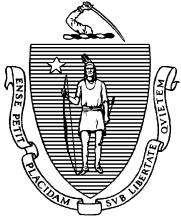


Senate, No. 2323, printed as amended

[Senate, March 11, 2010 – Text of Senate Bill, No. 2313, as amended by the Senate.]

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

7 **SECTION 2.** The first paragraph of section 37H of chapter 71 of the General Laws, as
8 so appearing, is hereby amended by inserting after the third sentence the following sentence:-
9 The policies shall also prohibit bullying as defined in section 37O and shall include the bullying
10 prevention and intervention plan required by section 37O.

11 **SECTION 3.** The third paragraph of said section 37H of said chapter 71, as so
12 appearing, is amended by inserting after the first sentence the following sentence:- The student
13 handbook shall include an age-appropriate summary of the student-related sections of the
14 bullying prevention and intervention plan required by section 37O.

15 **SECTION 4.** Said chapter 71 is hereby further amended by inserting after section 37N
16 the following section:-

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

19 “Bullying”, the severe or repeated use by one or more students of a written, verbal, or
20 electronic expression, or a physical act or gesture, or any combination thereof, directed at
21 another student that has the effect of: (i) causing physical or emotional harm to the other student
22 or damage to the other student’s property; (ii) placing the other student in reasonable fear of
23 harm to himself or of damage to his property; (iii) creating a hostile environment at school for
24 the other student; (iv) infringing on the rights of the other student at school; or (v) materially
25 and substantially disrupting the education process or the orderly operation of a school.

26 “Cyber-bullying”, bullying through the use of technology or any electronic means. The
27 use of bullying in this section shall include cyber-bullying.

28 “Hostile environment”, a situation in which bullying causes the school environment to
29 be permeated with intimidation, ridicule or insult that is sufficiently severe or pervasive to alter
30 the conditions of the student’s education and create an abusive school environment.

31 “Perpetrator”, the student who engages in bullying or retaliation.

32 “School grounds”, property on which a school building or facility is located or property
33 that is owned, leased or used by a school district, commonwealth charter school or non-public
34 school for a school-sponsored activity, function, program, instruction or training.

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

36 (b) Bullying is prohibited on school grounds, property immediately adjacent to school
37 grounds, at a school-sponsored or school-related activity, function or program whether on or off
38 school grounds, at a school bus stop, on a school bus or other vehicle owned, leased or used by
39 a district or school, or through the use of technology or an electronic device owned, leased or
40 used by a school district, commonwealth charter school or non-public school.

41 Bullying is also prohibited both (i) at a location, activity, function or program that is not
42 school-related and (ii) through the use of technology or an electronic device that is not owned,
43 leased or used by a district or school, if the bullying creates a hostile environment at school for
44 the victim, infringes on the rights of the victim at school, or materially and substantially disrupts
45 the education process or the orderly operation of a school.

46 Retaliation against a person who reports bullying, who provides information during an
47 investigation of bullying, or who is a witness to or has reliable information about bullying is
48 prohibited.

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

52 (d) Each school district, commonwealth charter school and non-public school shall
53 develop and update a bullying prevention and intervention plan in consultation with teachers,

54 school staff, professional support personnel, school volunteers, administrators, community
55 representatives, local law enforcement agencies, students, parents and guardians. The
56 consultation shall at a minimum include notice and a public comment period. The bullying
57 prevention and intervention plan shall be updated at least biennially.

58 Each bullying prevention and intervention plan at a minimum shall: (i) include
59 descriptions of and statements prohibiting bullying, cyber-bullying and retaliation; (ii) establish
60 clear procedures for students, staff, parents, guardians, and others to report bullying or
61 retaliation; (iii) include a provision that reports of bullying or retaliation may be made
62 anonymously; provided, however, that no disciplinary action shall be taken against a student
63 solely on the basis of an anonymous report; (iv) establish clear procedures for promptly
64 responding to and investigating reports of bullying or retaliation; (v) identify the range of
65 disciplinary actions that may be taken against a perpetrator for bullying or retaliation; (vi)
66 establish clear procedures for restoring a sense of safety for a victim and assessing that student's
67 needs for protection; (vii) establish strategies for protecting from bullying or retaliation a person
68 who reports bullying, provides information during an investigation of bullying, or is witness to
69 or has reliable information about an act of bullying; (viii) establish procedures consistent with
70 state and federal law for promptly notifying the parents or guardians of a victim and a
71 perpetrator; provided, however, that the parents or guardians of a victim shall also be notified of
72 the action taken to prevent any further acts of bullying; and provided further that said
73 procedures must provide for immediate notification to the local law enforcement agency where
74 criminal charges may be pursued against the perpetrator; (ix) include a provision that a student
75 who knowingly makes a false accusation of bullying shall be subject to disciplinary action; and

76 (x) include a strategy for providing counseling or referral to appropriate services for perpetrators
77 and victims and for appropriate family members of said students.

