

March 18, 2010.

HOUSE No. 4571

The Commonwealth of Massachusetts

Text of an amendment recommended by the committee on Ways and Means (House, No. 4567), as changed by the committee on Bills in the Third Reading and as amended by the House to the Senate Bill relative to bullying in schools. March 18, 2010.

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In the Year Two Thousand an Ten

Text of an amendment recommended by the committee on Ways and Means (House, No. 4567), as changed by the committee on Bills in the Third Reading and as amended by the House to the Senate Bill relative to bullying in schools:

By striking out all after the enacting clause and inserting in place thereof the following:—

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 and
3 inserting in place thereof the following sentence:- The standards may provide for instruction in
4 the issues of nutrition, physical education, AIDS education, violence prevention, including teen
5 dating violence, bullying prevention, conflict resolution and drug, alcohol and tobacco abuse
6 prevention.

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

11 SECTION 2A. Designate the 4th Wednesday in January as ‘No Name Calling Day’ in the Commonwealth
12 of Massachusetts. This day shall be set aside annually to educate the public as to the devastating effects
13 of verbal bullying. Encouraging positive dialogue and pledging not to name call on this designated day
14 reaffirms the commitment of the citizens of the Commonwealth to basic human rights and dignity while
15 respecting differences and promoting tolerance.

16 SECTION 3. The third paragraph of said section 37H of said chapter 71, as so appearing, is
17 hereby amended by inserting after the first sentence the following sentence:- The student

18 handbook shall include an age appropriate summary of the student related sections of the
19 bullying prevention and intervention plan required by section 37O.

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

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

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

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

33 "Charter school", commonwealth charter schools and Horace Mann charter schools.

34 "Cyber bullying", bullying through the use of technology or any electronic communication,
35 which shall include, but shall not be limited to, any transfer of signs, signals, writing, images,
36 sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio,
37 electromagnetic, photo electronic or photo optical system, including, but not limited to,
38 electronic mail, internet communications, instant messages or facsimile communications. Cyber-
39 bullying shall also include creating or promoting a web page or blog in which the creator assumes the
40 identity of another person and in which an individual(s) knowingly impersonates another person as the
41 author of posted content or messages contained therein.

42 "Collaborative school", a school operated by an educational collaborative established pursuant to section
43 4E of chapter 40.

44 "Department", the department of elementary and secondary education.

45 “Hostile environment”, where bullying causes the school environment to be permeated with
46 intimidation, ridicule or insult that is sufficiently severe or pervasive to alter the conditions of the
47 student’s education.

48 “Plan”, a bullying prevention and invention plan established pursuant to subsection (d).

49 “Perpetrator”, a student or students who engage in bullying or retaliation.

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

52 “School grounds”, property on which a school building or facility is located or property that is
53 owned, leased or used by a school district, charter school, or an approved private day or residential
54 school or collaborative school with whom a school committee has provided or arranged to provide
55 alternative or special education services for a school-sponsored activity, function, program,
56 instruction or training.

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

58 (b) Bullying shall be prohibited: (i) on school grounds, property immediately adjacent to school
59 grounds, at a school sponsored or school related activity, function or program whether on or off
60 school grounds, at a school bus stop, on a school bus or other vehicle owned, leased or used by a
61 district or school, or through the use of technology or an electronic device owned, leased or used
62 by a school district, charter school, or an approved private day or residential school or collaborative
63 school with whom a school committee has provided or arranged to provide alternative or special
64 education services; and (ii) at a location, activity, function or program that is not school-related, or
65 through the use of technology or an electronic device that is not owned, leased or used by a
66 district or school, if the bullying creates a hostile environment at school for the victim, infringes
67 on the rights of the victim at school or materially and substantially disrupts the education process
68 or the orderly operation of a school.

69 Retaliation against a person who reports bullying, provides information during an
70 investigation of bullying, or witnesses or has reliable information about bullying shall be
71 prohibited. Nothing contained herein shall require school districts to staff any non-school related
72 activities, functions, or programs.

73 (c) Each school district, charter school, and approved private day or residential schools or collaborative
74 schools with whom a school committee has provided or arranged to provide alternative or special
75 education services shall provide age appropriate instruction on bullying prevention in each grade
76 that is incorporated into the curriculum of the district or school. The curriculum shall be evidence
77 based.

78 (d) Each school district, charter school, and approved private day or residential schools or collaborative
79 schools with whom a school committee has provided or arranged to provide alternative or special
80 education services shall develop, adhere and update a plan to address bullying prevention and
81 intervention in consultation with teachers, school staff, professional support personnel, school
82 volunteers, administrators, community representatives, local law enforcement agencies, students,
83 parents and guardians and district attorney's office. The consultation shall include, but not be
84 limited to, notice and a public comment period. The plan shall be updated at least biennially.

