

LEGAL ALERT

TO: All School District Clients

FROM: Keane & Beane, P.C.

**RE: Dignity For All Students Act and
NYSED Guidance on Bullying and Cyberbullying**

DATE: September 10, 2010

From time to time, Keane & Beane, P.C., will issue a legal alert to our clients to keep them informed of important changes or updates in the law. On September 9, 2010, Governor David A. Patterson signed into law the Dignity for All Students Act. In addition, the New York State Education Department (“SED”) recently issued the enclosed Guidance on Bullying and Cyberbullying. The Dignity for All Students Act (“DASA”) will be codified as Article 2 of the Education Law and will take effect on July 1, 2012. Since DASA specifically requires certain actions to be taken by school districts, we provide this review of DASA.

Significantly, DASA explicitly prohibits discrimination and harassment in schools, as follows:

No student shall be subjected to harassment by employees or students on school property or at a school function; nor shall any student be subjected to discrimination based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex by school employees or students on school property or at a school function.

DASA defines harassment as:

The creation of a hostile environment by conduct or verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student’s

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educational performance, opportunities or benefits, or mental, emotional or physical well-being; or 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; such conduct, verbal threats, intimidation or abuse includes but is not limited to conduct, verbal threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

DASA requires school districts to:

- Include an age-appropriate version of the above-quoted policy of prohibiting discrimination and harassment that is written in plain-language in their mandated Code of Conduct as well as to include a summary of the policy in any required summaries of their Code of Conduct.
- Create policies and guidelines that shall include, but not be limited to:
 1. policies intended to create a school environment that is free from discrimination and harassment;
 2. guidelines for training school personnel and staff that discourage the development of discrimination and harassment and that are designed:
 - (a) to raise the awareness and sensitivity of school employees to potential discrimination or harassment, and
 - (b) to enable employees to prevent and respond to discrimination or harassment; and
 3. guidelines relating to the development of nondiscriminatory instructional and counseling methods.
- have at least one staff member at every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.
- report at least annually material incidents of discrimination and harassment on school grounds or at a school function. (DASA requires the Commissioner of Education to develop the procedure for this reporting.)

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- instruction in tolerance, respect for others and dignity required by Section 801-a of the Education Law must incorporate 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 disabilities, sexual orientations, genders or sexes.

We have enclosed a copy of SED's Guidance on Bullying and Cyberbullying for your review. As you can see, SED has broached the subject of off-campus cyberbullying and sexting, but referred you to your attorneys for aid in drafting legally sufficient policies. Our office is ready to either review existing policies to insure compliance with all applicable laws and your communities' concerns, or, in the alternative to draft a new policy(ies) to address same.

Should you have any questions with regard to the Dignity For All Students Act, the enclosed Guidance on Bullying and Cyberbullying or your policies, please contact our office.

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