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INDEPENDENT STATE AUDITOR'S REPORT ON
THE DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION'S
COMPLIANCE WITH THE COMMONWEALTH'S
ANTI-HAZING LAW
JULY 1, 2004 TO NOVEMBER 1, 2009

OFFICIAL AUDIT
REPORT
JANUARY 13, 2011

TABLE OF CONTENTS/EXECUTIVE SUMMARY

INTRODUCTION

1

Chapter 15, Section 1 (replaced by Chapter 69, Section 1A), of the Massachusetts General Laws created the Department of Elementary and Secondary Education (DESE) within the Executive Office of Education, under the supervision and management of the Commissioner of Elementary and Secondary Education. DESE is responsible for ensuring improved teaching and learning practices in the Commonwealth's public schools. To foster an atmosphere of learning, DESE has been charged with the monitoring of any activities detrimental to the welfare of students, including the crime of hazing.

Chapter 269, Sections 17 through 19, of the General Laws defines hazing and specifies requirements for anti-hazing compliance, including the filing of annual reports by each institution of secondary education and by each public and private institution of post-secondary education. DESE has established 603 Code of Massachusetts Regulations (CMR) 33.00 to govern the content and frequency of reports secondary schools must file with DESE. These compliance reports certify that the school has distributed copies of the law against hazing to its student groups and non-school affiliated organizations and that it has adopted a disciplinary policy addressing the organizers of and participants in hazing activities.

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor (OSA) conducted an audit of DESE to examine secondary school compliance with the anti-hazing reporting requirements of Chapter 269, Section 19, of the General Laws and 603 CMR 33.00. Specifically, we sought to determine whether all secondary schools filed annual compliance reports with DESE by October 1 and whether DESE notified the Office of the Attorney General (OAG) by November 1 of any secondary schools that had not filed the required annual compliance report. In addition, we examined six selected secondary schools to better understand how anti-hazing policies and procedures, including anti-hazing discipline policies and procedures and incident reporting, were implemented. To achieve a historical perspective, we attempted to review DESE anti-hazing compliance reports for the five academic years 2006-2010.

AUDIT RESULTS

4

1. INADEQUATE OVERSIGHT OF ANTI-HAZING LAW REQUIREMENTS HAS RESULTED IN INADEQUATE ASSURANCE THAT STUDENTS' RIGHT TO A SAFE ENVIRONMENT IS PROTECTED AND UPHELD

4

Our audit disclosed that DESE did not have adequate internal controls in place and had not conducted any meaningful oversight of its anti-hazing law responsibilities. Specifically, we noted (a) inadequate internal controls over anti-hazing compliance reports, (b) the OAG was not notified of noncompliant secondary schools, (c) a central repository of Commonwealth public and private secondary schools was not accurately maintained, (d) regulatory guidance and anti-hazing responsibilities were not communicated to public and private secondary schools, and (e) not all secondary school anti-hazing disciplinary policies approved by school committees were obtained and filed,

as discussed below. Because of DESE's inadequate oversight of the anti-hazing program, there is inadequate assurance that all the Commonwealth secondary schools are meeting anti-hazing requirements and that students' right to a safe environment is upheld.

a. Inadequate Internal Controls over Anti-Hazing Compliance Reports **5**

During our interviews, the Director of the Program Quality Assurance unit (PQA) confirmed that PQA had not developed and implemented written policies and procedures for ensuring that Commonwealth secondary school anti-hazing requirements were properly carried out. Further, the PQA had not established policies and procedures for the retention of anti-hazing compliance reports. In fact, our examination showed that just 22 anti-hazing compliance reports (10 from public schools and 12 from private schools) had been received and filed during academic years 2006-2010, a period in which more than 4,300 compliance reports should have been received by DESE.

b. Attorney General's Office Not Notified of Noncompliant Secondary Schools **6**

On November 1 of each year the Commissioner of Education is required to notify the OAG of any Commonwealth secondary schools that have not filed an anti-hazing compliance report. However, we found that DESE had not established and implemented critical communication controls to ensure that all secondary schools have a clear understanding of their anti-hazing reporting responsibilities and that the OAG would be notified of any noncompliant schools by November 1. As a result, we found that more than 4,300 compliance reports were not reported delinquent to the OAG by the November 1 deadline.

c. Central Repository of Commonwealth Public and Private Secondary Schools Not Accurately Maintained in Compliance with Anti-Hazing Law **7**

Our review determined that DESE had not maintained a complete, accurate, and up-to-date listing of the Commonwealth's secondary public and private schools. However, during our fieldwork, PQA began developing an anti-hazing log in order to determine which public and private secondary schools were required to file annual anti-hazing compliance reports. Nevertheless, since DESE did not have a complete and accurate listing of secondary public and private schools, it could not verify which (or how many) schools were obligated to file anti-hazing compliance reports.

d. Regulatory Guidance and Anti-Hazing Responsibilities Not Communicated to Public and Private Secondary Schools **8**

