

Senate, No. 2404

[Senate, Wednesday, April 28, 2010 -- Report of the committee of conference on the disagreeing votes of the two branches, with reference to the House amendments to the Senate Bill relative to bullying in schools (Senate, No. 2323) (*amended by the House* by striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4571, printed as amended.]

The Commonwealth of Massachusetts



IN THE YEAR OF TWO THOUSAND AND 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
2 section 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
8 dignity.

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

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

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

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

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

27 "Approved private day or residential school", a school that accepts, through agreement
28 with a school committee, a child requiring special education pursuant to section 10 of chapter
29 71B.

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

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

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

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

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

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

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

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

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

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

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

68 (b) Bullying shall be prohibited: (i) on school grounds, property immediately adjacent to
69 school grounds, at a school-sponsored or school-related activity, function or program whether
70 on or off school grounds, at a school bus stop, on a school bus or other vehicle owned, leased or
71 used by a school district or school, or through the use of technology or an electronic device
72 owned, leased or used by a school district or school and (ii) at a location, activity, function or

73 program that is not school-related, or through the use of technology or an electronic device that
74 is not owned, leased or used by a school district or school, if the bullying creates a hostile
75 environment at school for the victim, infringes on the rights of the victim at school or materially
76 and substantially disrupts the education process or the orderly operation of a school. Nothing
77 contained herein shall require schools to staff any non-school related activities, functions, or
78 programs.

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

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

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

94 Each plan shall include, but not be limited to: (i) descriptions of and statements
95 prohibiting bullying, cyber-bullying and retaliation; (ii) clear procedures for students, staff,
96 parents, guardians and others to report bullying or retaliation; (iii) a provision that reports of
97 bullying or retaliation may be made anonymously; provided, however, that no disciplinary
98 action shall be taken against a student solely on the basis of an anonymous report; (iv) clear
99 procedures for promptly responding to and investigating reports of bullying or retaliation; (v)
100 the range of disciplinary actions that may be taken against a perpetrator for bullying or
101 retaliation; provided, however, that the disciplinary actions shall balance the need for
102 accountability with the need to teach appropriate behavior; (vi) clear procedures for restoring a
103 sense of safety for a victim and assessing that victim's needs for protection; (vii) strategies for
104 protecting from bullying or retaliation a person who reports bullying, provides information
105 during an investigation of bullying or witnesses or has reliable information about an act of
106 bullying; (viii) procedures consistent with state and federal law for promptly notifying the
107 parents or guardians of a victim and a perpetrator; provided, further, that the parents or
108 guardians of a victim shall also be notified of the action taken to prevent any further acts of
109 bullying or retaliation; and provided, further, that the procedures shall provide for immediate
110 notification pursuant to regulations promulgated under this subsection by the principal or person
111 who holds a comparable role to the local law enforcement agency when criminal charges may
112 be pursued against the perpetrator; (ix) a provision that a student who knowingly makes a false
113 accusation of bullying or retaliation shall be subject to disciplinary action; and (x) a strategy for
114 providing counseling or referral to appropriate services for perpetrators and victims and for
115 appropriate family members of said students. The plan shall afford all students the same
116 protection regardless of their status under the law.

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

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

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

144 The department shall promulgate rules and regulations on the requirements related to a
145 principal's duties under clause (viii) of the second paragraph of this subsection; provided, that
146 school districts, charter schools, approved private day or residential schools and collaborative
147 schools shall be subject to the regulations. A non-public school shall develop procedures for
148 immediate notification by the principal or person who holds a comparable role to the local law
149 enforcement agency when criminal charges may be pursued against the perpetrator.

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

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

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

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

165 (g) A member of a school staff, including, but not limited to, an educator, administrator,
166 school nurse, cafeteria worker, custodian, bus driver, athletic coach, advisor to an
167 extracurricular activity or paraprofessional, shall immediately report any instance of bullying or
168 retaliation the staff member has witnessed or become aware of to the principal or to the school
169 official identified in the plan as responsible for receiving such reports or both. Upon receipt of
170 such a report, the school principal or a designee shall promptly conduct an investigation. If the
171 school principal or a designee determines that bullying or retaliation has occurred, the school
172 principal or designee shall (i) notify the local law enforcement agency if the school principal or
173 designee believes that criminal charges may be pursued against a perpetrator; (ii) take
174 appropriate disciplinary action; (iii) notify the parents or guardians of a perpetrator; and (iv)
175 notify the parents or guardians of the victim, and to the extent consistent with state and federal
176 law, notify them of the action taken to prevent any further acts of bullying or retaliation.

177 (h) If an incident of bullying or retaliation involves students from more than one school
178 district, charter school, non-public school, approved private day or residential school or
179 collaborative school, the school district or school first informed of the bullying or retaliation
180 shall, consistent with state and federal law, promptly notify the appropriate administrator of the
181 other school district or school so that both may take appropriate action. If an incident of
182 bullying or retaliation occurs on school grounds and involves a former student under the age of

183 21 who is no longer enrolled in a local school district, charter school, non-public school,
184 approved private day or residential school or collaborative school, the school district or school
185 informed of the bullying or retaliation shall contact law enforcement consistent with the
186 provisions of clause (viii) of the second paragraph of subsection (d).

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

189 (j) The department, after consultation with the department of public health, the
190 department of mental health, the attorney general, the Massachusetts District Attorneys
191 Association and experts on bullying shall: (i) publish a model plan for school districts and
192 schools to consider when creating their plans; and (ii) compile a list of bullying prevention and
193 intervention resources, evidence-based curricula, best practices and academic-based research
194 that shall be made available to schools. The model plan shall be consistent with the behavioral
195 health and public schools framework developed by the department in accordance with section
196 19 of chapter 321 of the acts of 2008. The resources may include, but shall not be limited to,
197 print, audio, video or digital media; subscription based online services; and on-site or
198 technology-enabled professional development and training sessions. The department shall
199 biennially update the model plan and the list of the resources, curricula, best practices and
200 research and shall post them on its website.

