

SENATE No. 2404

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. Chapter 6 of the General Laws is hereby amended by inserting after section
2 15MMMMM the following section:-

3 15NNNNN. The governor shall annually issue a proclamation setting apart the fourth
4 Wednesday in January as No Name Calling Day to increase public awareness of the devastating
5 effects of verbal bullying, to encourage students to use positive dialogue and pledge not to use
6 hurtful names on this designated day, to promote tolerance and respect for differences and to
7 reaffirm the commitment of the citizens of the commonwealth to basic human rights and dignity.

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

14 SECTION 3. The first paragraph of section 37H of chapter 71 of the General Laws, as so
15 appearing, is hereby amended by inserting after the third sentence the following sentence:- The
16 policies shall also prohibit bullying as defined in section 37O and shall include the student-
17 related sections of the bullying prevention and intervention plan required by said section 37O.

18 SECTION 4. The third paragraph of said section 37H of said chapter 71, as so appearing,
19 is hereby amended by inserting after the first sentence the following sentence:- The student
20 handbook shall include an age-appropriate summary of the student-related sections of the
21 bullying prevention and intervention plan required by section 37O.

22 SECTION 5. Said chapter 71 is hereby further amended by inserting after section 37N
23 the following section:-

24 Section 37O. (a) As used in this section the following words shall, unless the context
25 clearly requires otherwise, have the following meaning:-

26 "Approved private day or residential school", a school that accepts, through agreement
27 with a school committee, a child requiring special education pursuant to section 10 of chapter
28 71B.

29 "Bullying", the repeated use by one or more students of a written, verbal or electronic
30 expression or a physical act or gesture or any combination thereof, directed at a victim that: (i)
31 causes physical or emotional harm to the victim or damage to the victim's property; (ii) places
32 the victim in reasonable fear of harm to himself or of damage to his property; (iii) creates a
33 hostile environment at school for the victim; (iv) infringes on the rights of the victim at school;
34 or (v) materially and substantially disrupts the education process or the orderly operation of a
35 school. For the purposes of this section, bullying shall include cyber-bullying.

36 “Charter school”, commonwealth charter schools and Horace Mann charter schools
37 established pursuant to section 89 of chapter 71.

38 “Cyber-bullying”, bullying through the use of technology or any electronic
39 communication, which shall include, but shall not be limited to, any transfer of signs, signals,
40 writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a
41 wire, radio, electromagnetic, photo electronic or photo optical system, including, but not limited
42 to, electronic mail, internet communications, instant messages or facsimile communications.
43 Cyber-bullying shall also include (i) the creation of a web page or blog in which the creator
44 assumes the identity of another person or (ii) the knowing impersonation of another person as the
45 author of posted content or messages, if the creation or impersonation creates any of the
46 conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying. Cyber-
47 bullying shall also include the distribution by electronic means of a communication to more than
48 one person or the posting of material on an electronic medium that may be accessed by one or
49 more persons, if the distribution or posting creates any of the conditions enumerated in clauses
50 (i) to (v), inclusive, of the definition of bullying.

51 “Collaborative school”, a school operated by an educational collaborative established
52 pursuant to section 4E of chapter 40.

53 “Department”, the department of elementary and secondary education.

54 “Hostile environment”, a situation in which bullying causes the school environment to be
55 permeated with intimidation, ridicule or insult that is sufficiently severe or pervasive to alter the
56 conditions of the student’s education.

57 “Plan”, a bullying prevention and intervention plan established pursuant to subsection
58 (d).

59 “Perpetrator”, a student who engages in bullying or retaliation.

60 “School district”, the school department of a city or town, a regional school district or a
61 county agricultural school.

62 “School grounds”, property on which a school building or facility is located or property
63 that is owned, leased or used by a school district, charter school, non-public school, approved
64 private day or residential school, or collaborative school for a school-sponsored activity,
65 function, program, instruction or training.