Our review found no evidence that DESE periodically addressed anti-hazing compliance with school principals following the 1998 issuance of the former Commissioner's memorandum. To determine the status of the secondary schools' anti-hazing policies, we interviewed principals at six secondary schools to obtain an understanding of their anti-hazing compliance policies and procedures. Our interviews disclosed that, due to DESE's lack of guidance and oversight, differing viewpoints exist among secondary schools concerning their responsibilities under the Commonwealth's anti-hazing law (see Appendix).

e. Not All Secondary School Hazing Disciplinary Policies Approved by School Committees Have Been Obtained and Filed **9**

Our examination showed that the PQA could produce evidence for only 105 of a potential 865 secondary schools that should file anti-hazing disciplinary policies (student handbooks) with DESE. Furthermore, our examination found that four of 10 randomly selected handbooks did not have the required posting.

In response to our audit, the DESE indicated that it began developing reporting, tracking, and communications systems immediately following the OSA's intentions to audit the Anti-Hazing program. The DESE has worked with the OAG's Civil Rights Division to create communication protocols for compliance with notifying the OAG by November 1 of each year of a secondary school not filing a report as required by the law; developed and is maintaining an up-to-date list of all public and private secondary schools as defined by the anti-hazing law, including contact information for school leaders to facilitate communication about the anti-hazing law; developed a system for tracking and maintaining compliance reports; communicated with school leaders about the requirements of the anti-hazing law; and, has developed a compliance monitoring system to ensure schools' compliance with the anti-hazing law requirements.

2. INTERNAL CONTROL PLAN AND AGENCY-WIDE RISK ASSESSMENT NEED IMPROVEMENT **13**

Our review of the DESE Internal Control Plans (ICP) for the fiscal years 2009 and 2010 disclosed that the ICP did not incorporate all eight of the Committee of Sponsoring Organizations, Enterprise Risk Management (ERM) components required by the Office of the Comptroller's Internal Control Guide. Moreover, DESE could not provide documentation that annual risk assessments had been performed. Without an analysis of risk, there is inadequate assurance that the most significant areas that could keep DESE from attaining its mission, goals, and objectives will be identified and the controls to mitigate risks implemented.

In response to our audit, the DESE indicated that it will strongly consider our recommendations to update its ICP to include ERM controls.

APPENDIX - SUMMARY OF SITE VISITS **17**

INTRODUCTION

Background

Chapter 15, Section 1 (replaced by Chapter 69, Section 1A), of the Massachusetts General Laws created the Department of Elementary and Secondary Education (DESE) within the Executive Office of Education, under the supervision and management of the Commissioner of Elementary and Secondary Education. DESE is responsible for ensuring improved teaching and learning practices in all of the Commonwealth's public schools. To foster an atmosphere of learning, DESE has been charged with the monitoring of any activities detrimental to the welfare of students, including the crime of hazing.

Chapter 269, Sections 17 through 19, of the General Laws defines hazing¹ and specifies requirements for anti-hazing compliance, including the filing of annual reports by each public and private institution of secondary education as well as by each public and private institution of post-secondary education. DESE has established 603 Code of Massachusetts Regulations (CMR) 33.00 to govern the content and frequency of reports secondary schools² must file with DESE. These compliance reports certify that the school has distributed copies of the anti-hazing law to its student groups and non-school-affiliated organizations³ and that it has adopted a disciplinary policy addressing the organizers of and participants in hazing activities.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of DESE to determine whether all Commonwealth secondary schools, both public and private, had complied with the anti-hazing reporting requirements of Chapter 269, Section 19, of the General Laws and 603 CMR 33.00. Specifically, we sought to determine whether all secondary schools filed annual compliance reports with DESE by October 1 of each year and whether DESE notified the Office of the Attorney General (OAG) by November 1 of each year concerning any secondary schools that had not filed the required annual compliance report. In

¹ Chapter 269, Section 17, of the General Laws defines hazing as “any conduct or method of initiation into any student organization, whether on public or private property, which willfully or recklessly endangers the physical or mental health of any student or other person.”

² The 603 CMR 33.00 defines a secondary school as “any school, be it public or private, that has been designated or approved as a secondary school by the school committee.”

³ The 603 CMR 33.00 defines non-school affiliated organizations as “any group or organization that operates on the campus of a secondary school but is not under the authority of such school.”

addition, to determine the effectiveness of management internal controls, our report intended to address the following questions:

- How did DESE notify Commonwealth secondary schools regarding anti-hazing compliance requirements?
- What actions did school administrators take in response to the DESE notifications?
- How did DESE measure the effectiveness of Commonwealth secondary schools' compliance with Chapter 269, Sections 17 through 19, of the General Laws and 603 CMR 33.00?
- To what extent did DESE's efforts ensure that anti-hazing compliance requirements are being carried out by all Commonwealth secondary schools?
- How and did DESE notify the OAG concerning anti-hazing noncompliance by Commonwealth secondary schools?
- What actions did the OAG take in response to the DESE notifications?
- To what extent did the OAG involvement ensure that anti-hazing compliance requirements are being carried out?

