



Rocky Peterson

Kenneth Skroumbelos

Anti-Bullying in New Jersey Where Are We Now?

As many readers may already know the Anti-Bullying Bill of Rights Act ("Anti-Bullying") protects students from harassment, intimidation or bullying which includes gestures, any written, verbal or physical act, or electronic communication that a reasonable person would know to have the effect of physically or emotionally harming a student or damaging a student's property or placing a student in reasonable fear of harm to his person or damage to his property. The Act includes acts that have the effect of insulting or demeaning a student or group of students or create a hostile educational environment for a student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student. Revisions to the Act implemented in the 2011/2012 school year redefine acts of harassment, intimidation or bullying to include both a single and a series of incidents. In addition to these protections to students, the act contains significant policy requirements on schools to provide awareness and avenues of reporting incidents of bullying as well as informing the student body of the consequences of committing acts of harassment, intimidation or bullying. Though it is often assumed that bullying occurs between and among students, the Act is also designed to protect students from teachers or other school personnel who commit acts of harassment, intimidation or bullying.

Though most parents and schools may agree with the purpose and intent of the Act, it has not come without its own unique problems and difficulties. One issue is the privacy protection of students involved in alleged acts of bullying. Generally, student records are confidential and schools are not permitted to release records of students to individuals who are not legal guardians. In one case, a parent of a bullied child sought school records regarding the investigation of the incident, which included information pertaining to both students involved. The Court held that though the school was not permitted to disclose information about the alleged bully, the school was required to provide to the victim's parents access to the parts of the record that pertained to the victim. The school provided the victim's parents a disciplinary referral form with the name of the bullying student redacted.

Another issue that the Anti-Bullying Act faces is the ever-present issue of funding. Under the New Jersey Con-

stitution, the State cannot require a school to implement a mandate without providing the monies for same. Absent State funding to cover the costs inherent in implementing the legislation, schools are not required to provide the protection that the law gives to victims. In August of 2011, the Allamuchy Township Board of Education ("Allamuchy") filed a complaint with the Council on Local Mandates seeking a declaration that portions of the Anti-Bullying Act are unfunded mandates and there-

[Though most parents and schools may agree with the purpose and intent of the Act, it has not come without its own unique problems and difficulties. One issue is the privacy protection of students involved in alleged acts of bullying.]

fore unconstitutional. Allamuchy alleged sections of the Act that required school districts to adopt a policy for responding to incidents of harassment; intimidation or bullying; which include a combination of counseling, support services; and intervention services, as well as the appointment of a district anti-bullying coordinator; anti-bullying specialist and a school safety team in each school, were an unfunded mandate. Hence the school alleged they were not obligated to implement the Act. On January 27, 2012, based on uncontested proofs that the anti-bullying policy would cost Allamuchy an initial \$6,000.00 with expected additional costs of up to \$4000.00 per year, the Council on Local mandates held that the Anti-Bullying Bill of Rights Act violated the New Jersey Constitution.

In response to the Council's decision, in April 2012 the Anti-Bullying Act was amended to appropriate \$1 million in State funds for the program. Given the fact that New Jersey has over 600 school districts, it is unsurprising that Gloucester County School representatives believe that the \$1 million appropriation will not be sufficient to cover the

costs of implementing the Act. The New Jersey School Boards Association reported that out of the \$1 million appropriation school districts are only receiving 20 percent of the amount requested and some school districts received as little as \$36.00. With this real limitation on funding, the Anti-Bullying Bill of Rights may face future difficulties; both from an implementation standpoint and also a constitutional standpoint. School districts may face noncompliance issues due to insufficient implementation of the requirements of the Act and the Act may face additional legal challenges as an unfunded mandate if not adequately funded by the state. Given the current state budget difficulties in New Jersey, effective implementation of the Anti-Bullying Act will require careful navigation.

So what has been the result of the legislation? In March 2012, a Star-Ledger survey of 12 school districts showed 1,127 incidents of suspected bullying reported with 499 confirmed. Based on the revision of the act to include isolated incidents of harassment, intimidation, and bullying, official numbers when published are expected to exceed the 3,412 reported cases in the 2010/2011 school year. Hence it is clear that students and parents are making use of the legislation and given the state wide support of the Act it is hoped that it will overcome the financial and constitutional difficulties it faces in the future. ■

Rocky Peterson is a Partner with Hill Wallack and Kenneth Skroumbelos is an Associate with the firm.

RESOURCES:

N.J.S.A. 18A: 37-14.

N.J.S.A. 18A: 37-15.

K.L. v. Evesham Township Board of Education, Docket No. A-1771-10T3.

N.J. Const., Art. VIII §2, ¶5(a).

Rebecca Forand, Amendments to the state's Anti-Bullying law make it a funded mandate, Gloucester County Times, April 2, 2012.

Anti-Bullying Funding Falls Short of Requests, New Jersey School Boards Association, School Board Notes, July 3, 2012, Vol. XXXVI No. 1.

Jeanette Rundquist, 6 Months into N.J. law to halt bullying, a survey takes a look at how its working, The Star-Ledger, March 11, 2012.