

## EDUCATION

# The Dignity for All Students Act: A Right without a (Private) Remedy

By Cory Morris

In *Eskenazi-McGibney v. Connetquot Central School District*, 2018 N.Y. Slip Op 8467 (2d Dep't. 2018) (“*Eskenazi*”) the Second Department held that “[a] review of [the Dignity for All Students Act’s] legislative history shows that finding a private right of action under the act would be inconsistent with the legislative scheme.” The Dignity for All Students Act states that “students’ ability to learn and to meet high academic standards, and a school’s ability to educate its students, are compromised by incidents of discrimination or harassment including bullying, taunting or intimidation.” It took effect on July 1, 2012 and imposes uniform requirements on New York schools, including all Long Island Public School Districts<sup>1</sup>, of which there are over a hundred.<sup>2</sup> DASA requires that school districts impose training requirements and draft age-appropriate, plain language versions of the statute to appear in student codes of conduct. Individual school districts are charged with creating their own guidelines for training and prevention as well as policies for responding to harassment and discrimination.<sup>3</sup> While it aims to protect a class of students, there is little to nothing in the way of oversight or remedy when a school district fails to comply with DASA.

DASA prohibits “harassment or bullying

by employees or students on school property or at a school function; [and no] student be subjected to discrimination based on a person’s actual or perceived... disability... by school employees or students on school property or at a school function.”<sup>4</sup> “These activities can include aggressive conduct, threats, intimidation or abuse that unreasonably and substantially interferes with another student’s educational performance.”<sup>5</sup> This applies to online or “cyber-bullying” as well. Furthermore “[o]ne employee from each school will need to attend an intensive training program. This person will become the school’s designated contact for handling bullying.”<sup>6</sup> Six short years after its creation, however, it seems that DASA is an empty promise, a right without a remedy.

In *Eskenazi*, a learning-impaired student made complaints about harassment and bullying. The conduct “including multiple physical assaults and death threats... occurred at the high school, at BOCES, on the school bus, and on a school trip.” Plaintiffs “received assurances that the matter would be dealt with, but the other student was not disciplined, and the bullying and harassment continued.” The *Eskenazi* Plaintiffs brought suit, defendants moved, successfully, for



Cory Morris

failure to state a claim on the grounds that DASA does not provide a private cause of action. The court agreed with other courts<sup>7</sup>, finding that “a private right of action cannot be fairly implied under DASA...” Other causes of action, however, survive but DASA does not provide a remedy that parents or students can exercise.

Still, school districts are tasked with implementing training for its staff, also track, report, and address any incident of bullying, harassment or discrimination, taking prompt measures to address and cure any such incident(s). Indeed, DASA mandates reporting by the Commissioner of Education “under which material incidents of harassment, bullying and discrimination on school grounds or at a school function are reported to the department at least on an annual basis.”<sup>8</sup> The Commissioner of Education must provide direction, funding, regulations, guidance and educational materials for school districts to address bullying, discrimination and “helping families and communities work cooperatively with schools in addressing cyberbullying, whether on or off school property or at or away from a school function.”<sup>9</sup> Lastly, DASA provides a provision that prohibits retaliation against someone who reports an

incident of bullying, harassment, or discrimination under the act.<sup>10</sup>

*Note: Named a Superlawyer, Cory Morris is admitted to practice in NY, EDNY, SDNY, Florida and the SDNY. Mr. Morris holds an advanced degree in psychology, is an adjunct professor at Adelphi University and is a CASAC-T. The Law Offices of Cory H. Morris focuses on helping individuals facing addiction and criminal issues, accidents and injuries, and, lastly, accountability issues.*

<sup>1</sup> The notable exception to this law is “private, religious or denominational educational institutions.” N.Y. Educ. Law § 17 (McKinney).  
<sup>2</sup> Erase Racism, *8 Key Facts about Long Island School Districts* (Erase, 2010), accessible at: [http://www.eraseracismny.org/storage/documents/education/ERASE\\_Racism-long-island-district-facts.pdf](http://www.eraseracismny.org/storage/documents/education/ERASE_Racism-long-island-district-facts.pdf) (“We currently have 124 school districts. Nassau contains 56 and Suffolk 68, placing them seventh and fourth—out of 3,066 counties in the nation—in the number of districts per county.”).