As part of our review, we selected six secondary schools to obtain an understanding of how anti-hazing policies and procedures, including anti-hazing discipline policies and procedures and incident reporting, were implemented. To achieve a historical perspective, we attempted to review the DESE anti-hazing compliance reports for the five academic years 2006-2010.

Our audit was conducted in accordance with applicable generally accepted government auditing standards, with the objective of determining DESE's compliance with applicable laws, rules, and regulations concerning anti-hazing reporting. To accomplish our objectives, we:

- Conducted interviews and meetings with DESE management and employees.
- Reviewed relevant laws, regulations, and DESE policies and procedures pertaining to anti-hazing compliance and reporting.
- Performed a walkthrough⁴ of the Program Quality Assurance unit (PQA) and observed PQA's anti-hazing compliance procedures.

⁴ In an audit, a walkthrough is the act of reviewing a process or activity in scope. The purpose is to confirm whether a documented process is in use and accurately reflects current workflow. The walkthrough may also be used to test the accuracy of current or previously used control activities.

- Made site visits to secondary schools and interviewed school principals and superintendents concerning the implementation of anti-hazing procedures, including discipline policies and compliance reporting.
- Reviewed the DESE Internal Control Plan and risk assessment to ascertain the roles and responsibilities of the PQA and whether any agency risks regarding anti-hazing compliance were identified.

Our performance audit was limited to a review of anti-hazing reporting and DESE internal controls established for anti-hazing compliance. As discussed in the Audit Results section of this report, we found that DESE did not have adequate internal controls in place and had not conducted any meaningful oversight of the anti-hazing law, which resulted in noncompliance with the anti-hazing program requirements and inadequate assurance that all the Commonwealth secondary schools are meeting anti-hazing requirements and that students' right to a safe environment is upheld. In addition, we recommend that the Legislature consider strengthening the anti-hazing law by requiring that:

- (1) All incidents of hazing acted upon by a reporting school are reported to DESE in a timely manner;
- (2) DESE be required to follow-up on these incidents to ensure that the school's procedures were properly followed; and
- (3) DESE be required to annually compile a report of hazing incidents reported and investigated in the prior year.

AUDIT RESULTS

1. INADEQUATE OVERSIGHT OF ANTI-HAZING LAW REQUIREMENTS HAS RESULTED IN INADEQUATE ASSURANCE THAT STUDENTS' RIGHT TO A SAFE ENVIRONMENT IS PROTECTED AND UPHELD

The Commonwealth of Massachusetts is one of 44 states⁵ defining hazing as a crime subject to criminal penalties, including fines and imprisonment under Chapter 269, Section 17, of the Massachusetts General Laws⁶. Moreover, Chapter 269, Section 19, of the General Laws specifies the following compliance standards for Commonwealth secondary schools in monitoring hazing behavior:

Each institution of secondary education . . . shall file, at least annually, a report with . . . the board of education, certifying that such institution has complied with its responsibility to inform student groups and each full time student enrolled by it of the provisions of this section and sections seventeen and eighteen and also certifying that said institution has adopted a disciplinary policy with regard to the organizers and participants of hazing, and that such policy has been set forth with appropriate emphasis in the student handbook or similar means of communicating the institution's policies to its students. . . . The board of education shall promulgate regulations governing the content and frequency of such reports, and shall forthwith report to the attorney general any such institution which fails to make such report.

Acting under this authority, the Board of Education promulgated 603 Code of Massachusetts Regulations (CMR) 33.00, which assigns responsibility for implementing and monitoring anti-hazing compliance to the Department of Elementary and Secondary Education (DESE) and established the following time frames for compliance reporting:

33.04: Filing of Reports

(1) On or before October 1 of each year, the principal or headmaster of every secondary school shall file an anti-hazing compliance report as required by M.G.L. c. 269, § 19 with the Bureau of Student Services.

33.05: Notifying the Attorney General

(2) On November 1 of each year, the Commissioner of Education shall notify the Attorney General of any failure by a secondary school to file an anti-hazing compliance report.

⁵ Source: StopHazing.Org (Educating to Eliminate Hazing). Six states do not have an anti-hazing law: Alaska, Hawaii, Montana, New Mexico, South Dakota, and Wyoming.

⁶ Section 17: "Whoever is a principal organizer or participant in the crime of hazing...shall be punished by a fine of not more than three thousand dollars or by imprisonment in a house of correction for not more than one year, or both such fine and imprisonment."

Last updated on March 30, 2004, 603 CMR 33.00 still portrayed the Bureau of Student Services (BSS) as the unit responsible for receiving anti-hazing compliance reports, even though BSS was discontinued in 1993 and replaced by the Program Quality Assurance unit (PQA).

