited to, (1) implementation of a positive behavioral interventions and supports process or another evidence-based model approach for safe school climate or for the prevention of bullying identified by the Department of Education, (2) school rules prohibiting bullying, harassment and intimidation and establishing appropriate consequences for those who engage in such acts, (3) adequate adult supervision of outdoor areas, hallways, the lunchroom and other specific areas where bullying is likely to occur, (4) inclusion of grade-appropriate bullying education and prevention curricula in kindergarten through high school, (5) individual interventions with the bully, parents and school employees, and interventions with the bullied child, parents and school employees, (6) school-wide training related to safe school climate, (7) student peer training, education and support, and (8) promotion of parent involvement in bullying prevention through individual or team participation in meetings, trainings and individual interventions.
- ***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.
- ***How will we monitor our efforts to combat bullying?***
 - ✓ Commencing July 1, 2012, and every two years thereafter, all schools will be required to “complete an assessment using the school climate assessment instruments, including surveys, approved and disseminated by the Department of Education pursuant to section 10-222h.” That statute provides, *inter alia*, that “in collaboration with the Connecticut Association of Schools, [the Department of Education shall] disseminate to all public schools grade-level appropriate school climate assessment instruments approved by the department, including surveys, to be used by local and regional boards of education for the purposes of collecting information . . . so that the department can monitor bullying prevention efforts over time and compare each district's progress to state trends.” Each local and regional board of education is required to collect the school climate assessments for each school in the district and submit such school climate assessments to the Department of Education.
- ***If despite our best efforts, a student is harmed through bullying, will I 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.”