

RECOMMENDATIONS FROM THE REVIEW OF LAWS REGARDING BULLYING IN MASSACHUSETTS

REPORT TO THE
MASSACHUSETTS GENERAL COURT



COMMONWEALTH OF MASSACHUSETTS
COMMISSION TO REVIEW STATUTES RELATIVE TO
IMPLEMENTATION OF THE SCHOOL BULLYING LAW

JUNE 2011

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EXECUTIVE SUMMARY

On May 3, 2010, Governor Patrick signed into law Chapter 92 of the Acts of 2010, An Act Relative to Bullying in Schools (“The Act”). This legislation created a comprehensive, school-based approach to address the problem of bullying and cyber-bullying. To this end, the Act created a new section of the General Laws, G.L. c. 71, § 37O, that requires school districts, charter schools and certain private schools to develop bullying prevention and intervention plans containing specific requirements for curricula, training, investigation, reporting and discipline. The Act also updated several criminal statutes to account for advances in technology and to provide law enforcement with better tools to address bullying that may include criminal conduct.

In addition to these statutory additions and updates, the Act created a special Commission to “review the General Laws to determine if they need to be amended in order to address bullying and cyber-bullying,” and to “investigate parental responsibility and liability for bullying and cyber-bullying.” This Commission comprises seven members, selected from a prescribed list of organizations named in the law, with Attorney General Martha Coakley serving as chair. The additional Commission members are: Norfolk County Sheriff Michael Bellotti, Massachusetts Sheriffs’ Association; Berkshire County District Attorney David Capeless, Massachusetts District Attorneys Association; Steve Clem, Executive Director, Association of Independent Schools in New England; Michael Long, General Counsel, Massachusetts Association of School Superintendents; Chief Mary Lyons, Mattapoissett Police Department, Massachusetts Chiefs of Police Association; and Laura Salomons, Sharon School Committee, Massachusetts Association of School Committees. The statute also required the Commission to report its findings to the legislature by June 30, 2011.

The Commission began its work in June 2010 and met seven times over the past year. These meetings included two public hearings held in Boston and Springfield to collect input and testimony from the public. The Commission also invited members of the public to submit written testimony. In addition to convening public meetings and hearings and soliciting testimony, the Commission conducted a thorough review of existing criminal and civil Massachusetts General Laws that may be applied to address bullying and cyber-bullying. As a result of its work, the Commission has identified and provides to the General Court through this report the following seven recommendations to improve bullying prevention efforts in the Commonwealth.

1. The Legislature Should Establish A Mechanism For Annually Reporting Data Regarding Bullying To The Department Of Elementary And Secondary Education
2. The Legislature Should Require That Schools Make Explicit In School Anti-Bullying Plans That Certain Enumerated Categories Of Students Are Particularly Vulnerable To Bullying And Harassment
3. The Department Of Elementary And Secondary Education Should Continue To Emphasize and Publicize The Department's Problem Resolution System
4. The Legislature Should Consider Additional Funding Sources for Training Initiatives And For the Work of the Department Of Elementary And Secondary Education
5. Schools And School Districts Must Work To Foster Parental Involvement To Stop Bullying and Resolve Incidents of Bullying
6. No New or Additional Criminal Laws Are Necessary At This Time
7. The Legislature May Wish To Extend The Term Of This Commission For Two Years

It has been just over a year since the Legislature enacted the bullying prevention law, and schools are still in the first months of implementation. The Commission commends the efforts of the Legislature in crafting this statute and also commends the Department of Elementary and Secondary Education ("DESE"), school administrators, and teachers as they work to implement the new law. However, we recognize that there is still work to be done. Many school districts are continuing to refine their bullying prevention plans. The professional development and anti-bullying curricula requirements are still in the early stages of implementation. Continued support at this time is critical to ensuring that the law is successfully implemented in all school districts across the Commonwealth. The Commission hopes that this report will assist with the important mission of ensuring a safe learning environment for all students.

II. INTRODUCTION

On May 3, 2010, Governor Patrick signed into law Chapter 92 of the Acts of 2010, An Act Relative to Bullying in Schools (“The Act”), designed to create a comprehensive approach to the problem of bullying and cyber-bullying faced by students in the Commonwealth. While bullying is not a new phenomenon for parents, teachers and school personnel, new technology has made the effects and pervasiveness of bullying more acute. Historically, students could at least escape bullying when they went home at the end of the school day. The advent of the internet and omnipresence of social networking, text messages, emails and other modern means of communication have only exacerbated the problem of bullying by adding around the clock challenges for students, parents and school personnel to confront.