Our audit disclosed that DESE did not have adequate internal controls in place and had not conducted any meaningful oversight of its anti-hazing law responsibilities. Specifically, we noted (a) inadequate internal controls over anti-hazing compliance reports, (b) the OAG was not notified of noncompliant secondary schools, (c) a central repository of Commonwealth public and private secondary schools was not accurately maintained, (d) regulatory guidance and anti-hazing responsibilities were not communicated to public and private secondary schools, and (e) not all secondary school anti-hazing disciplinary policies approved by school committees were obtained and filed, as discussed below.

a. Inadequate Internal Controls over Anti-Hazing Compliance Reports

During our interviews, the PQA Director confirmed that PQA had not developed and implemented written policies and procedures for ensuring that Commonwealth secondary school anti-hazing requirements were properly carried out. Further, the PQA had not established policies and procedures for the retention of anti-hazing compliance reports. When asked about policies and procedures regarding document retention, the PQA Director could only provide us with the unit's policy calling for a three-year retention period for complaints;⁷ no specific retention policies and procedures existed for anti-hazing reports.

To ascertain whether the PQA had a routine retention system in place, we conducted a walkthrough of the unit to observe how anti-hazing compliance reports received were documented, filed, and retained. We observed that a PQA clerk date-stamped each report, recorded in a daily log, and filed any anti-hazing compliance reports submitted by secondary schools in a PQA central file and discarded any prior reports as new reports were received. As a result, only the most recently received report by a school would be on file. Our examination of all reports on file showed that just 22 anti-hazing compliance reports (10 from public and 12 from private secondary schools) had been filed during academic years 2006 to 2010.

⁷ DESE has established procedures for complaints addressed to DESE by parents and other interested parties concerning educational and behavioral issues. Our review of the DESE complaint forms disclosed that anti-hazing was not listed in the DESE criteria. This oversight was confirmed by DESE management.

Because DESE had not established the necessary internal controls to ensure that a complete record of all Commonwealth secondary schools was up-to-date and maintained (see c., below), the PQA, during our audit fieldwork, set in motion the development of a computerized database—anti-hazing log—of public and private secondary schools in order to identify all authorized secondary schools obligated to file annual anti-hazing compliance reports with DESE. To estimate the number of Commonwealth secondary schools, we used the PQA anti-hazing log, which identified 865 public and private secondary schools as of May 2010. Accordingly, we estimate that during the period 2006 to 2010 an estimated 4,325 (865 x 5) compliance reports should have been received by DESE. As a result, the 22 reports on file represent merely 0.5% (22/4,325) of the estimated anti-hazing compliance reports that DESE should have received. Moreover, given that 11 of the 22 compliance reports on file were for academic year 2009/2010, potentially, it appears that 854 or 99.5% of the Commonwealth's secondary schools had not submitted the required annual compliance report to DESE for that year.

b. Attorney General's Office Not Notified of Noncompliant Secondary Schools

On November 1 of each year the Commissioner of Education is required to notify the OAG of any Commonwealth secondary schools that have not filed an anti-hazing compliance report. However, we found that DESE had not established and implemented critical communication controls to ensure that all secondary schools have a clear understanding of their anti-hazing reporting responsibilities and that the OAG would be notified of any noncompliant schools by November 1.

As previously noted, DESE could provide documentation for only 22 anti-hazing compliance reports that it received during the academic period 2006 to 2010, which represents only 0.5% of the estimated 4,325 compliance reports that DESE should have received. Accordingly, during this time period more than 4,300 reports should have been reported as delinquent to the OAG. However, we found that, contrary to the anti-hazing law, DESE had not notified the OAG of these delinquent reports and noncompliant schools.

c. Central Repository of Commonwealth Public and Private Secondary Schools Not Accurately Maintained in Compliance with Anti-Hazing Law

As previously noted, our review determined that DESE had not maintained a complete, accurate, and up-to-date listing of all Commonwealth public and private secondary schools. However, as a result of our audit, the PQA began developing an anti-hazing log in order to identify all authorized public and private secondary schools obligated to file annual anti-hazing compliance reports. Prior to this anti-hazing log, the DESE Data Analysis and Reporting Unit⁸ (DAR) had established a computer database listing 1,831 public schools as of October 1, 2009 by the following categories: elementary schools (1,146), middle/junior schools (314), and secondary schools (371). The DAR database used a standard of 900 academic hours (middle schools) and 990 academic hours (secondary schools)⁹ to classify the educational levels of public schools.

Nevertheless, the DAR 900/990 academic hour standard is contrary to 603 CMR 33.03, which defines a “secondary school” as “any school, be it private or public, that has been designated or approved as a secondary school by the school committee.” The aforementioned definition was further given emphasis by the former Commissioner of Education in his August 13, 1998 memorandum to all secondary school principals and superintendents. For this reason, it is possible that some of the 314 middle/junior public schools within the DAR database may have been designated as secondary schools by their respective school committees. If so, the DAR database was not designed to capture secondary schools authorized by school committees, but rather, was based on designated academic hours. Moreover, the DAR database only listed public schools, even though private schools were also included under the anti-hazing law.¹⁰

As previously noted, during our audit, the PQA attempted to address this deficiency by developing an anti-hazing log for both private and public secondary schools. However, because it lacked a complete and accurate listing of public and private secondary schools authorized by school committees, DESE could not verify which or how many schools were obligated to file annual anti-hazing compliance reports with DESE. Without a complete and up-to-date register of Commonwealth secondary schools, schools designated as “secondary schools” by school

⁸ DAR is a separate unit from PQA, and its database has been developed separately from PQA.