78 A school district, commonwealth charter school or a non-public school may establish
79 separate discrimination or harassment policies that include categories of students. Nothing in
80 this section shall prevent a school district, commonwealth charter school or non-public school
81 from remediating any discrimination or harassment based on a person's membership in a legally
82 protected category under local, state or federal law.

83 The bullying prevention and intervention plan may include ongoing professional
84 development to build the skills of all members of school staff, including but not limited to
85 educators, administrators, school nurses, cafeteria workers, custodians, and paraprofessionals, to
86 prevent, identify and respond to bullying. The content of such professional development shall
87 include, but not be limited to: (i) developmentally appropriate strategies to prevent bullying
88 incidents; (ii) developmentally appropriate strategies for immediate, effective interventions to
89 stop bullying incidents; (iii) information regarding the complex interaction and power
90 differential that can take place between and among the perpetrator, the victim, and any
91 witnesses to the bullying; (iv) research findings on bullying, including information about
92 specific categories of students who have been shown to be particularly at risk for bullying in the
93 school environment; (v) information on the incidence and nature of cyber-bullying; and (vi)
94 internet safety issues as they relate to cyber-bullying.

95 The bullying prevention and intervention plan shall include provisions for educating
96 parents and guardians about the bullying prevention curriculum of the district or school; how
97 parents and guardians can reinforce the curriculum at home and support the district or school

98 prevention and intervention plan; the dynamics of bullying; and online safety and cyber-
99 bullying.

100 (e)(1) Each school district, commonwealth charter school and non-public school shall
101 provide to students and their parents or guardians, in age-appropriate terms and in the languages
102 which are most predominant among the students, parents and guardians, annual written notice of
103 the relevant sections of the bullying prevention and intervention plan.

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

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

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

114 (g) A member of a school staff, including, but not limited to, an educator, administrator,
115 school nurse, cafeteria worker, custodian or paraprofessional, shall immediately report any
116 instance of bullying or retaliation the staff member has witnessed or become aware of to the
117 school principal or to the school official identified in the bullying prevention and intervention
118 plan as responsible for receiving such reports or both. Upon receipt of such a report, the school
119 principal or a designee shall promptly conduct an investigation. If the school principal or a

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

126 (h) If an incident of bullying or retaliation involves students from more than one school
127 district, commonwealth charter school or non-public school, the district or school first informed
128 of the bullying or retaliation shall promptly notify the appropriate administrator of other district
129 or school so that both may take appropriate action; provided however that the notification shall
130 be in compliance with 20 U.S.C. section 1232g.

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

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

143 list of these resources, curricula, best practices and research and shall ensure that they are posted
144 on its website.

145 **Section 4A:** The sixth paragraph of section 3 of chapter 71B of the General Laws, as appearing
146 in the 2008 Official Edition, is hereby amended by inserting after the third sentence the
147 following sentence:-

148 “Whenever the evaluation indicates that a child has a developmental or mental disability
149 that requires an Individualized Education Program, this program shall address the skills and
150 proficiencies needed to avoid and respond to bullying, harassment or teasing.”

151 **SECTION 5.** Section 3 of said chapter 71B of the General Laws, as appearing in the
152 2008 Official Edition, is hereby amended by inserting after the word “proficiencies”, in line
153 154, the following words:- ;the skills and proficiencies needed to avoid and respond to
154 bullying, harassment or teasing.

155 **SECTION 5A.** Section 43 of chapter 265 of the General Laws, as appearing in the 2008
156 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof
157 the following subsection:-

158 (a) Whoever (1) willfully and maliciously engages in a knowing pattern of conduct or series of
159 acts over a period of time directed at a specific person which seriously alarms or annoys that
160 person and would cause a reasonable person to suffer substantial emotional distress, and (2)
161 makes a threat with the intent to place the person in imminent fear of death or bodily injury,
162 shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison
163 for not more than 5 years or by a fine of not more than \$1,000, or imprisonment in the house of
164 correction for not more than 2 and one-half years or both. Such conduct, acts or threats
165 described in this subsection shall include, but not be limited to, conduct, acts or threats

166 conducted by mail or by use of a telephonic or telecommunication device or electronic
167 communication device including, but not limited to, any device that transfers signs, signals,
168 writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a
169 wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not
170 limited to, electronic mail, internet communications, instant messages or facsimile
171 communications.