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

67 (b) Bullying shall be prohibited: (i) on school grounds, property immediately adjacent to
68 school grounds, at a school-sponsored or school-related activity, function or program whether on
69 or off school grounds, at a school bus stop, on a school bus or other vehicle owned, leased or
70 used by a school district or school, or through the use of technology or an electronic device
71 owned, leased or used by a school district or school and (ii) at a location, activity, function or
72 program that is not school-related, or through the use of technology or an electronic device that
73 is not owned, leased or used by a school district or school, if the bullying creates a hostile
74 environment at school for the victim, infringes on the rights of the victim at school or materially
75 and substantially disrupts the education process or the orderly operation of a school. Nothing
76 contained herein shall require schools to staff any non-school related activities, functions, or
77 programs.

78 Retaliation against a person who reports bullying, provides information during an
79 investigation of bullying, or witnesses or has reliable information about bullying shall be
80 prohibited.

81 (c) Each school district, charter school, approved private day or residential school and
82 collaborative school shall provide age-appropriate instruction on bullying prevention in each
83 grade that is incorporated into the curriculum of the school district or school. The curriculum
84 shall be evidence-based.

85 (d) Each school district, charter school, non-public school, approved private day or
86 residential school and collaborative school shall develop, adhere to and update a plan to address
87 bullying prevention and intervention in consultation with teachers, school staff, professional
88 support personnel, school volunteers, administrators, community representatives, local law
89 enforcement agencies, students, parents and guardians. The consultation shall include, but not be
90 limited to, notice and a public comment period; provided, however, that a non-public school
91 shall only be required to give notice to and provide a comment period for families that have a
92 child attending the school. The plan shall be updated at least biennially.

93 Each plan shall include, but not be limited to: (i) descriptions of and statements
94 prohibiting bullying, cyber-bullying and retaliation; (ii) clear procedures for students, staff,
95 parents, guardians and others to report bullying or retaliation; (iii) a provision that reports of
96 bullying or retaliation may be made anonymously; provided, however, that no disciplinary action
97 shall be taken against a student solely on the basis of an anonymous report; (iv) clear procedures
98 for promptly responding to and investigating reports of bullying or retaliation; (v) the range of
99 disciplinary actions that may be taken against a perpetrator for bullying or retaliation; provided,

100 however, that the disciplinary actions shall balance the need for accountability with the need to
101 teach appropriate behavior; (vi) clear procedures for restoring a sense of safety for a victim and
102 assessing that victim's needs for protection; (vii) strategies for protecting from bullying or
103 retaliation a person who reports bullying, provides information during an investigation of
104 bullying or witnesses or has reliable information about an act of bullying; (viii) procedures
105 consistent with state and federal law for promptly notifying the parents or guardians of a victim
106 and a perpetrator; provided, further, that the parents or guardians of a victim shall also be
107 notified of the action taken to prevent any further acts of bullying or retaliation; and provided,
108 further, that the procedures shall provide for immediate notification pursuant to regulations
109 promulgated under this subsection by the principal or person who holds a comparable role to the
110 local law enforcement agency when criminal charges may be pursued against the perpetrator;
111 (ix) a provision that a student who knowingly makes a false accusation of bullying or retaliation
112 shall be subject to disciplinary action; and (x) a strategy for providing counseling or referral to
113 appropriate services for perpetrators and victims and for appropriate family members of said
114 students. The plan shall afford all students the same protection regardless of their status under the
115 law.

116 A school district, charter school, non-public school, approved private day or residential
117 school or collaborative school may establish separate discrimination or harassment policies that
118 include categories of students. Nothing in this section shall prevent a school district, charter
119 school, non-public school, approved private day or residential school or collaborative school
120 from remediating any discrimination or harassment based on a person's membership in a legally
121 protected category under local, state or federal law.

122 The plan for a school district, charter school, approved private day or residential school
123 and collaborative school shall include a provision for ongoing professional development to build
124 the skills of all staff members, including, but not limited to, educators, administrators, school
125 nurses, cafeteria workers, custodians, bus drivers, athletic coaches, advisors to extracurricular
126 activities and paraprofessionals, to prevent, identify and respond to bullying. The content of
127 such professional development shall include, but not be limited to: (i) developmentally
128 appropriate strategies to prevent bullying incidents; (ii) developmentally appropriate strategies
129 for immediate, effective interventions to stop bullying incidents; (iii) information regarding the
130 complex interaction and power differential that can take place between and among a perpetrator,
131 victim and witnesses to the bullying; (iv) research findings on bullying, including information
132 about specific categories of students who have been shown to be particularly at risk for bullying
133 in the school environment; (v) information on the incidence and nature of cyber-bullying; and
134 (vi) internet safety issues as they relate to cyber-bullying. The department shall identify and offer
135 information on alternative methods for fulfilling the professional development requirements of
136 this section, at least 1 of which shall be available at no cost to school districts, charter schools,
137 approved private day or residential schools and collaborative schools.