This new law was the result of an exhaustive effort by the Legislature to collaborate with parents, school leaders, education officials, law enforcement and advocacy groups to confront the roots of and resulting harm caused by bullying. The legislation correctly focused on a school-based approach to preventing and reducing acts of bullying and cyber-bullying. The Act created a new section of the General Laws, G.L. c. 71, § 37O, that requires school districts, charter schools and certain private schools to develop bullying prevention and intervention plans with specific requirements about what these plans must include regarding curricula, training, investigation, reporting and discipline. The legislation also updated several criminal statutes, discussed below, that may be implicated in certain bullying situations. These updates address the changing use of modern technology to harass and stalk individuals by expanding the types of electronic communications covered by the statutes to include a wider array of conduct.

In addition, the legislation created a special Commission to “review the General Laws to determine if they need to be amended in order to address bullying and cyber-bullying,” and to “investigate parental responsibility and liability for bullying and cyber-bullying.” This Commission comprises seven members, selected from a prescribed list of organizations named in the law, with Attorney General Martha Coakley serving as chair. The additional Commission members are: Norfolk County Sheriff Michael Bellotti, Massachusetts Sheriffs’ Association; Berkshire County District Attorney David Capeless, Massachusetts District Attorneys Association; Steve Clem, Executive Director, Association of Independent Schools in New England; Michael Long, General Counsel, Massachusetts Association of School Superintendents; Chief Mary Lyons, Mattapoissett Police Department, Massachusetts Chiefs of Police Association; and Laura Salomons, Sharon School Committee, Massachusetts Association of School Committees. The statute also required the Commission to report its findings to the Legislature by June 30, 2011.

Beginning June 21, 2010, the Commission met seven times to carry out its work. As part of these meetings, the Commission held two public hearings, one in Boston and one in Springfield, to collect input and testimony from the public. The Commission heard live testimony and also accepted written testimony from key stakeholders and interested members of the public. In total, the Commission received testimony from approximately fifty individuals, representing a cross section of parent groups, academics, school administrators, civil rights attorneys, students, teachers, mental health professionals and advocates.

Pursuant to its statutory charge, the Commission reviewed existing criminal and civil statutes that may be applied to address bullying and cyber-bullying. This report includes an overview of those statutes. The Commission also provides in this report seven recommendations to improve bullying prevention efforts in the Commonwealth. These recommendations include proposed changes to existing law and procedures as well as areas of the law where at this time the Commission believes no changes are needed.

III. REVIEW OF THE GENERAL LAWS RELEVANT TO BULLYING

A. CRIMINAL STATUTES

The definition of bullying included in the Act encompasses a range of conduct, some of which may rise to the level of a criminal act. While the anti-bullying legislation did not establish any new crime, it did make several important updates to existing criminal laws to provide law enforcement with the proper tools to address harassing conduct involving modern means of communication. Specifically, the legislature updated the crimes of stalking (G.L. c. 265, §43), criminal harassment (G.L. c. 265, §43), intimidation of witnesses (G.L. c. 268, §13B) and making annoying telephone calls (G.L. c. 269, §14A) to address potential loopholes by broadening the type of conduct covered by the statutes to more effectively address advances in technology.

In addition to these newly modernized statutes, the General Laws contain numerous other criminal statutes that may apply in the context of bullying. Upon reviewing the current General Laws, the Commission has identified the following additional existing statutes available to law enforcement when addressing the most severe instances of bullying. While this list is not exhaustive of every criminal statute that may be implicated in a bullying situation, the Commission has determined that these statutes may be applied to certain bullying behaviors that rise to the level of criminal prosecution.

- Violation of Harassment Prevention Order, G.L. c. 258E, §9
- Assault, G.L. c. 265, §13A
- Assault and Battery, G.L. c. 265, §13A
- Assault and Battery with a Dangerous Weapon, G.L. c. 265, §15A
- Assault with Dangerous Weapon, G.L. c. 265, §15B
- Violation of Constitutional Rights, G.L. c. 265, §37
- Assault or Battery for Purpose of Intimidation, G.L. c. 265, §39
- Identity Fraud, G.L. c. 266, §37E
- Destruction of Place of Worship etc., G.L. c. 266, §127A (schools and educational facilities are covered under the statute)
- Hazing, G.L. c. 269, §17
- Disturbance of School or Assembly, G.L. c. 272, §40
- Threats, G.L. c. 275, §2
- Dissemination of harmful material to a minor, G.L. c. 272, §28

B. CIVIL REMEDIES

Existing civil remedies may also offer recourse to the targets of bullying. Certain of the criminal statutes listed above also establish civil liability for any damage caused by a defendant. For example, under G.L. c. 266, §127A, a defendant who defaces an educational facility may be liable for fines in proportion to the amount of damage caused by the destructive act. Under G.L. c. 265, §39, the court may order a defendant found guilty of assault or battery for purpose of intimidation to pay restitution to the victim of up to three times the value of any property damage he caused. Civil statutes and common law claims may provide further remedies in certain situations. In addition, state and federal civil rights laws may apply when a student is targeted based on his or her membership in a legally protected category.