172 **SECTION 5B.** Section 43A of said chapter 265, as so appearing, is hereby amended by
173 striking out paragraph (a) and inserting in place thereof the following paragraph:-

174 (a) Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts
175 over a period of time directed at a specific person, which seriously alarms that person and would
176 cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of
177 criminal harassment and shall be punished by imprisonment in a house of correction for not
178 more than 2 and one-half years or by a fine of not more than \$1,000, or by both such fine and
179 imprisonment. Such conduct or acts described in this paragraph shall include, but not be limited
180 to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device or
181 electronic communication device including, but not limited to, any device that transfers signs,
182 signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in
183 part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but
184 not limited to, electronic mail, internet communications, instant messages or facsimile
185 communications.

186 **SECTION 5C.** Chapter 269 of the General Laws is hereby amended by striking out
187 section 14A and inserting in place thereof the following section:-

188 Section 14A. Whoever telephones another person or contacts another person by electronic
189 communication, or causes a person to be telephoned or contacted by electronic communication,
190 repeatedly, for the sole purpose of harassing, annoying or molesting the person or the person's
191 family, whether or not conversation ensues, or whoever telephones or contacts a person
192 repeatedly by electronic communication and uses indecent or obscene language to the person,
193 shall be punished by a fine of not more than \$500 or by imprisonment for not more than 3
194 months, or both.

195 **SECTION 6.** School districts, commonwealth charter schools, and non-public schools
196 shall have a bullying prevention and intervention plan in compliance with this act and
197 incorporate the plan into the district code of conduct required by section 37H of chapter 71 of
198 the General Laws and shall file the plan with the department of elementary and secondary
199 education not later than December 31, 2010.

200 **SECTION 7.** The department of elementary and secondary education shall publish
201 guidelines for the implementation of social and emotional learning curricula in kindergarten
202 through grade 12 not later than June 30, 2011. For purposes of this section, social and
203 emotional learning shall mean the processes through which children acquire the knowledge,
204 attitudes, and skills they need to recognize and manage their emotions, demonstrate caring and
205 concern for others, establish positive relationships, make responsible decisions, and handle
206 challenging social situations constructively.

207 **SECTION 8.** The department of elementary and secondary education shall periodically
208 review school district programs, activities and services to determine whether the school boards
209 are in compliance with this act.

210 **SECTION 9.** There shall be a special commission for the purpose of making an
211 investigation and study relative to bullying and cyber-bullying. The commission shall consist
212 of 7 members: 1 of whom shall be the attorney general, or a designee, who shall chair the
213 commission; 1 of whom shall be a representative of the Massachusetts District Attorneys
214 Association; 1 of whom shall be a representative of the Massachusetts Chiefs of Police
215 Association; 1 of whom shall be a representative of the Massachusetts Sheriffs' Association; 1
216 of whom shall be a representative of the Massachusetts Association of School Committees; 1 of
217 whom shall be a representative of the Massachusetts Association of School Superintendents;
218 and 1 of whom shall be a representative of the Massachusetts Association of Secondary School
219 Administrators. The commission shall review criminal laws to determine if they need to be
220 amended in order to address bullying and cyber-bullying; provided further that the commission
221 shall also investigate parental responsibility and liability for bullying and cyber-bullying. The
222 commission shall also investigate and study the efficacy of including in the general laws
223 specific categories or methods of bullying, specific classes of individuals for whom anti-
224 bullying polices should be in place, as well as the efficacy of putting in place a mandated report
225 system for bullying similar to the system currently established in section 51A of chapter 119 of
226 the General Laws. The commission shall report to the general court the results of its
227 investigation and study and its recommendations, if any, together with drafts of legislation
228 necessary to carry out such recommendations, by filing the same with the clerks of the senate
229 and the house of representatives who shall forward the same to the chairs of the joint committee
230 on education, the chairs of the joint committee on the judiciary, the chairs of the joint committee
231 on public safety and homeland security, the chairs of the joint committee on children and

232 families and the chairs of the house and senate committees on ways and means not later than
233 January 1, 2011.