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FREQUENTLY ASKED QUESTIONS ON COVID-19-RELATED SCHOOL LAW ISSUES

GRADUATION REQUIREMENTS

Will state graduation requirements be modified or waived for the Class of 2020?

While the administration of the MCAS test has been cancelled for spring of 2020 due to the COVID-19 school closures, we are still awaiting a decision regarding modifications or waivers to state graduation requirements for the Class of 2020. Notably, [Chapter 56 of the Acts of 2020](#), signed into law by Governor Baker on April 10, 2020, specifically authorizes the Commissioner of Education to make recommendations to the Board of Elementary and Secondary Education to modify or waive the requirements of the competency determination for high school graduation. The statute further requires that any grade 12 student, who is unable to complete an MCAS assessment as a requirement of the competency determination in the spring of 2020, must be afforded the opportunity to take or retake the assessment during subsequent offerings.

Looking at steps taken by other states to address graduation requirements in the wake of school closures, there are a variety of approaches that Massachusetts could take. For example, in Florida, where schools are closed through May 1, 2020, the graduation requirement for students to pass a state-wide assessment in ELA and mathematics, similar to the MCAS, has been waived entirely for all seniors who have not yet passed or taken the exam.

In Washington, where schools are closed by state order through the end of the 2019-2020 school year, the state Board of Education adopted emergency regulations that allow for individual districts to apply to the state Executive Director of Education for waivers of credit-based graduation requirements for individual seniors. The Washington model requires districts to show good-faith efforts to provide options for students to meet the credit requirements (such as waiving local requirements that are flexible), and districts must allow students the opportunity to complete credits beyond their date of graduation if they so choose. One important difference to note between Massachusetts and Washington is that Washington's regular graduation requirement allows for several diverse pathways to graduation through credits and various assessments, rather than the completion of a specific statewide assessment.

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Based on the models developed in other states, it is likely that the Commissioner will recommend a modified competency determination requirement for seniors who have not yet passed all MCAS requirements. This alternate, or modified, competency determination may take the form of having districts demonstrate efforts made by individual students such as: participation in coursework in the MCAS assessment area(s) not yet completed prior to the school closures; participation in an Educational Proficiency Plan; or passage of one (1) or more of the three (3) required MCAS assessments. The next Board of Elementary and Secondary Education meeting is scheduled for April 27, 2020, so any changes to the competency determination will not likely be made prior to that meeting.

Should we consider changing any local graduation requirements?

Yes, as appropriate. For example, districts will need to address whether and how they will award credit for students' remote learning work. Options include, but are not limited to: credit/no credit; typical grades; and pass/fail. A decision as to whether to treat seniors differently should also be made; for example, in a San Francisco school district, a school board is considering the option of giving all seniors an A for the final semester. Also, by way of example, a district may have a community service hour expectation that may need to be waived/reduced due to the public health emergency. Any changes made to local requirements would be based on the individual district's discretion and, importantly, would be subject to approval from the district's school committee.

BULLYING AND HARASSMENT

How should we handle bullying and harassment complaints?

As a preliminary matter, districts should ensure that students and parents have electronic access to the district's complaint form and/or complaint process during the school closures. Districts are still obligated to follow their Bullying Prevention and Intervention Plans and investigate complaints of bullying. *M.G.L. c. 71, s. 37O; 603 CMR 49.00*. Complaints of discrimination, harassment, and retaliation based on race, color, religion, national origin, gender, sexual orientation, gender identity, age or disability must also be investigated pursuant to districts' harassment policies and federal and state law. Failing to address bullying or harassment of a student with a disability, which includes cyberbullying conducted online or via social media, may result in liability under the IDEA, Section 504, and Title II of the ADA. *See [Dear Colleague Letter, U. S. Department of Education, Office of Special Education and Rehabilitative Services \(August 20, 2013\)](#); [Dear Colleague Letter, U.S. Department of Education, Office for Civil Rights \(October 21, 2014\)](#).*

Bullying and harassment complaints that are brought to the attention of school personnel should be investigated thoroughly to the extent practicable under the circumstances while still protecting the health and safety of students and staff. Additionally, districts should follow through with investigations that began prior to school closures. Districts should, as best possible, adhere to timelines outlined in their bullying and harassment policies. While in-person interviews of students and/or staff typically conducted during these types of investigations may not be conducted under the current school closures and stay-at-home orders, to the extent interviews may be conducted over the phone or via video conferencing, districts should move forward in this fashion. Notices should still be issued in accordance

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with the provisions of the district’s Bullying Prevention and Intervention Plan and/or discriminatory harassment policy.

As districts engage in remote learning plans that utilize online platforms, it should be expected that complaints of bullying and harassment that occur on these online platforms will be brought to the attention of school personnel. Also, with students spending more time at home and on social media, a rise in bullying via Snapchat, TikTok, Instagram, Facebook, and the like may also occur. Additionally, as noted by the United States Department of Education Office for Civil Rights, the COVID-19 pandemic itself can lead to prohibited discriminatory conduct based on protected categories. See [Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students, U.S. Department of Education, Office for Civil Rights \(March 16, 2020\)](#).