Examples of state and federal civil laws that may apply in certain bullying situations are discussed below. This is not intended to be an exhaustive list, but rather is illustrative of the civil remedies that may be available under existing law.

I. MASSACHUSETTS CIVIL STATUTES AND COMMON LAW

The Massachusetts Civil Rights Act, G.L. c. 12 § 11H-J. Under the Massachusetts Civil Rights Act (“MCRA”), the Attorney General or a private individual may seek an injunction or other equitable relief when that individual’s enjoyment or exercise of a protected right is interfered with by threats, intimidation or coercion. An MCRA injunction may include provisions ordering the perpetrator to stay away from the victim and refrain from any harassment, threats, intimidation or coercion. To prevail on a claim under the MCRA, a plaintiff must prove that (1) his exercise or enjoyment of rights secured by the Constitution or laws of either the United States or of the Commonwealth, (2) has been interfered with, or attempted to be interfered with, and (3) that the interference or attempted interference was by threats, intimidation or coercion. In Massachusetts, the right to education is secured by our state constitution. *See* Mass. Const. pt. 2, c. 5, § 2; *McDuffy v. Sec’y Executive Office of Educ.*, 415 Mass. 545, 621 (1993). Thus, the MCRA may be applied in certain instances to protect a bullying victim when a perpetrator’s threatening or intimidating behavior interferes with his or her education. Violation of a MCRA injunction is a criminal offense under G.L. c. 12, §11J.

Harassment Prevention Orders, G.L. c. 258E. This statute allows a victim of stalking, sexual assault, or harassment to seek a restraining order against the perpetrator. A Harassment Prevention Order may include provisions that the perpetrator refrain from abusing or harassing the victim, stay away from the victim’s household or workplace, and pay the victim monetary compensation for the losses suffered as a direct result of the harassment. Violation of a Harassment Prevention Order is a criminal offense under G.L. c. 258E, §9. A victim seeking an order against an individual under the age of 17 must file a complaint in the Juvenile Court in the county where the victim resides. In certain circumstances, a Harassment Prevention Order may be an appropriate tool to protect a bullying victim when the conduct at issue rises to the level of harassment as defined in the statute.

The Right to Attend School Free from Discrimination, G.L. c. 76, § 5. This statute provides that “No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, religion, national origin or sexual orientation.” Pursuant to this statute and its implementing regulations, 603 C.M.R. 26.00 et seq., school handbooks and codes of conduct must contain a nondiscrimination policy and affirm the school’s non-tolerance for harassment or discrimination, including that based upon race, color, sex, religion, national origin or sexual orientation, and must contain procedures for promptly responding to such discrimination or harassment when the school becomes aware of its occurrence.

Tort Claims. Victims of bullying may pursue traditional common law tort claims against a child who engages in bullying behavior, including assault, battery, intentional infliction of emotional distress, negligent infliction of emotional distress, or negligence. In addition, G.L. c. 76, §16 allows a student who has been unlawfully deprived of the benefit of a public education to recover in tort from her town or regional school district. Specifically this statute states, “Any pupil ... or the parent, guardian or custodian of a pupil ... who has been refused admission to or excluded from the public schools or from the advantages, privileges and courses of study of such public schools shall on application be furnished by the school committee with a written statement of the reasons therefor, and thereafter, if the refusal to admit or exclusion was unlawful, such pupil may recover from the town or... the district, in tort...” However, the Massachusetts Tort Claims Act (“MTCA”), G.L., c. 258, §10(j) may bar certain of these claims against municipal defendants when the allegation is based on failure to prevent harm by a third person rather than some affirmative act on the part of the school district or its employees. See *Parsons v. Town of Tewksbury*, 2010 WL 1544470, at *4 (Mass. Super., Jan. 19, 2010) (holding MTCA precluded a student’s negligence claim against school officials for failure to intervene in a series of bullying events resulting in physical injury); *Martin v. Town of Wilmington*, 2001 WL 915259, at *2-3 (Mass. Super., May 23, 2001) (holding MTCA precluded claim that school unlawfully deprived student of education premised on school’s alleged failure to take action to remedy harmful conduct of students). Parental liability for damage caused by the actions of their children is discussed below in Section IV.

2. FEDERAL CIVIL RIGHTS STATUTES

When a student is targeted because of his or her membership in a legally protected category, misconduct that falls within a school's anti-bullying policy may also interfere with a student's rights under federal civil rights laws. These laws include:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which prohibits discrimination based on race, color, or national origin;
- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., which prohibits discrimination based on sex;
- Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., which protects the rights of students with disabilities;
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which prohibits discrimination based on disability; and
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 et seq., which also prohibits discrimination based on disability.