⁹ These academic hours were predicated upon a 185-day school schedule, with every school committee operating schools at least 180 school days in a school year (603 CMR 27.03).

¹⁰ Chapter 269, Section 19: “each public or private institution.”

committees may be unaware of their anti-hazing responsibilities. Consequently, DESE may inadvertently overlook schools required to submit annual compliance reports due to its flawed database.

d. Regulatory Guidance and Anti-Hazing Responsibilities Not Communicated to Public and Private Secondary Schools

DESE did not provide evidence that it periodically addressed anti-hazing compliance with the Commonwealth's school principals following the 1998 issuance of the former Commissioner's memorandum. Hence, to determine the status of the secondary schools' anti-hazing policies, we randomly selected six secondary schools: four public (Chelsea High School, Everett High School, Malden Ferryway, and Revere High School) and two private (Boston University Academy and the Brooks School). We interviewed the principals of these six secondary schools to obtain an understanding of their anti-hazing compliance policies and procedures. Our interviews disclosed a mixed level of understanding as well as varying degrees with regard to implementing anti-hazing law (see Appendix).

For example, although all six schools visited obtained and maintained student signatures from their students to document their receipt of the Chapter 269, Sections 17 through 19, anti-hazing law, only Everett High School had obtained signatures from coaches, club leaders, and non-school affiliates as required. All six schools had an anti-hazing disciplinary policy approved by their respective school committees; however none of these schools had filed their disciplinary policies with DESE as required by 603 CMR 33.04 (2)(e). In addition, we noted that only the Brooks School and Chelsea High School student handbooks fully disclosed the anti-hazing law, whereas the student handbooks for the other four schools omitted key sections of the anti-hazing law, contrary to 603 CMR 33.04(2)(d). Also, four (Boston University Academy, Chelsea High School, Malden Ferryway, and Revere High School) of the six schools were not aware of the annual requirement to file an anti-hazing compliance report with DESE. One school (Everett High School) filed only once (September 2007), whereas the Brooks School indicated that it filed the compliance report annually.

As these results indicate, the selected secondary schools were not consistent in their approaches to compliance with anti-hazing law. In the absence of DESE guidance to secondary schools

concerning this issue, the principals apparently followed their own interpretations of the former Commissioner's 1998 memorandum.

We interviewed the superintendents of the Everett and Malden school districts, who both confirmed that DESE had not discussed anti-hazing compliance reporting with them or their school principals. These superintendents, neither of whom had received any notice of hazing incidents from their schools, kept the non-school affiliated teams, clubs, and organizations informed of hazing regulations by providing a contract agreement that must be signed by an officer and members of the non-school affiliated team before the school's facilities can be used. The school principal maintains a copy of this agreement.

We also formed an understanding of the superintendents' role in dealing with the school committees. According to the Everett and Malden superintendents, the school committees designated middle schools as secondary schools if the school had been built to house grades 6, 7, and 8, only. Following this criterion, neither district had any middle schools, only elementary schools (four in Everett; five in Malden) and secondary schools (Everett High School and Malden High School). The superintendents indicated that they confer with the school committees to ensure that the laws in student handbooks are current and exact and that a State House liaison provides updates of Massachusetts laws through the Massachusetts Association of School Superintendents (MASS). Nevertheless, the results of our review indicate that, there is some miscommunication between the superintendents and their secondary schools, given that Everett High School was missing pertinent sections of the anti-hazing law in its school handbook.

Because of DESE's lack of guidance and oversight, differing viewpoints exist between secondary schools concerning responsibilities under the Commonwealth's anti-hazing law.

e. Not All Secondary School Hazing Disciplinary Policies Approved by School Committees Have Been Obtained and Filed

During our audit, the PQA Director explained that DESE staff only obtained and reviewed school disciplinary policies and procedures when conducting annual program reviews¹¹ or when addressing complaints received from parents and other concerned parties.¹² Since the schools

¹¹ DESE staff conducted site visits on a rotating basis. Each school would be visited every six years.

¹² DESE had established complaint forms and procedures. However, anti-hazing was not addressed.

were responsible for instituting and maintaining anti-hazing disciplinary policies, DESE believed that posting disciplinary policies within each school's student handbook was sufficient for compliance with Chapter 269 of the General Laws. However, we noted that 603 CMR 33.04(2) (e) requires that all anti-hazing compliance reports include the following certification: "that the school has adopted a disciplinary policy with regard to the organizers of and participants in hazing which has been approved by the school committee, is available to anyone upon request and has been filed with the Bureau of Student Services¹³ as required by M.G.L. c.71, § 37H."¹⁴

When we attempted to determine whether all Commonwealth secondary school disciplinary policies were on file, the PQA could produce evidence for only 105 secondary school student handbooks received by DESE during the academic period 2006 to 2010. According to the DESE-provided anti-hazing log of public and private schools, DESE had only 12% (105) of the potential 865 Commonwealth secondary schools' disciplinary policies on file. Furthermore, we randomly selected 10 of the 105 school student handbooks and found that four (Chatham High School, Revere High School, Sandwich High School, and Waltham High School) were missing portions of the anti-hazing law.

