

SENATE, NO. 2283

[Senate, February 24, 2010 - New draft reported on Senate, Nos. 228, 209, 233, 242, 243, 281 and 290 and House Nos. 364, 378, 428, 440, 455, 483, 524, 3433 and 3804 from the committee on Education.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

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.** Section 1D of chapter 69 is hereby amended by striking the following in
- 2 line 30: “The standards may provide for instruction in the issues of nutrition, physical education,
- 3 AIDS education, violence prevention, and drug, alcohol and tobacco abuse prevention.” and
- 4 inserting in place thereof the following:- “The standards may provide for instruction in the

5 issues of nutrition, physical education, AIDS education, violence prevention, including teen
6 dating violence, bullying prevention, conflict resolution, and drug, alcohol and tobacco abuse
7 prevention.”

8 **SECTION 2.** Section 37H of Chapter 71 is hereby amended by inserting after the word
9 “department” in line 9 the following new sentence:- “Said policies shall prohibit bullying as
10 defined in section 37O and shall include the bullying prevention and intervention plan required
11 by section 37O.”

12 And further amended by inserting after the word “students” in line 26 the following new
13 sentence:- “Said student handbook shall include an age-appropriate summary of the student-
14 related sections of the bullying prevention and intervention plan required by section 37O.”

15 **SECTION 3.** Chapter 71 is hereby amended by inserting after section 37N, the following
16 new section:-

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

19 (a) “Bullying” means the severe or repeated use by one or more students of a written,
20 verbal, or electronic expression, or a physical act or gesture, or any combination thereof, directed
21 at another student that has the effect of: (i) causing physical or emotional harm to the other
22 student or damage to the other student’s property; (ii) placing the other student in reasonable fear
23 of 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” means bullying through the use of technology or any electronic means.
27 The use of bullying in this section shall include cyber-bullying.

28 “Perpetrator” means the student who engages in bullying or retaliation.

29 “School grounds” means property on which a school building or facility is located; or
30 property that is owned, leased or used by a school district, commonwealth charter school or non-
31 public school for any school-sponsored activities, functions, programs, instruction or training.

32 “Victim” means the student who has been bullied or retaliated against.

33 (b) Bullying is prohibited on school grounds, property immediately adjacent to school
34 grounds, at school-sponsored or school-related activities, functions or programs whether on or
35 off school grounds, at school bus stops, on school buses or other vehicles owned, leased or used
36 by a district or school, or through the use of technology or an electronic device owned, leased or
37 used by a school district, commonwealth charter school, or non-public school.

38 Bullying is also prohibited at a location, activity, function or program that is not school-
39 related or through the use of technology or an electronic device that is not owned, leased or used
40 by a district or school if the act or acts in question create a hostile environment at school for the
41 victim, infringe on the rights of the victim at school, or materially and substantially disrupt the
42 education process or the orderly operation of a school.

43 Retaliation against a person who reports bullying, who provides information during an
44 investigation of bullying, or who is a witness to or has reliable information about bullying is
45 prohibited.

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

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

55 Each bullying prevention and intervention plan at a minimum shall: 1) include
56 descriptions of and statements prohibiting bullying, cyber-bullying and retaliation; 2) establish
57 clear procedures for students, staff, parents, guardians, and others to report bullying or
58 retaliation; 3) include a provision that reports of bullying or retaliation may be made
59 anonymously, provided that no disciplinary action shall be taken against a student solely on the
60 basis of an anonymous report; 4) establish clear procedures for promptly responding to and
61 investigating reports of bullying or retaliation; 5) identify the range of disciplinary actions that
62 may be taken against a perpetrator for bullying or retaliation; 6) establish clear procedures for
63 restoring a sense of safety for a victim and assessing that student's needs for protection; 7)
64 establish strategies for protecting from bullying or retaliation a person who reports bullying,
65 provides information during an investigation of bullying, or is witness to or has reliable
66 information about an act of bullying; 8) establish procedures consistent with state and federal law
67 for promptly notifying the parents or guardians of a victim and a perpetrator, provided that the
68 parents or guardians of a victim shall also be notified of the action taken to prevent any further

69 acts of bullying; and provided further that said procedures must provide for immediate
70 notification to the local law enforcement agency where criminal charges may be pursued against
71 the perpetrator; 9) include a provision that a student who knowingly makes a false accusation of
72 bullying shall be subject to disciplinary action; and 10) include a strategy for providing
73 counseling or referral to appropriate services for perpetrators and victims and for appropriate
74 family members of said students.

75 The bullying prevention and intervention plan shall afford all students the same
76 protection regardless of their status under the law. A school district, commonwealth charter
77 school, or a non-public school may establish separate discrimination or harassment policies that
78 include categories of students, and nothing in this section shall prevent a school district,
79 commonwealth charter school, or non-public school from remediating any discrimination or
80 harassment based on a person's membership in a legally protected category under local, state or
81 federal law.

