

New state regs aimed at curbing school bullying

Mon, Sep 19th 2011 12:00 am



EDUCATION
LAW
ANDREW
FREEDMAN

As a practicing school attorney for approximately 14 years, it appears that now more than ever school districts will be challenged implementing new laws and regulations passed by Albany during this difficult funding period.

At this time, schools are implementing a new Annual Professional Performance Review System that is complex and uncertain to navigate, given a recent court decision. For the school year 2012-13, all districts in New York State must have a Response To Intervention (RtI) program. This general education program will be provided to all students. Those students who do meet certain testing targets will receive more intensive instruction. Additionally, by July 1, 2012, districts throughout this state will be required to comply with the provisions of The Dignity for All Students Act, hereinafter referred to as the Dignity Act or the Act.

The Dignity Act was signed into law by then-Gov. Paterson on Sept. 8, 2010. The act prohibits harassment of students on school property or at school functions. It also establishes additional "protected classes" and designates many forms of bullying as unlawful discrimination. The Act defines harassment as the creation of a hostile environment by conduct or by verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being. Harassment also means conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety.

Furthermore, expressly prohibited is the harassment of students with respect to their actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. Actual or perceived identification includes a student's gender identity or expression. The challenge for school districts will be implementing these expectations on a system wide basis to both students and staff.

The Dignity Act has five basic requirements which districts must follow. First, districts must educate both staff and students on the Act's requirements. The Commissioner of Education will provide guidance to assist school districts in developing measured, balanced and age-appropriate responses to harassment and discrimination with remedies focused on intervention and education. The commissioner will further provide direction for school districts including the development of model policies and, to the extent possible, direct services, to prevent discrimination and harassment (including bullying) and to create safe and supportive conditions for learning. This assistance may also include the provision of grant money to assist in the Act's implementation.

Second, the Dignity Act requires instruction in certain subjects. New York State Education Law §801-a requires instruction in civility, citizenship and character education. The Regents must ensure that the course of instruction in

grades kindergarten through 12 includes a component on civility, citizenship and character education. This component instructs students on the principles of honesty, tolerance, personal responsibility, respect for others, observance of laws and rules, courtesy, dignity and other traits which will enhance the quality of their experiences in, and contributions to, the community. Added to the law and for the purposes of this section, "tolerance," "respect for others" and "dignity" includes awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

Third, districts will be required to adopt a Code of Conduct that includes the new provisions of the Dignity Act. New York State Education Law §2801 requires, as a minimum, provisions to comply with the Dignity For All Students Act. This includes an age appropriate version of the District's anti-harassment and/or anti-discrimination policy in the Codes of Conduct. Additionally, it appears as though New York State Education Department is going to recommend amending 8 NYCRR 100.2(l) to require schools to change their code of conducts to include information that enhances a school community's overall awareness and understanding of the changes to the code of conduct.

Fourth, the Board of Education must enact policies and guidelines to create a school environment free from discrimination or harassment. Training programs must raise staff awareness and sensitivity to potential harassment and discrimination. This training must teach staff to prevent and respond to harassment and discrimination. Nondiscriminatory instructional and counseling methods must be implemented and at least one staff member at every school be thoroughly trained to handle human relations in the protected categories.

Finally, the Dignity Act has certain reporting requirements. Consequently, schools will have to report incidents of discrimination or harassment and the specific nature of such incidents.

The Commissioner of Education is required to create a procedure under which material incidents of discrimination and harassment are to be reported to the state Education Department at least annually. The commissioner has indicated that the current Uniform Violent and Disruptive Incident Reporting System (VADIR) is going to be utilized in order to achieve this goal.

The Dignity for All Students Act arose out of a legislative concern to prevent harassment, discrimination and bullying in the schools. Recent media reports have showcased the devastating effect that harassment and bullying has had on schoolchildren. It is with great hope that the Dignity Act will prevent these occurrences and children will again focus on instruction and curriculum, both of which are necessary for success in today's worldwide economy.

Andrew Freedman is a partner in the law firm of *Hodgson Russ LLP.*, afreedma@hodgsonruss.com