Student-on-student harassment may violate a student's rights under these statutes when it creates a hostile environment wherein the conduct is so severe, pervasive, and objectively offensive that it interferes with the victim's ability to participate in or benefit from the services, activities, or opportunities offered by a school. *Davis v. Monroe County School Board*, 526 U.S. 629, 633 (1999). School districts that encourage, tolerate, fail to adequately address, or ignore such harassment may face administrative enforcement by the U.S. Department of Education, Office for Civil Rights and risk loss of federal financial assistance. In addition, the United States Supreme Court has held that a private action for injunctive relief and damages may be brought against a school district in cases of discriminatory student-on-student harassment where school employees act with deliberate indifference to known acts of harassment in school programs or activities. *Id.* A victim of such bullying may also bring a claim under 42 U.S.C. § 1983 alleging that a school district or individual acting under the color of state law deprived the student of his or her constitutional or statutory rights. See *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246 (2009) (holding Title IX did not preclude § 1983 claim against school district in case alleging failure to respond to student-on-student sexual harassment).

The U.S. Department of Education, Office for Civil Rights issued a "Dear Colleague" Letter on October 26, 2010, to clarify the relationship between bullying and discriminatory harassment and to explain how student misconduct that falls under an anti-bullying policy also may trigger responsibilities on the part of a school under federal anti-discrimination laws. The letter provides detailed examples of conduct that rises to the level of discriminatory harassment and guidance regarding steps that a school may take to remedy the resulting hostile environment. On November 3, 2010, Massachusetts Department of Elementary and Secondary Education Commissioner Mitchell Chester issued a memorandum to all superintendents and directors of charter schools, approved special education schools, and education collaboratives, reinforcing this message and urging them to closely review the letter and discuss it with their legal counsel. Both of these documents are available at <http://www.doe.mass.edu/bullying/default.html>.

IV. PARENTAL LIABILITY AND RESPONSIBILITY

As discussed above, the Legislature also asked the Commission to examine “parental responsibility and liability for bullying and cyber-bullying” acts of their children. As discussed below, there are certain circumstances in which a parent may be held liable under existing law for such conduct.

Historically, common law did not assign liability to parents for the acts of their children absent 1) an agency relationship; or 2) evidence that the parent somehow encouraged or directed the child’s conduct. See *Kerins v. Lima*, 425 Mass. 108, 110 (1997). In Massachusetts, however, courts have held that “a parent is under a duty to exercise reasonable care to prevent his minor child from inflicting injury, intentionally or negligently, on others.” *Caldwell v. Zaher*, 344 Mass. 590, 592 (1962). Parents are subject to this duty “when the parent knows or should know of the child’s propensity for the type of harmful conduct complained of, and has an opportunity to take reasonable corrective measures.” *Id.* The common law claim of “negligent supervision” that flows through these holdings established a high threshold for plaintiffs to meet to prove a defendant parent should be held liable. See *DePasquale v. Dello Russo*, 349 Mass. 655, 656-59; *Cooke v. Lopez*, 57 Mass.App.Ct. 703, 706 (2003).

The Legislature moved away from this common law rule to create vicarious liability for parents for the acts of their children through the passage of Chapter 453 of the Acts of 1969, which established G.L. c. 231, §85G. G.L. c. 231, § 85G makes parents vicariously liable for damage caused by the intentional acts of children in their custody who are over the age of 7 and under the age of 18. The statute provides for damages up to the amount of \$5,000 for personal injury, death, or property damage. It has been interpreted to apply only to the parents and not to other persons who are filling a temporary parental role such as foster parents. *Kerins v. Lima*, 425 Mass. 108, 111 (1997). Since 1969, this statute has undergone some amendment, but the main purpose of the statute, holding parents liable for the willful actions of their unemancipated children, remains unchanged. Specifically, this statute provides:

Parents of an unemancipated child under the age of eighteen and over the age of seven years shall be liable in a civil action for any willful act committed by said child which results in injury or death to another person or damage to the property of another, which shall include any damages resulting from a larceny or attempted larceny of property as set forth in section thirty A of chapter two hundred and sixty-six, damage to cemetery property or damage to any state, county or municipal property or damage as set forth in sections one hundred and twenty-six A and one hundred and twenty-six B of chapter two hundred and sixty-six. This section shall not apply to a parent who, as a result of a decree of any court of competent jurisdiction, does not have custody of such child at the time of the commission of the tort. Recovery under this section shall be limited to the amount of proved loss or damage but in no event shall it exceed five thousand dollars.

Despite relatively minor amendments made by the Legislature—adding specific conduct on the part of minors to the statute and raising the cap on damages—the strict liability for parents under this statute has not been disturbed since 1969. Most recently, the Legislature amended the statute through Chapter 60 of the Acts of 1994, to add further specificity to the types of damage the statute would address. Inherent in the relative stasis of this statute is evidence that, historically, the Legislature has been comfortable with some level of parental liability, albeit limited. Perhaps the clearest example of the limited nature of the potential liability is seen through the cap on money damages. The current \$5,000 cap on damages was a result of Chapter 442 of the Acts of 1985.