<sup>3</sup> See, e.g., New York Civil Liberties Union: *Dignity Now: The Campaign to Stop Bullying and Bias-Based Harassment in New York City Schools* (NYCLU, 2009), available at: [http://www.nyclu.org/files/DASA\\_finalwhitepaper.pdf](http://www.nyclu.org/files/DASA_finalwhitepaper.pdf); NYCLU Letter urging New York State’s top education officials to adopt initiatives to combat school bullying (May 14, 2010), accessible at: [http://www.nyclu.org/files/releases/NYCLU\\_LetteronRITT\\_5.14.10.pdf](http://www.nyclu.org/files/releases/NYCLU_LetteronRITT_5.14.10.pdf). The Long Island NYCLU Chapters helped train school officials and suggested how to implement school codes of conduct to comply with the mandate set forth by New York State.

<sup>4</sup> N.Y. Educ. Law § 12(1) (McKinney).

<sup>5</sup> See New York Civil Liberties Union: *The Dignity for All Students Act* (NYCLU) available at: [http://www.nyclu.org/files/OnePager\\_DASA.pdf](http://www.nyclu.org/files/OnePager_DASA.pdf).

<sup>6</sup> *Id.* (emphasis added).

<sup>7</sup> *Terrill v. Windham-Ashland-Jewett Cent. Sch. Dist.*, 176 F. Supp. 3d 101 (N.D.N.Y. 2016); *CT v. Valley Stream Union Free School Dist.*, 201 F. Supp. 3d 307 (E.D.N.Y. 2016); *Motta v. Eldred Central School District*, 141 A.D.3d 819, 36 N.Y.S.3d 239 (3rd Dep’t. 2016).

<sup>8</sup> N.Y. Educ. Law § 15 (McKinney).

<sup>9</sup> N.Y. Educ. Law § 14 (McKinney).

## Seeking appointments

Suffolk County Surrogate’s Court Judge Hon. Theresa Whelan is interested in persons seeking appointments (i.e., as a guardian ad litem) in matters pending before the Suffolk County Surrogate’s Court.

Send a cover letter with your *rèsumè* to: Michael Cipolino, Chief Clerk, Suffolk County Surrogate’s Court, 320 Center Drive, Riverhead, NY 11901. Submissions should also include an indication that the applicant has complied with the Rules of the Chief Judge, Part 36, specifically §36.3(b).

## NOTICE TO THE BAR

**Effective February 15, 2019:** For civil cases pending in Supreme Court, Suffolk County (except matrimonial, guardianship, and Commercial Division cases) working copies of all papers that have been electronically filed shall be placed in the appropriate bin(s) designated for the assigned judge/part located outside of the mail room (next to the cafeteria) on the first floor of the Oshrin Supreme Court Building located at 1 Court Street, Riverhead, New York. This will constitute the single centralized location for the submission of working copies of papers electronically filed on such cases. A time stamp will be present, but please note these bins are for

working copies only and the e-filed papers would be the original.

**Effective February 1, 2019:** At the time of a preliminary conference in the Differentiated Case Management (DCM) part, counsel appearing for the plaintiff shall provide the court with a copy of any bill(s) of particulars previously served in the action. Additionally, counsel appearing for the plaintiff shall be required to set forth a brief written description of the nature of the case and the alleged injuries and/or damages at the time of the Preliminary Conference. A form will be provided by the court for this purpose.

## SECURITIES LAW JOHN E. LAWLOR, ESQ.

- Securities Arbitration / Litigation
- FINRA Arbitrations
- Federal and State Securities Matters
- Employment Disputes
- FINRA OTRs
- SEC Investigations

**(516) 248-7700**

129 Third Street • Mineola, NY 11501  
Email: [JLawlor@johnelawlor.com](mailto:JLawlor@johnelawlor.com)