

**SENATE . . . . . No. 2323**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Ten**  
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An Act relative to bullying in schools.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. The third paragraph of section 1D of chapter 69 of the General Laws, as  
2 appearing in the 2008 Official Edition, is hereby amended by striking out the fourth sentence and  
3 inserting in place thereof the following sentence:- The standards may provide for instruction in  
4 the issues of nutrition, physical education, AIDS education, violence prevention, including teen  
5 dating violence, bullying prevention, conflict resolution and drug, alcohol and tobacco abuse  
6 prevention.

7           SECTION 2. The first paragraph of section 37H of chapter 71 of the General Laws, as so  
8 appearing, is hereby amended by inserting after the third sentence the following sentence:- The  
9 policies shall also prohibit bullying as defined in section 37O and shall include the bullying  
10 prevention and intervention plan required by section 37O.

11           SECTION 3. The third paragraph of said section 37H of said chapter 71, as so appearing,  
12 is amended by inserting after the first sentence the following sentence:- The student handbook  
13 shall include an age-appropriate summary of the student-related sections of the bullying  
14 prevention and intervention plan required by section 37O.

15 SECTION 4. Said chapter 71 is hereby further amended by inserting after section 37N  
16 the following section:-

17 Section 37O. (a) As used in this section, the following words shall have the following  
18 meanings unless the context clearly requires otherwise:

19 “Bullying”, the severe or repeated use by one or more students of a written, verbal, or  
20 electronic expression, or a physical act or gesture, or any combination thereof, directed at  
21 another student that has the effect of: (i) causing physical or emotional harm to the other student  
22 or damage to the other student’s property; (ii) placing the other student in reasonable fear of  
23 harm to himself or of damage to his property; (iii) creating a hostile environment at school for  
24 the other student; (iv) infringing on the rights of the other student at school; or (v) materially and  
25 substantially disrupting the education process or the orderly operation of a school.

26 “Cyber-bullying”, bullying through the use of technology or any electronic means. The  
27 use of bullying in this section shall include cyber-bullying.

28 “Hostile environment”, a situation in which bullying causes the school environment to be  
29 permeated with intimidation, ridicule or insult that is sufficiently severe or pervasive to alter the  
30 conditions of the student’s education and create an abusive school environment.

31 “Perpetrator”, the student who engages in bullying or retaliation.

32 “School grounds”, property on which a school building or facility is located or property  
33 that is owned, leased or used by a school district, commonwealth charter school or non-public  
34 school for a school-sponsored activity, function, program, instruction or training.

35 “Victim”, a student against whom bullying or retaliation has been perpetrated.

36 (b) Bullying is prohibited on school grounds, property immediately adjacent to school  
37 grounds, at a school-sponsored or school-related activity, function or program whether on or off  
38 school grounds, at a school bus stop, on a school bus or other vehicle owned, leased or used by a  
39 district or school, or through the use of technology or an electronic device owned, leased or used  
40 by a school district, commonwealth charter school or non-public school.

41 Bullying is also prohibited both (i) at a location, activity, function or program that is not  
42 school-related and (ii) through the use of technology or an electronic device that is not owned,  
43 leased or used by a district or school, if the bullying creates a hostile environment at school for  
44 the victim, infringes on the rights of the victim at school, or materially and substantially disrupts  
45 the education process or the orderly operation of a school.

46 Retaliation against a person who reports bullying, who provides information during an  
47 investigation of bullying, or who is a witness to or has reliable information about bullying is  
48 prohibited.

49 (c) Each school district, commonwealth charter school and non-public school shall  
50 provide age-appropriate instruction on bullying prevention in each grade that is incorporated into  
51 the curriculum of the district or school. The curriculum shall be evidence-based.

52 (d) Each school district, commonwealth charter school and non-public school shall  
53 develop and update a bullying prevention and intervention plan in consultation with teachers,  
54 school staff, professional support personnel, school volunteers, administrators, community  
55 representatives, local law enforcement agencies, students, parents and guardians. The  
56 consultation shall at a minimum include notice and a public comment period. The bullying  
57 prevention and intervention plan shall be updated at least biennially.