Thus, the current law in Massachusetts provides two potential causes of action that could lead to liability for the parents. A common law claim of negligent supervision may be brought in certain circumstances when a parent knew of their child’s dangerous tendency, or a propensity for reckless or vicious behavior or a particular type of harmful conduct, and failed to take appropriate action. *Id.* at 706. On the other hand, G.L. c. 231, §85G creates vicarious liability for parents for the willful actions of their child.

V. RECOMMENDATIONS

Based on the testimony and information received during the course of the Commission's work, the Commission is prepared to submit the following recommendations that address the Legislature's specific requests and offer additional suggestions that the Commission believes will be helpful in ensuring the most constructive and effective measures to combat bullying and cyber-bullying in the Commonwealth.

1. The Legislature Should Establish A Mechanism For Annually Reporting Data Regarding Bullying To The Department Of Elementary And Secondary Education

A common theme in the testimony received by the Commission was the need for a state-wide reporting mechanism to collect data from school districts regarding incidents of bullying that can be used to measure the efficacy of the Act as implemented by schools and school districts. For example, Harvey Wolkoff testified on behalf of the Anti-Defamation League regarding data collection best practices from other states that have been critical to ensuring compliance with and assessing the effectiveness of bullying prevention laws. Massachusetts State Auditor Suzanne Bump testified that annual reporting of bullying incidents to DESE would also allow school districts to modify their educational programs based on an assessment of the severity of the problem in their districts, and facilitate the sharing of best practices. The Commission heard additional testimony that the collection of data related to specific categories of bullying conduct will shed light on student populations that are particularly vulnerable, and thereby enable schools to focus their efforts accordingly. In addition, Rahsaan Hall of the Lawyers' Committee for Civil Rights testified regarding the need to monitor implementation of the bullying law to ensure that it does not result in the disproportionate discipline or expulsion of students of color.

Public school districts are already subject to certain state and federal reporting requirements. DESE currently collects data from all public school districts in the Commonwealth pursuant to G.L. c. 69 §11 as well as pursuant to state and federal laws such as the Federal Safe and Drug-Free Schools and Communities Act, the Federal Individuals with Disabilities Education Act ("IDEA"), and the Massachusetts Education Reform Act of 1993. For example, school districts are required to complete a School Safety and Discipline Report that provides accurate data about incidents such as those involving drugs or violence on school property and resulting suspensions or expulsions. The relevant privacy laws and regulations, including the Family Educational Rights and Privacy Act and Massachusetts Student Records Regulations, 603 C.M.R. 23.07(4), authorize local school officials to release this information to DESE for the purpose of auditing, evaluating, and enforcing state and federal educational requirements.

In addition, the U.S. Department of Education, Office for Civil Rights biennially collects data that now includes information regarding incidents of bullying and harassment. The Civil Rights Data Collection ("CRDC") is a mandatory survey that all school districts with more than 3,000 students and certain other school districts must complete. Approximately 125 school districts in Massachusetts responded to the survey in 2006, the last year for which data is publicly available. Three of the 44 questions on the 2009-2010 CRDC addressed harassment and bullying incidents.

These questions required schools to report: (1) the number of reported harassment or bullying allegations, (2) the number of students reported to have been harassed or bullied, and (3) the number of students disciplined for harassment or bullying. The data responsive to the first question must be listed by category to reflect the basis of the bullying or harassment (i.e., sex, race/color/national origin, or disability). The data responsive to the last two questions must reflect the sex, race/ethnicity, and disability status of the victim and the perpetrator.

The Commission recommends implementing a similar data collection process state-wide to capture information regarding reported incidents of bullying in all public school districts in Massachusetts. The data should be broken down by category including, without limitation, race/ethnicity, sex, religion, sexual orientation and disability. This information will provide a valuable tool for measuring the effectiveness of the law, tailoring bullying prevention efforts, focusing resources where they are most needed, and identifying best practices.

Specifically, the Commission recommends that the Legislature amend G.L. c. 71, §37O to include a requirement that school districts report data regarding incidents of bullying to DESE on an annual basis. DESE should be authorized to develop and implement a mechanism for collecting such data, in collaboration with the Attorney General. DESE shall then make an annual report to the Legislature and the Attorney General regarding current levels and the nature of bullying in schools and the effectiveness of school bullying prevention efforts under the law.

2. The Legislature Should Require That Schools Make Explicit In School Anti-Bullying Plans That Certain Enumerated Categories Of Students Are Particularly Vulnerable To Bullying And Harassment

The Commission heard extensive testimony that certain categories of students are more vulnerable to becoming the targets of bullying, harassment or teasing based on actual or perceived differentiating characteristics. These characteristics include, among others, race, color, religion, ancestry, national origin, sex, socioeconomic status, academic status, sexual orientation, gender identity or expression, physical appearance, mental, physical, developmental or sensory disability. Students are also often targeted based on their friendship or association with others identified by these characteristics.