For example, both Chatham and Sandwich High Schools did not disclose the last sentence in Section 17: "Notwithstanding any other provisions of this section to the contrary, consent shall not be available as a defense to any prosecution under the action." Excluding this language from the handbooks significantly alters the law's intent and would seemingly absolve a hazer from responsibility for their actions, if given permission by the affected party.

Recommendation

Given the importance of anti-hazing law and the recently passed anti-bullying legislation, DESE is under growing scrutiny for its oversight role and responsibilities. For this reason, DESE must place a high priority on implementing corrective measures that ensure compliance with the provisions of the anti-hazing law. At a minimum, DESE should:

- Establish written policies and procedures and implement necessary management oversight controls to ensure that all Commonwealth secondary schools, both public and private, adhere to anti-hazing statutory reporting and filing requirements and that the OAG is informed annually of all non-compliant schools by November 1.

¹³ As previously noted, this unit had been discontinued in 1993 and replaced by the PQA.

¹⁴ "Codes of discipline as well as procedures used to develop such codes shall be filed with the department of education for informational purposes only." (Chapter 71, Section 37H, amended by 2008, 451, Sec. 50, effective January 5, 2009).

- Ensure that proper channels of communication exist to assure that the PQA's roles and responsibilities are clearly defined, understood, and adequately monitored.
- Create and maintain a central repository database of all Commonwealth secondary schools authorized by district school committees.
- Collaborate with secondary schools to develop effective and innovative ways to leverage technology as a means to enhance communication and to address anti-hazing compliance requirements.
- Conduct periodic spot checks of Commonwealth secondary schools to ensure that annual anti-hazing certifications are accurate, complete, and are in place and operating effectively.

Increased scrutiny and oversight by DESE will enhance awareness of the anti-hazing law, better protect students from the practice of hazing, and result in greater compliance with anti-hazing statutory requirements over the long-term.

Auditee's Response

The Commissioner of Elementary and Secondary Education provided the following comments in response to the audit result:

The Department does not dispute the general findings of noncompliance described in the Report... The Department began developing reporting, tracking, and communications systems immediately following the receipt of the December 21, 2009, notice of the audit. The following corrective actions and controls over the process for receiving anti-hazing compliance reports were implemented fully by the October 1, 2010 deadline for secondary schools to submit compliance reports to the Department:

A. *Communication with the Office of the Attorney General.*

The Department has worked with the Office of the Attorney General (OAG), Civil Rights Division, to create communications protocols consistent with the requirement under G.L. c. 269 § 19 and 603 CMR 33.05 that the Department notify the Attorney General by November 1 of each year of the failure of any secondary school to file a report with it. This year, the Department directed its report to the Assistant Attorney General designated as the anti-hazing liaison. The OAG requested additional assistance from the Department in contacting the schools that had not yet filed the reports.

Following the OAG's receipt of a final, updated list from the Department that included the names and contact information for 11 public schools and 5 private or parochial schools (16 out of 675, or 2.4 percent of all secondary schools in the Commonwealth), the OAG contacted those schools in writing and instructed them to file their reports with the Department. To date, the Department has received all but 8 anti-hazing reports for 2010 from secondary schools. This communication system will be used in 2011 and in future years.

B. Compilation and maintenance of complete, accurate, and up-to-date list of public and private secondary schools.

The Report noted that in the spring of 2010, the Department did not have a complete and accurate list of public and private secondary schools in the Commonwealth. At this time, the Department has and is maintaining an up-to-date list of all public and private secondary schools in the Commonwealth, and contact information for the school leaders to facilitate communication about the anti-hazing law. The list includes all of the public schools that have been designated by school committees as secondary schools, consistent with 603 CMR 33.03, and private and parochial secondary schools.

The list was created, in part, by contacting schools directly and requesting oral confirmation that they were deemed to be secondary schools. The Department obtained additional information about school status from the annual report that all private schools must file, and worksheets that are required to be submitted by schools participating in a Coordinated Program Review with its Program Quality Assurance Services unit (PQA). The Department is confident that this list is up-to-date and accurate, and includes all secondary schools in the Commonwealth. The 675 secondary schools in the Commonwealth include 352 public schools, 32 charter schools, 41 collaboratives, 103 approved private special education schools, and 147 private or parochial schools.

A PQA staff member maintains this list, and updates it as new information becomes available. One of her ongoing responsibilities is to gather information submitted through the annual private schools reports, compliance monitoring reports, and communication with school leaders to ensure that this list remains accurate and comprehensive.