82 The bullying prevention and intervention plan shall include ongoing professional
83 development to build the skills of all members of school staff, including but not limited to
84 educators, administrators, school nurses, cafeteria workers, custodians, and paraprofessionals, to
85 prevent, identify and respond to bullying. The content of such professional development shall
86 include, but not be limited to: 1) developmentally appropriate strategies to prevent bullying
87 incidents; 2) developmentally appropriate strategies for immediate, effective interventions to
88 stop bullying incidents; 3) information regarding the complex interaction and power differential
89 that can take place between and among the perpetrator, the victim, and any witnesses to the
90 bullying; 4) research findings on bullying; 5) information on the incidence and nature of cyber-
91 bullying; and 6) internet safety issues as they relate to cyber-bullying.

92 The bullying prevention and intervention plan shall include provisions for educating
93 parents and guardians about the bullying prevention curriculum of the district or school, how
94 they can reinforce said curriculum at home, how they can support the district or school
95 prevention and intervention plan, the dynamics of bullying, and online safety and cyber-bullying.

96 (e)(i) Each school district, commonwealth charter school, and non-public school shall
97 provide to students and their parents or guardians, in age appropriate terms and in the most
98 prevalent languages of the students, parents or guardians, annual written notice of the relevant
99 sections of the bullying prevention and intervention policy.

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

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

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

111 (g) A member of a school staff, including but not limited to an educator, administrator,
112 school nurse, cafeteria worker, custodian, and paraprofessional, shall immediately report any
113 instance of bullying or retaliation he has witnessed or become aware of to the school principal or

114 to the school official identified in the bullying prevention and intervention plan as responsible for
115 receiving such reports or both. Upon receipt of such a report, the school principal or his
116 designee shall promptly investigate. If the school principal or his designee determines that
117 bullying or retaliation has occurred, he shall (i) notify the local law enforcement agency if he
118 believes that criminal charges may be pursued against the perpetrator; (ii) take appropriate
119 disciplinary action; (iii) notify the parents or guardians of the perpetrator; and (iv) notify the
120 parents or guardians of the victim, and to the extent consistent with state and federal law, notify
121 them of the action taken to prevent any further acts of bullying or retaliation.

122 (h) If an incident of bullying or retaliation involves students from more than one school
123 district, commonwealth charter school, or non-public school, the district or school first informed
124 of the bullying or retaliation shall promptly notify the appropriate administrator of other district
125 or school so that both may take appropriate action.

126 (i) A school employee, school volunteer, student, parent or guardian who, in accordance
127 with the applicable bullying prevention and intervention plan, promptly reports in good faith an
128 act of bullying or retaliation or an act which he reasonably believes is bullying or retaliation is
129 immune from a cause of action for damages arising out of the reporting itself or any failure by
130 the district or school to remedy the reported incident.

131 (j) Nothing in this section shall be construed to abridge the rights of students that are
132 protected by the First Amendment to the Constitution of the United States or by Article XVI, as
133 amended, of the Constitution of the Commonwealth of Massachusetts.

134 (k) Nothing in this section shall supersede or replace existing rights or remedies under
135 any other general or special law.

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

148 **SECTION 4.** Section 3 of chapter 71B is hereby amended by adding in line 154 after the
149 word “proficiencies;” the following: “the skills and proficiencies to avoid and respond to
150 bullying, harassment or teasing;”.

151 **SECTION 5.** Section 98C of chapter 272 is hereby amended by striking out the first
152 sentence and inserting in place thereof the following:- “Whoever publishes any false material
153 whether written, printed, electronic, televised, or broadcast with intent to maliciously promote
154 hatred of any group of persons in the commonwealth because of race, color, religion, national
155 origin, ancestry, sex, sexual orientation, or disability shall be guilty of libel and shall be punished
156 by a fine of not more than one thousand dollars or by imprisonment for not more than one year,
157 or both.”

158 **SECTION 6.** School districts, commonwealth charter schools, and non-public schools
159 must have a bullying prevention and intervention plan in compliance with this act and
160 incorporate said plan into the district code of conduct required by section 37H of chapter 71 no
161 later than December 31, 2010.

162 **SECTION 7.** The department of elementary and secondary education shall publish
163 guidelines for the implementation of social and emotional learning curricula in kindergarten
164 through grade 12 no later than June 30, 2011. For purposes of this section, social and emotional
165 learning shall mean the processes through which children acquire the knowledge, attitudes, and
166 skills they need to recognize and manage their emotions, demonstrate caring and concern for
167 others, establish positive relationships, make responsible decisions, and handle challenging
168 social situations constructively.