138 The plan shall include provisions for informing parents and guardians about the bullying
139 prevention curriculum of the school district or school and shall include, but not be limited to: (i)
140 how parents and guardians can reinforce the curriculum at home and support the school district
141 or school plan; (ii) the dynamics of bullying; and (iii) online safety and cyber-bullying.

142 The department shall promulgate rules and regulations on the requirements related to a
143 principal's duties under clause (viii) of the second paragraph of this subsection; provided, that
144 school districts, charter schools, approved private day or residential schools and collaborative

145 schools shall be subject to the regulations. A non-public school shall develop procedures for
146 immediate notification by the principal or person who holds a comparable role to the local law
147 enforcement agency when criminal charges may be pursued against the perpetrator.

148 (e)(1) Each school district, charter school, non-public school, approved private day or
149 residential school and collaborative school shall provide to students and parents or guardians, in
150 age-appropriate terms and in the languages which are most prevalent among the students, parents
151 or guardians, annual written notice of the relevant student-related sections of the plan.

152 (2) Each school district, charter school, non-public school, approved private day or
153 residential school and collaborative school shall provide to all school staff annual written notice
154 of the plan. The faculty and staff at each school shall be trained annually on the plan applicable
155 to the school. Relevant sections of the plan relating to the duties of faculty and staff shall be
156 included in a school district or school employee handbook.

157 (3) The plan shall be posted on the website of each school district, charter school, non-
158 public school, approved private day or residential school and collaborative school.

159 (f) Each school principal or the person who holds a comparable position shall be
160 responsible for the implementation and oversight of the plan at his school.

161 (g) A member of a school staff, including, but not limited to, an educator, administrator,
162 school nurse, cafeteria worker, custodian, bus driver, athletic coach, advisor to an extracurricular
163 activity or paraprofessional, shall immediately report any instance of bullying or retaliation the
164 staff member has witnessed or become aware of to the principal or to the school official
165 identified in the plan as responsible for receiving such reports or both. Upon receipt of such a
166 report, the school principal or a designee shall promptly conduct an investigation. If the school

167 principal or a designee determines that bullying or retaliation has occurred, the school principal
168 or designee shall (i) notify the local law enforcement agency if the school principal or designee
169 believes that criminal charges may be pursued against a perpetrator; (ii) take appropriate
170 disciplinary action; (iii) notify the parents or guardians of a perpetrator; and (iv) notify the
171 parents or guardians of the victim, and to the extent consistent with state and federal law, notify
172 them of the action taken to prevent any further acts of bullying or retaliation.

173 (h) If an incident of bullying or retaliation involves students from more than one school
174 district, charter school, non-public school, approved private day or residential school or
175 collaborative school, the school district or school first informed of the bullying or retaliation
176 shall, consistent with state and federal law, promptly notify the appropriate administrator of the
177 other school district or school so that both may take appropriate action. If an incident of bullying
178 or retaliation occurs on school grounds and involves a former student under the age of 21 who is
179 no longer enrolled in a local school district, charter school, non-public school, approved private
180 day or residential school or collaborative school, the school district or school informed of the
181 bullying or retaliation shall contact law enforcement consistent with the provisions of clause
182 (viii) of the second paragraph of subsection (d).

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

185 (j) The department, after consultation with the department of public health, the
186 department of mental health, the attorney general, the Massachusetts District Attorneys
187 Association and experts on bullying shall: (i) publish a model plan for school districts and
188 schools to consider when creating their plans; and (ii) compile a list of bullying prevention and

189 intervention resources, evidence-based curricula, best practices and academic-based research that
190 shall be made available to schools. The model plan shall be consistent with the behavioral health
191 and public schools framework developed by the department in accordance with section 19 of
192 chapter 321 of the acts of 2008. The resources may include, but shall not be limited to, print,
193 audio, video or digital media; subscription based online services; and on-site or technology-
194 enabled professional development and training sessions. The department shall biennially update
195 the model plan and the list of the resources, curricula, best practices and research and shall post
196 them on its website.