85 Each plan shall include, but not be limited to: (i) descriptions of and statements
86 prohibiting bullying, cyber-bullying and retaliation; (ii) clear procedures for students, staff,
87 parents, guardians and others to report bullying or retaliation; (iii) a provision that reports of
88 bullying or retaliation may be made anonymously; provided, however, that no disciplinary action
89 shall be taken against a student solely on the basis of an anonymous report; (iv) clear procedures
90 for promptly responding to and investigating reports of bullying or retaliation; (v) the range of
91 disciplinary actions that may be taken against a perpetrator for bullying or retaliation which
92 balance the need for accountability with the need to teach appropriate behavior; (vi) clear
93 procedures for restoring a sense of safety for a victim and assessing that student's needs for
94 protection; (vii) strategies for protecting a person from bullying or retaliation who reports
95 bullying, provides information during an investigation of bullying or witnesses or has reliable
96 information about an act of bullying; (viii) procedures consistent with state and federal law for
97 promptly notifying the parents or guardians of a victim and a perpetrator; provided, further, that
98 the parents or guardians of a victim shall also be notified of the action taken to prevent any
99 further acts of bullying; and provided, further, that procedures shall provide for immediate
100 notification by the principal or person who holds a comparable role, pursuant to regulations promulgated
101 under subsection (j), to the local law enforcement agency where criminal activity is involved and
102 criminal charges may be pursued against the perpetrator; (ix) a provision that a student who

103 knowingly makes a false accusation of bullying shall be subject to disciplinary action; and (x) a
104 strategy for providing counseling or referral to appropriate services for perpetrators and victims
105 and for appropriate family members of said students. The bullying prevention and intervention plan
106 shall afford all students the same protection regardless of their status under the law.

107 A school district, charter school, or an approved private day or residential school or collaborative
108 school with whom a school committee has provided or arranged to provide alternative or special
109 education services may establish separate discrimination or harassment policies that include
110 categories of students. Nothing in this section shall prevent a school district, charter school, or an
111 approved private day or residential school or collaborative school with whom a school committee has
112 provided or arranged to provide alternative or special education services from remediating any
113 discrimination or harassment based on a person's membership in a legally protected category
114 under local, state or federal law.

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

129 The plan shall include provisions for informing parents and guardians about the bullying
130 prevention curriculum of the district or school and shall include, but not be limited to: (i) how

131 parents and guardians can reinforce the curriculum at home and support the district or school
132 plan; (ii) the dynamics of bullying; and (iii) online safety and cyber-bullying.

133 (e)(1) Each school district, charter school, and approved private day or residential schools or
134 collaborative schools with whom a school committee has provided or arranged to provide alternative or
135 special education services shall provide to students and parents or guardians, in age appropriate
136 terms and in the languages which are most prevalent among the students, parents or guardians,
137 annual written notice of the relevant student related sections of the plan.

138 (2) Each school district, charter school, and approved private day or residential schools or collaborative
139 schools with whom a school committee has provided or arranged to provide alternative or special
140 education services shall provide to all school staff annual written notice of the plan. The faculty
141 and staff at each school shall be trained annually on the plan applicable to the school. Relevant
142 sections of the plan relating to the duties of faculty and staff shall be included in a district or
143 school employee handbook.

144 (3) The plan shall be posted on the website of each school district, charter school, and approved
145 private day or residential schools or collaborative schools with whom a school committee has provided or
146 arranged to provide alternative or special education services.

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

149 (g) If an incident of bullying or retaliation involves students from more than one school district,
150 charter school, or an approved private day or residential school or collaborative school with whom a
151 school committee has provided or arranged to provide alternative or special education services, the
152 district or school first informed of the bullying or retaliation shall, consistent with state and
153 federal law, promptly notify the appropriate administrator of the other district or school so that
154 both may take appropriate action. If an incident of bullying or retaliation involves a former student no
155 longer enrolled in a local school district, commonwealth charter school, approved private day or
156 residential school or collaborative school, the district or school informed of the bullying or retaliation
157 shall carry out its duties relative to the incident consistent with the provisions of clause (viii) of the
158 second paragraph of subsection (d).

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

161 (i) The department, after consultation with the department of public health, the department of
162 mental health, the attorney general and experts on bullying shall: (i) publish a model plan for
163 school districts, charter schools, and approved private day or residential schools or collaborative schools
164 with whom a school committee has provided or arranged to provide alternative or special education
165 services to consider when creating their plans; and (ii) compile a list of bullying prevention and
166 intervention resources, evidence based curricula, best practices and academic-based research that
167 shall be made available to schools. Said model bullying prevention and intervention plan shall be
168 consistent with and organized according to the schools and behavioral health framework developed by the
169 department of elementary and secondary education in accordance with Section 19 of Chapter 321 of the
170 acts of 2008. These resources may include, print, audio, video or digital media; subscription based
171 online services; and on site or technology enabled professional development and training
172 sessions. The department shall biennially update the model plan and the list of the resources,
173 curricula, best practices and research and shall post them on its website.

174 (j) The department shall by September 30, 2010 promulgate rules and regulations necessary to
175 carry out the purposes of this section; provided, further, that the regulations shall include requirements
176 related to a principal's duties under clause (viii) of the second paragraph of subsection (d); provided,
177 further, that the regulations shall include requirements and standards for staff members to report
178 instances of bullying; provided further that such regulations shall require a member of a school staff,
179 including but not limited to an educator, administrator, school nurse, cafeteria worker, custodian, bus
180 driver and paraprofessional, to immediately report any instance of bullying or retaliation he has witnessed
181 or become aware of to the school principal or to the school official identified in the bullying prevention
182 and intervention plan as responsible for receiving such reports or both.