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

203 Section 93. Every public school providing computer access to students shall have a
204 policy regarding internet safety measures to protect students from inappropriate subject matter

205 and materials that can be accessed via the internet and shall notify the parents or guardians of all
206 students attending the school of the policy. The policy and any standards and rules enforcing the
207 policy shall be prescribed by the school committee in conjunction with the superintendent or the
208 board of trustees of a commonwealth charter school.

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

212 Whenever the evaluation of the Individualized Education Program team indicates that
213 the child has a disability that affects social skills development or that the child is vulnerable to
214 bullying, harassment or teasing because of the child's disability, the Individualized Education
215 Program shall address the skills and proficiencies needed to avoid and respond to bullying,
216 harassment or teasing.

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

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

222 (a) Whoever (1) willfully and maliciously engages in a knowing pattern of conduct or
223 series of acts over a period of time directed at a specific person which seriously alarms or
224 annoys that person and would cause a reasonable person to suffer substantial emotional distress,
225 and (2) makes a threat with the intent to place the person in imminent fear of death or bodily
226 injury, shall be guilty of the crime of stalking and shall be punished by imprisonment in the

227 state prison for not more than 5 years or by a fine of not more than \$1,000, or imprisonment in
228 the house of correction for not more than 2 ½ years or by both such fine and imprisonment. The
229 conduct, acts or threats described in this subsection shall include, but not be limited to, conduct,
230 acts or threats conducted by mail or by use of a telephonic or telecommunication device or
231 electronic communication device including, but not limited to, any device that transfers signs,
232 signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in
233 part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but
234 not limited to, electronic mail, internet communications, instant messages or facsimile
235 communications.

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

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

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

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

260 Section 14A. Whoever telephones another person or contacts another person by
261 electronic communication, or causes a person to be telephoned or contacted by electronic
262 communication, repeatedly, for the sole purpose of harassing, annoying or molesting the person
263 or the person’s family, whether or not conversation ensues, or whoever telephones or contacts a
264 person repeatedly by electronic communication and uses indecent or obscene language to the
265 person, shall be punished by a fine of not more than \$500 or by imprisonment for not more than
266 3 months, or by both such a fine and imprisonment.

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

271 **SECTION 13.** The department of elementary and secondary education shall periodically
272 review school districts, charter schools, approved private day or residential schools and
273 collaborative schools to determine whether the districts and schools are in compliance with this
274 act.

275 **SECTION 14.** The department of elementary and secondary education shall issue a
276 report detailing cost-effective ways to implement the professional development requirements in
277 subsection (d) of section 37O of chapter 71 of the General Laws; provided, further, that the
278 report shall: (i) include an option available at no cost to school districts, charter schools,
279 approved private day or residential schools and collaborative schools; (ii) explore the feasibility
280 of an option for a “train-the-trainer” model, so-called, with demonstrated success and an option
281 for online professional development; and (iii) include any other options which may be cost
282 effective; provided, further, that the report shall include a cost estimate for the professional
283 development; and provided, further, that the report shall be provided to the clerks of the senate
284 and house of representatives not later than August 31, 2010; and provided, further, that the
285 clerks of the senate and house of representatives shall forward the report to the chairs of the
286 house and senate committees on ways and means and the house and senate chairs of the joint
287 committee on education.

288 **SECTION 15.** School districts, charter schools, approved private day or residential
289 schools and collaborative schools shall establish a bullying prevention and intervention plan in
290 compliance with this act and shall file the plan with the department of elementary and secondary
291 education on or before December 31, 2010; provided, however, that school districts, charter
292 schools, approved private day or residential schools and collaborative schools shall establish
293 and have in place the professional development provisions of the fourth paragraph of subsection

294 (d) of section 37O of chapter 71 of the General Laws at the start of the 2010-2011 academic
295 year. Non-public schools shall establish a bullying prevention and intervention plan in
296 compliance with this act on or before December 31, 2010.

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

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

307 **SECTION 18.** There shall be a special commission to consist of 7 members: 1 of whom
308 shall be the attorney general or a designee who shall chair the commission; 1 of whom shall be a
309 representative of the Massachusetts District Attorneys Association; 1 of whom shall be a
310 representative of the Massachusetts Chiefs of Police Association; 1 of whom shall be a
311 representative of the Massachusetts Sheriffs' Association; 1 of whom shall be a representative
312 of the Massachusetts Association of School Committees; 1 of whom shall be a representative of
313 the Massachusetts Association of School Superintendents; and 1 of whom shall be a
314 representative of the Association of Independent Schools in New England who represents a
315 Massachusetts school, for the purpose of making an investigation and study relative to bullying

316 and cyber-bullying. The commission shall review the General Laws to determine if they need
317 to be amended in order to address bullying and cyber-bullying; provided, further, that the
318 commission shall also investigate parental responsibility and liability for bullying and cyber-
319 bullying. The commission shall report to the general court the results of its investigation and
320 study and its recommendations, if any, together with drafts of legislation necessary to carry out
321 such recommendations, by filing the same with the clerks of the senate and the house of
322 representatives who shall forward the same to the chairs of the joint committee on education,
323 the chairs of the joint committee on the judiciary, and the chairs of the house and senate
324 committees on ways and means on or before June 30, 2011.