C. System for retention of compliance reports.

As noted above, the list of secondary schools also serves as the resource for tracking schools' submission of and the Department's retention of annual compliance reports. Within this list, the Department records the date of submission of the report. The Department also maintains hard copy and/or electronic files of the reports; schools are able to submit their compliance reports in hard copy or electronically. Reports will be maintained consistent with the agency records retention protocol.

D. Communication with public and private school leaders about requirements of the anti-hazing law.

In June 2010, I sent written notice to leaders of public school districts, middle and high schools, charter schools, education collaboratives, approved private special education schools, and private and parochial schools with updated information about the anti-hazing law and its requirements. The memorandum described the anti-hazing law and enumerated the statutory and regulatory requirements for: adopting an anti-hazing policy; giving notice of the law to student groups, teams, and organizations, whether affiliated or non-affiliated; collecting written acknowledgements from students and student groups; and filing a certification of compliance report with the Department by October 1 of each year. The memorandum included sample statements of acknowledgement for student groups, teams, and organizations; a sample secondary school anti-hazing report; and a copy of the law that could be used by school leaders for compliance. On June 11, 2010, I included the memorandum and other information in the Commissioner's Update, which is posted online and also emailed to school leaders.

Schools received additional written notice of the requirements of the anti-hazing law in the annual Superintendent's Checklist, a publication the Department distributes to public school leaders before each school year. The checklist includes reminders of and timelines for reporting and compliance requirements, and contains electronic links to relevant background information about the requirements.

The Department used its up-to-date list of secondary schools in the Commonwealth (see B, above) to contact directly the leaders of schools that had not filed the report by September 15, 2010. Department staff members were trained about the law, and were able to give school leaders consistent and accurate guidance about the law, and its notice and reporting requirements. Staff also responded to questions school leaders asked about the law.

The memorandum and other written reminders will be issued annually to public and private school leaders prior to the October 1 reporting deadline.

E. Compliance monitoring.

The Department has revised its Coordinated Program Review (CPR) monitoring instruments to include information about the anti-hazing law. With each monitoring cycle, and more often if complaints arise, the compliance of public schools and approved private special education schools with the notice and reporting requirements of the law will be evaluated by monitoring staff from PQA. Schools are notified in advance through CPR instruments that PQA will be reviewing the schools' anti-hazing policy; records of distribution to and acknowledgement from students and student groups, teams, and organizations; and records of certification reports filed annually with the Department. Failure to comply with the requirement will result in the school adopting and fulfilling a plan for corrective action.

As part of its compliance monitoring process, all PQA staff members have been trained in the anti-hazing law and its requirements. All PQA staff members are able to instruct schools and other interested parties about the law and its requirements. Staff also responds to requests for guidance about the anti-hazing law. Training materials and information about the anti-hazing law have been incorporated into training and orientation materials used regularly by PQA staff.

In addition to these corrective action steps the Department has taken to ensure its compliance with the anti-hazing law, the Department is evaluating additional actions that will help schools comply with the law's requirements. The Department anticipates amending 603 CMR 33.00 to reflect current policies and procedures for reporting. Any amendments will omit the reference in the regulations to the Bureau of Student Services, a unit within the Department that no longer exists. All current correspondence and guidance provided by the Department to schools and other interested parties contains accurate and up-to-date reporting information.

2. INTERNAL CONTROL PLAN AND AGENCY-WIDE RISK ASSESSMENT NEED IMPROVEMENT

Our audit indicated that DESE did not have a complete and updated Internal Control Plan (ICP), contrary to the provisions of Chapter 647 of the Acts of 1989 (An Act Relative to Improving the Internal Controls within State Agencies) and OSC guidelines. The OSC's Internal Control Guide states, in part:

An internal control plan is a description of how a department expects to meet its various goals and objectives by using policies and procedures to minimize risk. The Commonwealth has defined the internal control plan to be a high-level summary supported by lower level policy and procedures. Each department's internal control plan will be unique; however, it should be based on the same framework as the organization's mission, goals and objectives, and the components of internal control recommended by the standards of the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Report. The plan should be reviewed and updated as conditions warrant, but at least annually.

The OSC's updated Internal Control Guide requires departments to incorporate the principles of Enterprise Risk Management (ERM) into the ICP and to update the ICP as often as changes in management, level of risk, program scope, etc., occur, but at least annually. The ERM augments and expands on COSO's five components of internal controls and requires ICPs to include eight interrelated control components consisting of: internal environment, objective setting, event identification, risk assessment, risk response, control activities, information and communication, and monitoring. The eight internal components are explained below:

- The internal environment is the tone of an organization, which, among other things, determines an organization's risk culture and provides the basis for its control.
- Objective setting is a critical process that supports an organization's mission.
- Event identification identifies internal controls and external events that impact an organization in its attempt to achieve its objectives.
- A risk assessment is a process used to identify and analyze factors that may affect the achievement of a goal and allows an organization to understand the extent to which potential events may impact objectives.
- The risk response evaluates options to an identified risk and determines the course of action. Risk responses fall into four basic categories: (1) accept the risk and monitor it, (2) avoid the risk by eliminating it, (3) reduce the risk by instituting controls, or (4) reduce the risk by partnering or entering into a strategic alliance with another department or external entity.
- An organization's control activities include policies and procedures or directives that an organization establishes so that identified risks do not prevent the organization from reaching its objectives.
- Information and communication is the identification and dissemination of pertinent information in a form and timeframe that enable people to carry out their responsibilities.
- Monitoring is the ongoing review of an organization's activities and transactions to assess the quality of performance over time and to determine whether internal controls are effective to achieve the organization's mission, goals, and objectives. The purpose of

monitoring is to determine whether internal control is adequately designed, properly executed, and effective.