197 SECTION 6. Said chapter 71 is hereby further amended by adding after section 92, added
198 by section 8 of chapter 12 of the acts of 2010, the following section: -

199 Section 93. Every public school providing computer access to students shall have a policy
200 regarding internet safety measures to protect students from inappropriate subject matter and
201 materials that can be accessed via the internet and shall notify the parents or guardians of all
202 students attending the school of the policy. The policy and any standards and rules enforcing the
203 policy shall be prescribed by the school committee in conjunction with the superintendent or the
204 board of trustees of a commonwealth charter school.

205 SECTION 7. The sixth paragraph of section 3 of chapter 71B of the General Laws, as
206 appearing in the 2008 Official Edition, is hereby amended by inserting after the third sentence
207 the following sentence:-

208 Whenever the evaluation of the Individualized Education Program team indicates that the
209 child has a disability that affects social skills development or that the child is vulnerable to
210 bullying, harassment or teasing because of the child's disability, the Individualized Education

211 Program shall address the skills and proficiencies needed to avoid and respond to bullying,
212 harassment or teasing.

213 SECTION 8. Said section 3 of said chapter 71B, as so appearing, is hereby amended by
214 inserting after the word “proficiencies”, in line 154, the following words:- ; the skills and
215 proficiencies needed to avoid and respond to bullying, harassment or teasing.

216 SECTION 9. Section 43 of chapter 265 of the General Laws, as so appearing, is hereby
217 amended by striking out subsection (a) and inserting in place thereof the following subsection:-

218 (a) Whoever (1) willfully and maliciously engages in a knowing pattern of conduct or
219 series of acts over a period of time directed at a specific person which seriously alarms or annoys
220 that person and would cause a reasonable person to suffer substantial emotional distress, and (2)
221 makes a threat with the intent to place the person in imminent fear of death or bodily injury, shall
222 be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for
223 not more than 5 years or by a fine of not more than \$1,000, or imprisonment in the house of
224 correction for not more than 2 ½ years or by both such fine and imprisonment. The conduct, acts
225 or threats described in this subsection shall include, but not be limited to, conduct, acts or threats
226 conducted by mail or by use of a telephonic or telecommunication device or electronic
227 communication device including, but not limited to, any device that transfers signs, signals,
228 writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a
229 wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited
230 to, electronic mail, internet communications, instant messages or facsimile communications.

231 SECTION 10. Section 43A of said chapter 265, as so appearing, is hereby amended by
232 striking out paragraph (a) and inserting in place thereof the following paragraph:-

233 (a) Whoever willfully and maliciously engages in a knowing pattern of conduct or series
234 of acts over a period of time directed at a specific person, which seriously alarms that person and
235 would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the
236 crime of criminal harassment and shall be punished by imprisonment in a house of correction for
237 not more than 2 ½ years or by a fine of not more than \$1,000, or by both such fine and
238 imprisonment. The conduct or acts described in this paragraph shall include, but not be limited
239 to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device or
240 electronic communication device including, but not limited to, any device that transfers signs,
241 signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part
242 by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not
243 limited to, electronic mail, internet communications, instant messages or facsimile
244 communications.

245 SECTION 11. Subsection (3) of section 13B of chapter 268 of the General Laws, as so
246 appearing, is hereby amended by striking out the second sentence and inserting in place thereof
247 the following sentence:- Such act shall include, but not be limited to, an act conducted by mail or
248 by use of a telephonic or telecommunication device or electronic communication device
249 including but not limited to any device that transfers signs, signals, writing, images, sounds, data,
250 or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic,
251 photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet
252 communications, instant messages or facsimile communications.

253 SECTION 12. Chapter 269 of the General Laws is hereby amended by striking out
254 section 14A, as so appearing, and inserting in place thereof the following section:-

255 Section 14A. Whoever telephones another person or contacts another person by
256 electronic communication, or causes a person to be telephoned or contacted by electronic
257 communication, repeatedly, for the sole purpose of harassing, annoying or molesting the person
258 or the person’s family, whether or not conversation ensues, or whoever telephones or contacts a
259 person repeatedly by electronic communication and uses indecent or obscene language to the
260 person, shall be punished by a fine of not more than \$500 or by imprisonment for not more than
261 3 months, or by both such a fine and imprisonment.