58           Each bullying prevention and intervention plan at a minimum shall: (i) include  
59 descriptions of and statements prohibiting bullying, cyber-bullying and retaliation; (ii) establish  
60 clear procedures for students, staff, parents, guardians, and others to report bullying or  
61 retaliation; (iii) include a provision that reports of bullying or retaliation may be made  
62 anonymously; provided, however, that no disciplinary action shall be taken against a student  
63 solely on the basis of an anonymous report; (iv) establish clear procedures for promptly  
64 responding to and investigating reports of bullying or retaliation; (v) identify the range of  
65 disciplinary actions that may be taken against a perpetrator for bullying or retaliation; (vi)  
66 establish clear procedures for restoring a sense of safety for a victim and assessing that student's  
67 needs for protection; (vii) establish strategies for protecting from bullying or retaliation a person  
68 who reports bullying, provides information during an investigation of bullying, or is witness to or  
69 has reliable information about an act of bullying; (viii) establish procedures consistent with state  
70 and federal law for promptly notifying the parents or guardians of a victim and a perpetrator;  
71 provided, however, that the parents or guardians of a victim shall also be notified of the action  
72 taken to prevent any further acts of bullying; and provided further that said procedures must  
73 provide for immediate notification to the local law enforcement agency where criminal charges  
74 may be pursued against the perpetrator; (ix) include a provision that a student who knowingly  
75 makes a false accusation of bullying shall be subject to disciplinary action; and (x) include a  
76 strategy for providing counseling or referral to appropriate services for perpetrators and victims  
77 and for appropriate family members of said students.

78           A school district, commonwealth charter school or a non-public school may establish  
79 separate discrimination or harassment policies that include categories of students. Nothing in  
80 this section shall prevent a school district, commonwealth charter school or non-public school

81 from remediating any discrimination or harassment based on a person’s membership in a legally  
82 protected category under local, state or federal law.

83           The bullying prevention and intervention plan may include ongoing professional  
84 development to build the skills of all members of school staff, including but not limited to  
85 educators, administrators, school nurses, cafeteria workers, custodians, and paraprofessionals, to  
86 prevent, identify and respond to bullying. The content of such professional development shall  
87 include, but not be limited to: (i) developmentally appropriate strategies to prevent bullying  
88 incidents; (ii) developmentally appropriate strategies for immediate, effective interventions to  
89 stop bullying incidents; (iii) information regarding the complex interaction and power  
90 differential that can take place between and among the perpetrator, the victim, and any witnesses  
91 to the bullying; (iv) research findings on bullying, including information about specific  
92 categories of students who have been shown to be particularly at risk for bullying in the school  
93 environment; (v) information on the incidence and nature of cyber-bullying; and (vi) internet  
94 safety issues as they relate to cyber-bullying.

95           The bullying prevention and intervention plan shall include provisions for educating  
96 parents and guardians about the bullying prevention curriculum of the district or school; how  
97 parents and guardians can reinforce the curriculum at home and support the district or school  
98 prevention and intervention plan; the dynamics of bullying; and online safety and cyber-bullying.

99           (e)(1) Each school district, commonwealth charter school and non-public school shall  
100 provide to students and their parents or guardians, in age-appropriate terms and in the languages  
101 which are most predominant among the students, parents and guardians, annual written notice of  
102 the relevant sections of the bullying prevention and intervention plan.

103           (2) Each school district, commonwealth charter school and non-public school shall  
104 provide to all school staff annual written notice of the bullying prevention and intervention plan.  
105 The faculty and staff at each school shall be trained annually on the bullying prevention and  
106 intervention plan applicable to the school. Relevant sections of the bullying prevention and  
107 intervention plan shall be included in a district or school employee handbook.

108           (3) The bullying prevention and intervention plan shall be posted on the website of each  
109 school district, commonwealth charter school and non-public school.

110           (f) Each school principal or the person who holds a comparable role shall be responsible  
111 for the implementation and oversight of the bullying prevention and intervention plan at his  
112 school.

113           (g) A member of a school staff, including, but not limited to, an educator, administrator,  
114 school nurse, cafeteria worker, custodian or paraprofessional, shall immediately report any  
115 instance of bullying or retaliation the staff member has witnessed or become aware of to the  
116 school principal or to the school official identified in the bullying prevention and intervention  
117 plan as responsible for receiving such reports or both. Upon receipt of such a report, the school  
118 principal or a designee shall promptly conduct an investigation. If the school principal or a  
119 designee determines that bullying or retaliation has occurred, the school principal or designee  
120 shall (i) notify the local law enforcement agency if the school principal or designee believes that  
121 criminal charges may be pursued against the perpetrator; (ii) take appropriate disciplinary action;  
122 (iii) notify the parents or guardians of the perpetrator; and (iv) notify the parents or guardians of  
123 the victim, and to the extent consistent with state and federal law, notify them of the action taken  
124 to prevent any further acts of bullying or retaliation.