For example, Stanley Griffith, President of Greater Boston Parents Families and Friends of Lesbians and Gays, Inc., submitted testimony regarding the overwhelming prevalence of bullying and harassment against students who are or are perceived to be lesbian, gay, bisexual or transgender (“LGBT”) and the resulting immediate and long-term adverse health and mental health risks. Mr. Griffith’s testimony highlighted the results of the 2009 Massachusetts Youth Risk Behavior Survey, which show that public high school students who described themselves as gay, lesbian, or bisexual were significantly more likely than their peers to report attacks, feeling unsafe in school, and suffer negative mental health consequences, including thoughts of or attempts at suicide. When compared to their peers, this group was:

- over twice as likely to have been injured or threatened with a weapon at school;
- over four times more likely to have skipped school in the past month because of feeling unsafe; and
- over four times more likely to have attempted suicide in the past year.

The Commission also heard the testimony of a brave young man who recounted his own personal experience as the victim of anti-gay bullying in his high school and how it impacted his education.

In addition, the Commission heard testimony regarding the vulnerability of students with disabilities. In 2009, Massachusetts Advocates for Children conducted an online survey of parents with children on the autism spectrum. Eighty-eight percent of responding parents reported that their child had been bullied. There is overwhelming statistical and anecdotal evidence that students who are, or are perceived to be, different from their peers are particularly at risk of becoming the targets of bullying.

The Act currently requires that ongoing professional development for school staff include research findings on bullying, including information about specific categories of students who have been shown to be particularly at risk for bullying in the school environment. This is a critical first step. Staff training regarding the historical prevalence of bullying against certain categories of students is essential to both raising awareness and recognition of bullying and appropriately responding to the behavior. Staff training is also key to fostering a safe and supportive school climate for all students.

The Commission commends DESE for encouraging school districts to address this issue further through its Model Bullying Prevention and Intervention Plan. The Model Plan includes several suggested priority statements, one of which is a statement acknowledging that members of certain student groups are more vulnerable to becoming targets of bullying and clarifying that the school district will take specific steps to create a safe, supportive environment for vulnerable populations in the school community. However, anecdotal evidence has revealed that some schools and school districts opted not to adopt this as a priority in their own bullying prevention plans.

The Commission recommends amending G.L. c. 71, §37O(d) to require schools and school districts to include in their bullying prevention plans a statement recognizing that certain enumerated categories of students are particularly vulnerable to bullying and that the school district must take steps to create a safe, supportive environment for these vulnerable populations in the school community. This statement should include a non-exclusive list of actual or perceived differentiating characteristics including, but not limited to, race, color, religion, ancestry, national origin, sex, socioeconomic status, academic status, sexual orientation, gender identity or expression, physical appearance, mental, physical, developmental or sensory disability. If the Legislature were to pass this recommendation, DESE would re-issue its model bullying plan to reflect this change, providing important guidance and assistance to local districts.

Many of these characteristics coincide with membership in a legally protected category under state or federal antidiscrimination law. As discussed above in Section III.B, bullying or harassment of students based on their race, color, sex, religion, national origin, sexual orientation or disability may trigger additional responsibilities on the part of the school or school district to remediate a hostile school environment. When an incident is reported, school officials should look beyond the label of bullying and consider whether the reported conduct may also be a violation of state or federal antidiscrimination law. For this reason, the Commission recommends further amending G.L. c. 71, §370(d) to make explicit that the law in no way alters the existing obligations of a school or school district to appropriately respond to discrimination or harassment based on a person's membership in a legally protected category under state or federal law.

This recommendation is intended to protect those students most at risk for bullying. The proposed amendment to the statute does not alter the definition of bullying set forth in G.L. c. 71, §370. However, it does make clear that bullying or harassment based on the enumerated differentiating characteristics is included within the scope of prohibited conduct. Furthermore, the amendment reinforces existing obligations under state and federal antidiscrimination law. These changes will ensure that schools and school districts recognize and appropriately respond to incidents of bullying and harassment targeting particularly vulnerable student populations, and foster a safe and supportive school climate for all students.

3. The Department Of Elementary And Secondary Education Should Continue To Emphasize and Publicize The Department's Problem Resolution System

During the course of the Commission's work, members heard from several parents who were frustrated with the response they received from their school district to bullying incidents involving their children. Frequently, these parents expressed concerns that they had no recourse when they felt that a school or school district failed to comply with the anti-bullying law. In some instances, parents did not agree with a local official's judgment in applying the law, and in other instances parents contended that local officials had not followed the law. The remedies available to parents in each of these situations will be different. In cases where the judgment of the local officials in applying the law is in question, the remedy must remain at the local level. Ultimately, the actions of school personnel rest with the superintendent who is accountable to the local school committee who, in turn, is accountable to the local voters. The Commission does not believe disturbing the role of local government is appropriate in these instances. Alternatively, in those instances where parents assert that school personnel have not followed the law when addressing a bullying situation, involvement beyond the local government may be appropriate, in the Commission's view. There are, however, existing resources available to address complaints regarding noncompliance and provide assistance to schools or school districts in fulfilling their obligations under the law.

