

SENATE No. 2323

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

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.