Does the remote learning environment affect how we interpret the legal definitions of bullying and harassment?

The legal definitions do not change, but certain language within the definitions may become more relevant in complaints arising during remote learning.

“School-sponsored or school-related activity”

For example, the statute and regulations state that bullying “shall be prohibited ... at a *school-sponsored or school-related activity*, function or program whether on or off school grounds ...” M.G.L. c. 71, s. 37O; 603 CMR 49.04(2)(emphasis added). A virtual classroom with instruction from or facilitated by district educators or service providers would be considered a school-sponsored or school-related activity subject to the bullying statute and regulations.

“Through the use of... an electronic device... leased by a school district”

Additionally, bullying is prohibited “*through the use of technology or an electronic device owned, leased, or used by a school district or school.*” 603 CMR 49.04(2)(emphasis added). Google Chromebooks loaned by the District to students during school closures would fall under this provision.

“At school”

Finally, bullying conduct “at a location, activity, function or program that is not school-related, or through the use of technology or an electronic device that is not owned, leased or used by a school district or school, shall be prohibited if the bullying: (a) creates a hostile environment at school for the target; (b) infringes on the rights of the target *at school*; or (c) materially and substantially disrupts the education process or the orderly operation of a school.” 603 CMR 49.04(2)(emphasis added). The central issue for analysis in these situations during school closures due to COVID-19 is what impact the conduct is having “at school” at a time when brick-and-mortar schools are closed.

During the period of school closures due to COVID-19, districts should consider students to be “at school,” for the purposes of the bullying statute, whenever they are participating in virtual classrooms and/or groups facilitated by district educators and/or service providers. Therefore, if the conduct alleged is creating a hostile environment for a target, or infringing upon a target’s rights, such that the target’s participation in virtual classrooms or remote learning is impacted, the conduct may rise to the level of

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bullying. So too for conduct that is materially and substantially disruptive to the orderly operation of the school's virtual classrooms and remote learning plans.

The analysis would be similar for complaints of harassment based upon a protected class. For example, if a student or teacher engaged in discriminatory harassment outside of school from a personal electronic device that was sufficiently severe, persistent or pervasive to interfere with or limit a student's ability to participate in, or benefit from, the services, activities or privileges provided by the school through virtual classrooms and remote learning, depending on the facts and circumstances, the conduct may rise to the level of discriminatory harassment.

OTHER INQUIRIES

We have students in our district who were suspended when the closures began, and students who were on an interim suspension, pending a long-term suspension hearing, at that time. What should we do in terms of discipline for those students?

Each discipline situation should be evaluated on a case-by-case basis. In most cases, schools should not delay a suspension hearing any longer than necessary. If the school is considering a long-term suspension, it is recommended that the school district proceed with that hearing virtually as soon as possible. Such an approach will avoid any potential arguments regarding the timelines for conducting those proceedings. As always, alternatives to suspension, such as restorative justice options, should be considered, and could be particularly appropriate during the school closures when blocking a student's physical presence from school has little impact. Finally, it is essential that schools keep parents/students informed, in writing, of what a student's disciplinary status is during the school closure and what it will be after school has reopened.

“Zoom bombing” has been all over the news. How can we ensure safety in our use of videoconferencing?

This week, the Massachusetts Attorney General's Office posted tips (available [here](#)) for safe video conferencing during the COVID-19 crisis.

Additionally, of particular interest to educators who are utilizing Zoom for virtual classrooms is Zoom's [COVID-19 resource page](#). On this page, Zoom provides links to tutorials, details information about privacy and security, and maintains resources specifically for educators labeled “Educating Over Zoom.” Numerous “tips and tricks” are located on Zoom's page for educators, which could be a useful resource for those adjusting mid-year to providing remote learning online.

Similarly, Google has set up a [resource page](#) for those utilizing Google Classrooms during the COVID-19 public health crisis. Google's COVID-19 resource site provides helpful resources for both educators and school IT administrators.

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You may also refer to our April 10, 2020 COVID-19 School Law FAQ, [here](#), and our March 30, 2020 Webinar power point, [here](#), for additional information and guidance on privacy, confidentiality and safety concerns related to virtual classrooms and virtual IEP meetings.

How should we address settlement agreements that include requirements that we cannot fulfill during the school closures?

Districts should strive to fulfill their contractual obligations set forth in existing settlement agreements through remote means where possible. However, there may be agreed-upon duties in existing settlement agreements that cannot be fulfilled during the school closures. General principles of contract law as well as certain contract provisions may address exceptional circumstances and impossibility of performance. You can discuss the specifics of any settlement agreement and how best to move forward with your attorney.

STAY SAFE AND HEALTHY AND LET US KNOW HOW WE MAY ASSIST YOU.

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