262 For purposes of this section, “electronic communication” shall include, but not be limited
263 to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature
264 transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-
265 optical system.

266 SECTION 13. The department of elementary and secondary education shall periodically
267 review school districts, charter schools, approved private day or residential schools and
268 collaborative schools to determine whether the districts and schools are in compliance with this
269 act.

270 SECTION 14. The department of elementary and secondary education shall issue a report
271 detailing cost-effective ways to implement the professional development requirements in
272 subsection (d) of section 370 of chapter 71 of the General Laws; provided, further, that the
273 report shall: (i) include an option available at no cost to school districts, charter schools,
274 approved private day or residential schools and collaborative schools; (ii) explore the feasibility
275 of an option for a “train-the-trainer” model, so-called, with demonstrated success and an option
276 for online professional development; and (iii) include any other options which may be cost

277 effective; provided, further, that the report shall include a cost estimate for the professional
278 development; and provided, further, that the report shall be provided to the clerks of the senate
279 and house of representatives not later than August 31, 2010; and provided, further, that the clerks
280 of the senate and house of representatives shall forward the report to the chairs of the house and
281 senate committees on ways and means and the house and senate chairs of the joint committee on
282 education.

283 SECTION 15. School districts, charter schools, approved private day or residential
284 schools and collaborative schools shall establish a bullying prevention and intervention plan in
285 compliance with this act and shall file the plan with the department of elementary and secondary
286 education on or before December 31, 2010; provided, however, that school districts, charter
287 schools, approved private day or residential schools and collaborative schools shall establish and
288 have in place the professional development provisions of the fourth paragraph of subsection (d)
289 of section 37O of chapter 71 of the General Laws at the start of the 2010-2011 academic year.
290 Non-public schools shall establish a bullying prevention and intervention plan in compliance
291 with this act on or before December 31, 2010.

292 SECTION 16. The department of elementary and secondary education shall publish
293 guidelines for the implementation of social and emotional learning curricula in kindergarten to
294 grade 12, inclusive, on or before June 30, 2011. The guidelines shall be updated biennially. For
295 purposes of this section, social and emotional learning shall mean the processes by which
296 children acquire the knowledge, attitudes and skills necessary to recognize and manage their
297 emotions, demonstrate caring and concern for others, establish positive relationships, make
298 responsible decisions and constructively handle challenging social situations.

299 SECTION 17. The department of elementary and secondary education shall promulgate
300 the rules and regulations required under the last paragraph of subsection (d) of Section 37O of
301 chapter 71 of the General Laws on or before September 30, 2010.

302 SECTION 18. There shall be a special commission to consist of 7 members: 1 of whom
303 shall be the attorney general or a designee who shall chair the commission; 1 of whom shall be a
304 representative of the Massachusetts District Attorneys Association; 1 of whom shall be a
305 representative of the Massachusetts Chiefs of Police Association; 1 of whom shall be a
306 representative of the Massachusetts Sheriffs' Association; 1 of whom shall be a representative of
307 the Massachusetts Association of School Committees; 1 of whom shall be a representative of the
308 Massachusetts Association of School Superintendents; and 1 of whom shall be a representative
309 of the Association of Independent Schools in New England who represents a Massachusetts
310 school, for the purpose of making an investigation and study relative to bullying and cyber-
311 bullying. The commission shall review the General Laws to determine if they need to be
312 amended in order to address bullying and cyber-bullying; provided, further, that the commission
313 shall also investigate parental responsibility and liability for bullying and cyber-bullying. The
314 commission shall report to the general court the results of its investigation and study and its
315 recommendations, if any, together with drafts of legislation necessary to carry out such
316 recommendations, by filing the same with the clerks of the senate and the house of
317 representatives who shall forward the same to the chairs of the joint committee on education, the
318 chairs of the joint committee on the judiciary, and the chairs of the house and senate committees
319 on ways and means on or before June 30, 2011.