DESE plays a crucial role in ensuring that schools under its jurisdiction are complying with applicable state and federal education law. To fulfill this obligation, DESE has established Program Quality Assurance Services ("PQA"). Within PQA is housed the Problem Resolution System ("PRS"). According to DESE's website, PRS "handles complaints that allege a school or a district is not meeting legal requirements for education." Accordingly, PRS handles a wide variety of subject areas, including bullying cases. On average, PRS handles approximately four hundred complaints

per year. Since July 1, 2010, PRS has received approximately twenty-four complaints related to bullying. Based on the testimony received by the Commission, there are likely many more parents who would utilize this resource. For this reason, the Commission recommends that DESE continue to take steps to increase awareness of the valuable services it already provides in this area.

DESE hosts an extremely informative and content-rich website that contains data, frequently asked questions, and other technical assistance for parents, educators, administrators and students on issues under DESE's jurisdiction. DESE's website contains a thorough and informative page dedicated to bullying, which provides information about the law, regulations, guidance and resources for educators and parents. It can be found at <http://www.doe.mass.edu/bullying/default.html>. We commend DESE for recently adding a link on that page to information regarding the PRS complaint process, which provides a valuable resource to parents and students. School districts could also take advantage of this resource by publicizing the work of PRS through its own websites, handbooks, bullying plans and other appropriate outreach efforts. Continuing to expand awareness of existing DESE resources through existing DESE media will help facilitate the implementation of the bullying law with minimal expenditure of resources.

4. The Legislature Should Consider Additional Funding Sources for Training Initiatives And For the Work of the Department Of Elementary And Secondary Education

The Commission heard from numerous educators and local administrators concerning the difficulty of evaluating anti-bullying programs for local school districts and measuring their success. While DESE has begun to compile a list of evidence based programs and curricula, the Commission supports DESE's continuing examination of these programs, so that local districts may look to DESE for effective programs and best practices in place across the Commonwealth. By focusing on developing and promoting best practices, DESE will help tackle the overriding concern that educators presented to the Commission: an increasing number of anti-bullying curricula without a corresponding collection of tools or data to measure their effectiveness.

As discussed above, the Commission understands the significant financial limitations that state and local governments have endured in recent years and may continue to endure for the next several years. Recognizing the difficulty of this request, the Commission recommends that DESE receive additional funding from the Legislature for the Act's requirements, particularly to foster appropriate training initiatives. By providing this valuable information to school districts, DESE will help promote effective governance in the district and effective training for teachers and administrators dealing with students on a daily basis.

5. Schools And School Districts Must Work To Foster Parental Involvement To Stop Bullying and Resolve Incidents of Bullying

As the Commission examined the issue of parental liability and responsibility, the members heard testimony by Dr. Elizabeth Englander of the Massachusetts Aggression Reduction Center at Bridgewater State University, a leading authority on bullying prevention. During her testimony, Dr. Englander discussed the potential consequences of enhancing liability for parents of a child who engages in bullying behavior: "Punishing parents of bullies may motivate a few neglecters;

but if admitting your child is a bully means you may be liable, then you can bet that many parents will never admit that their child is a bully. We may actually lose parents who otherwise would have taken responsibility.” Most parents of a child who engages in bullying behavior, according to Dr. Englander, are motivated to help their child so that he or she does not harm other students.

As discussed above in Section IV, there are certain limited situations in which a parent may be held liable for harm caused by their child’s conduct under existing law. By enhancing the liability that parents may face for incidents of bullying, educators may lose a key partner in preventing and stopping those incidents. We believe that by creating new liability for parents, legislators, law enforcement and the courts may actually exacerbate the problem by incentivizing an adversarial process.

Rather than enhancing the potential punishment that parents may face, schools and school districts should work to enhance parental involvement in disciplinary procedures and remedies for a child who engages in bullying behavior. Parents may feel helpless when dealing with a problem child, and school officials and teachers may be best situated to provide appropriate resources for both a child who engages in bullying behavior and that child’s parents. At the state and local level, education officials should seek to share and foster best practices in this area to avoid the problems that Dr. Englander described above.