125 (h) If an incident of bullying or retaliation involves students from more than one school  
126 district, commonwealth charter school or non-public school, the district or school first informed  
127 of the bullying or retaliation shall promptly notify the appropriate administrator of other district  
128 or school so that both may take appropriate action; provided however that the notification shall  
129 be in compliance with 20 U.S.C. section 1232g.

130 (i) Nothing in this section shall supersede or replace existing rights or remedies under  
131 any other general or special law, nor shall this section create a private right of action.

132 (j) The department of elementary and secondary education, after consultation with the  
133 department of public health, the department of mental health, the attorney general and experts on  
134 bullying, shall (i) publish a model bullying prevention and intervention plan for school districts,  
135 commonwealth charter schools, and non-public schools to consider when creating their own  
136 plans and (ii) compile a list of bullying prevention and intervention resources, evidence-based  
137 curricula, best practices and academic-based research that shall be made available for use by  
138 schools. These resources may include, but shall not be limited to, print, audio, video or digital  
139 media; subscription-based online services; and on-site or technology-enabled professional  
140 development and training sessions. The department of elementary and secondary education shall  
141 biennially update the model bullying prevention and intervention plan and the list of these  
142 resources, curricula, best practices and research and shall ensure that they are posted on its  
143 website.

144 Section 4A: The sixth paragraph of section 3 of chapter 71B of the General Laws, as  
145 appearing in the 2008 Official Edition, is hereby amended by inserting after the third sentence  
146 the following sentence:-

147           “Whenever the evaluation indicates that a child has a developmental or mental disability  
148 that requires an Individualized Education Program, this program shall address the skills and  
149 proficiencies needed to avoid and respond to bullying, harassment or teasing.”

150           SECTION 5. Section 3 of said chapter 71B of the General Laws, as appearing in the  
151 2008 Official Edition, is hereby amended by inserting after the word “proficiencies”, in line 154,  
152 the following words:- ;the skills and proficiencies needed to avoid and respond to bullying,  
153 harassment or teasing.

154           SECTION 5A. Section 43 of chapter 265 of the General Laws, as appearing in the 2008  
155 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof  
156 the following subsection:-

157           (a) Whoever (1) willfully and maliciously engages in a knowing pattern of conduct or  
158 series of acts over a period of time directed at a specific person which seriously alarms or annoys  
159 that person and would cause a reasonable person to suffer substantial emotional distress, and (2)  
160 makes a threat with the intent to place the person in imminent fear of death or bodily injury, shall  
161 be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for  
162 not more than 5 years or by a fine of not more than \$1,000, or imprisonment in the house of  
163 correction for not more than 2 and one-half years or both. Such conduct, acts or threats described  
164 in this subsection shall include, but not be limited to, conduct, acts or threats conducted by mail  
165 or by use of a telephonic or telecommunication device or electronic communication device  
166 including, but not limited to, any device that transfers signs, signals, writing, images, sounds,  
167 data, or intelligence of any nature transmitted in whole or in part by a wire, radio,



168 electromagnetic, photo-electronic or photo-optical system, including, but not limited to,  
169 electronic mail, internet communications, instant messages or facsimile communications.

170 SECTION 5B. Section 43A of said chapter 265, as so appearing, is hereby amended by  
171 striking out paragraph (a) and inserting in place thereof the following paragraph:-

172 (a) Whoever willfully and maliciously engages in a knowing pattern of conduct or series  
173 of acts over a period of time directed at a specific person, which seriously alarms that person and  
174 would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the  
175 crime of criminal harassment and shall be punished by imprisonment in a house of correction for  
176 not more than 2 and one-half years or by a fine of not more than \$1,000, or by both such fine and  
177 imprisonment. Such conduct or acts described in this paragraph shall include, but not be limited  
178 to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device or  
179 electronic communication device including, but not limited to, any device that transfers signs,  
180 signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part  
181 by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not  
182 limited to, electronic mail, internet communications, instant messages or facsimile  
183 communications.