As mentioned above, the risk assessment is an integral part of an internal control plan because it identifies and analyzes risks and assists management in prioritizing those activities where controls are most needed to mitigate risk. DESE's lack of a department-wide risk assessment may hinder or prevent it from fulfilling its responsibilities, achieving goals and objectives, and ensuring the integrity and effectiveness of its internal control system. Furthermore, a risk assessment may have identified internal control weaknesses disclosed in our report.

During our audit, we requested a copy of DESE's ICP to assist us in determining the PQA's roles and responsibilities, as well as whether any PQA operating risks had been identified as part of the agency-wide risk assessment required by the OSC's Internal Control Guide. We found that the ICP did not fully comply with the OSC's Internal Control Guide. Specifically, we determined that both the fiscal year 2009 and fiscal year 2010 ICPs disclosed only five of the eight ERM components required by the OSC Internal Control Guide.¹⁵ The five components disclosed covered control environment, risk assessment, control activities, monitoring, and information and communication. But neither ICP addressed the ERM components of objective setting, event identification, and risk response. As previously noted, Chapter 647 of the Acts of 1989 requires that a departmental internal control structure be developed in accordance with the internal control guideline established by the OSC. Accordingly, DESE needs to address all eight components to be in compliance with the OSC Internal Control Guide.

The OSC defines a department-wide risk assessment as the identification and analysis of the risks that could prevent a department from attaining established goals and objectives. For this reason, the OSC considers a risk assessment an integral part of the ICP. Accordingly, we inquired whether the ICP's provided included a department-wide risk assessment. We noted that both the fiscal year 2009 and fiscal year 2010 ICPs incorporated the following reference under the Risk Analysis – Overview section:

In 2003, the subject of risk assessment was formally introduced and discussed with the goal of creating a written "Risk Assessment Plan" for the Department, to be disseminated to all employees. This plan will be reviewed and updated at least annually.

¹⁵ Office of the State Comptroller, Quality Assurance Bureau, Internal Control Guide, 9/13/2007.

Nonetheless, DESE could not provide any supporting evidence of an analysis of department risks. Without an analysis of risk, there is inadequate assurance that the most significant areas that could keep DESE from attaining its mission, goals, and objectives will be identified and the controls to mitigate risks implemented.

Recommendation

DESE should:

- Update its ICP to include all ERM components as described in the OSC Internal Control Guide.
- Ensure that the department's ICP is based on a department-wide risk assessment and that evidence of an analysis of risk is documented and retained for audit purposes.
- Ensure that the department's Audit and Compliance Unit plays an active role in the ERM implementation process and how DESE is meeting the internal control requirements of Chapter 647.

Auditee's Response

The Commission provided the following comments in response to the audit result:

. . . . the Department has been in contact with the Office of the State Comptroller, which has reviewed our Internal Control Plan many times since the inception of our original Internal Control Plan. The Comptroller's Office agrees that the 8 Committee of Sponsoring Organizations (COSO) Enterprise Risk Management components are suggested guidance on this subject as indicated by the title of the manual, Internal Control Guide (emphasis added). There are no laws or regulations that require the 8 criteria to be incorporated into this or any other document.

However, the Department will seriously consider the State Auditor's recommendation to update our Internal Control Plan to include all Enterprise Risk Management components as described in the OSC Internal Control Guide. Additionally, the auditors stated that the Department could not provide documentation that the annual risk assessments had been performed. In the future, we will document with minutes the results of such meeting(s).

APPENDIX
Summary of Site Visits

<u>School Site</u>	<u>Aware of Filing Requirement</u>	<u>Discipline Policy Approved</u>	<u>Disciplinary Policy Filed With DESE</u>	<u>School Obtain/Maintain Student Signatures</u>	<u>School Obtain Coaches/Club Leaders Signatures</u>	<u>School Obtain Non-School Affiliates Signatures</u>	<u>Fully Posted M.G.L. c. 269, §§ 17 through 19</u>
Brooks School	Yes	Yes	No	Yes	No	No	Yes
Boston University Academy	No	Yes	No	Yes	No	No	No
Chelsea High	No	Yes	No	Yes	No	No	Yes
Everett High	Yes	Yes	No	Yes	Yes	Yes	No
Malden Ferryway	No	Yes	No	Yes	No	No	No
Revere High	No	Yes	No	Yes	No	No	No