6. No New or Additional Criminal Laws Are Necessary At This Time

The updates to the criminal laws contained within the Act, coupled with the existing criminal statutes outlined above in Section III.A, provide a solid framework for local police and prosecutors to address those bullying cases that rise to the level of criminal conduct. At no point during the public hearings did the Commission receive any testimony concerning inadequacies of the existing criminal statutes or that recommended additional criminal laws. As the list above indicates, the existing criminal statutes cover a variety of possible actions sufficient to address most bullying and cyber-bullying incidents. Thus, the Commission does not believe additional changes to our criminal laws are necessary at this time. Bullying covers a wide spectrum of conduct, only the most extreme of which is appropriate for criminal prosecution. In those severe instances, the Commission believes that existing criminal laws are sufficient to address bullying conduct and that no further criminal laws or creating a crime of “bullying” is needed. This conclusion stems from the unanimous input received during the Commission’s public hearings—a consensus shared by the Massachusetts District Attorneys Association and the education community. Accordingly, the Commission believes that the Commonwealth’s existing criminal laws provide the most appropriate protection possible to students.

7. The Legislature May Wish To Extend The Term Of This Commission For Two Years

It has been just over a year since the Legislature enacted the bullying prevention law, and schools are still in the first months of implementation. The Commission commends the efforts of DESE, school administrators, and teachers as they work to implement the new law. However, we recognize that there is still work to be done. Many school districts are continuing to refine their bullying prevention plans. The professional development and anti-bullying curricula requirements are still in the early stages of implementation. Continued support at this time is critical to ensuring that the law is successfully implemented in all school districts across the Commonwealth.

We propose that the Legislature extend the term of this Commission for at least two years to allow us to continue to oversee implementation of the law and our recommendations. The Commission would be expected to file a similar report in 2012 and 2013. The Commission can serve as a resource in the continued development and refinement of best practices in bullying prevention and intervention. We understand that it will take a community-wide effort to address bullying and are committed to bringing together resources from the various stakeholders represented on the Commission and the public to support the work being done in our schools, and to provide the public with a statewide mechanism to promote transparency as well as future recommendations. We ask that the Commission be permitted to continue our work to prevent bullying and ensure a safe and supportive school climate for all students.

VI. CONCLUSION

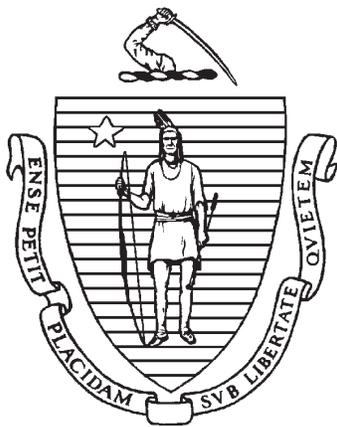
Properly addressing the challenge of bullying and cyber-bullying requires the efforts of parents, educators and law enforcement. This report outlines the tools that currently exist to assist students, as well as recommendations to improve the resources available to educators and law enforcement. The Commission looks forward to working with the Legislature to implement these recommendations to build upon the already strong foundation the Legislature created through the Act.

VII. APPENDIX

There were certain areas of the Commission's report that the Massachusetts Association of School Superintendents (M.A.S.S.) believed warranted further discussion to express this organization's point of view. The following addendum sets forth these views.

“The Massachusetts Association of School Superintendents believes expanding schools' responsibilities for bullying will protect vulnerable students and increase opportunities for learning. An increase in parental supervision of technology in the home will also help reduce cyber-bullying, over which schools have little or no control. The vast majority of a child's time is spent outside of school under the supervision of the parent or guardian. As a result, M.A.S.S. believes existing law relative to parental responsibility for intentional acts of their children should be specifically amended to include parental responsibility for cyber-bullying perpetrated by children. Also, given that the limits on parents' civil liability for the deliberate acts of their child under G.L. c. 231, §85G has not been increased since 1985, the limits on parental liability under Section 85G should be increased to \$10,000.00.”

“M.A.S.S. has historically opposed as overly broad and burdensome numerous legislative and bureaucratic initiatives mandating reports and data collection on a number of issues. This general opposition is based on a lack of capacity within schools, a lack of clear and specific formatting instructions, and a lack of time, as well as a sense that the data collected is often not analyzed or used to assist schools in a meaningful way. M.A.S.S. recognizes the importance of identifying the scope of the bullying problem in schools and notes a recent anecdotal comment at the Bullying Commission indicating that the Attorney General's Office has received 'a few dozen' complaints on bullying during the 2010-2011 school year. There are about 900,000 public school pupils in Massachusetts. Given M.A.S.S.'s historical concerns about data collection and anecdotal information received from M.A.S.S. members and others to date, at this time M.A.S.S. reserves judgment on a mandatory data collection system for bullying. When the details of the proposed plan are publicized, discussed, and analyzed in terms of the specificity sought, the requested format of information, and plans on implementation for projected use, M.A.S.S. will reconsider its reservations.”



COMMONWEALTH OF MASSACHUSETTS

COMMISSION TO REVIEW STATUTES RELATIVE
TO IMPLEMENTATION OF THE SCHOOL BULLYING LAW