183 SECTION 5. Section 3 of chapter 71B of the General Laws, as appearing in the 2008 Official
184 Edition, is hereby amended by inserting after the word "proficiencies", in line 154, the following
185 words:- ; the skills and proficiencies necessary to avoid and respond to bullying, harassment or
186 teasing.

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

189 (a) Whoever (1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a
190 period of time directed at a specific person which seriously alarms or annoys that person and would cause
191 a reasonable person to suffer substantial emotional distress, and (2) makes a threat with the intent to place
192 the person in imminent fear of death or bodily injury, shall be guilty of the crime of stalking and shall be
193 punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than
194 \$1,000, or imprisonment in the house of correction for not more than 2 ½ years or both. Such conduct,
195 acts or threats described in this subsection shall include, but not be limited to, conduct, acts or threats
196 conducted by mail or by use of a telephonic or telecommunication device or electronic communication
197 device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data,
198 or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-
199 electronic or photo-optical system, including, but not limited to, electronic mail, internet communications,
200 instant messages or facsimile communications.

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

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

214 SECTION 5C Section 13B of Chapter 268 of the General Laws is hereby amended by inserting in after
215 the first sentence in subsection 3 the following paragraph:-

216 Such conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts
217 conducted by mail or by use of a telephonic or telecommunication device or electronic communication
218 device including but not limited to any device that transfers signs, signals, writing, images, sounds, data,
219 or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-

220 electronic or photo-optical system, including, but not limited to, electronic mail, internet
221 communications, instant messages or facsimile communications.

222 SECTION 5D. Chapter 269 of the General Laws is hereby amended by striking out section 14A and
223 inserting in place thereof the following section:-

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

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

233 SECTION 5E. The sixth paragraph of section 3 of chapter 71B of the General Laws, as appearing in the
234 2008 Official Edition, is hereby amended by inserting after the third sentence the following sentence:-

235 Whenever the evaluation indicates that the child has a disability that affects social skills development, the
236 Individual Education Program (IEP), the program shall address the skills and proficiencies needed to
237 avoid and respond to bullying, harassment or teasing.

238 SECTION 6. School districts, charter schools, and approved private day or residential schools or
239 collaborative schools with whom a school committee has provided or arranged to provide alternative or
240 special education services shall establish a bullying prevention and intervention plan in compliance
241 with this act and shall file the plan with the department of elementary and secondary education
242 on or before December 31, 2010.

243 SECTION 7. The department of elementary and secondary education shall publish guidelines
244 for the implementation of social and emotional learning curricula in kindergarten through grade
245 12 on or before June 30, 2011. The department of elementary and secondary school education shall
246 also publish guidelines for the implementation of social emotional learning for afterschool sports
247 programming. The guidelines shall be updated biennially. For purposes of this section, social and
248 emotional learning shall mean the processes which children acquire the knowledge, attitudes and
249 skills necessary to recognize and manage their emotions, demonstrate caring and concern for

250 others, establish positive relationships, make responsible decisions and constructively handle
251 challenging social situations.

252 SECTION 8. The department of elementary and secondary education shall periodically review
253 school district, charter school, and approved private day or residential schools or collaborative schools
254 with whom a school committee has provided or arranged to provide alternative or special education
255 services programs, activities and services to determine whether the school committees and
256 schools are in compliance with this act.”.

257 SECTION 9. Chapter 71 of the General Laws, as most recently amended by chapter 27 of the acts of
258 2009, is hereby amended by inserting after section 91, the following new section: -

259 Section 92. Every public school providing computer access to students shall have a policy regarding
260 internet safety measures and shall notify the parents or guardians of all students attending the school of
261 the policy. Establishing the policy and any standards and rules enforcing the policy shall be prescribed by
262 the school committee in conjunction with the superintendent or the board of trustees of a commonwealth
263 charter school.

264 SECTION 10. The department of elementary and secondary education shall issue a report detailing cost
265 effective ways to implement the professional development requirements in subsection (d) of section 70O
266 of chapter 71 of the General Laws; provided, further, that the report shall: (i) include an option available
267 at no cost to school districts, charter schools, approved private day or residential schools and collaborative
268 schools, (ii) explore the feasibility of an option for a train the trainer model with demonstrated success
269 and online professional development, and (iii) include any other options which may be cost effective;
270 provided, further, that the report shall include a cost estimate for the professional development; and
271 provided, further, that the report shall be provided to the clerks of the senate and house of representatives
272 who shall forward the same to the chairs of the house and senate committees on ways and means and the
273 house and senate chairs of the joint committee on education not later than August 31, 2010.

274 SECTION 11. The fourth paragraph of subsection (d) of section 70O of Chapter 71 of the General Laws
275 shall take effect for the 2011-2012 academic year.