TESTIMONY OF ATTORNEY RICHARD W. COLE,
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TO *"MASSACHUSETTS COMMISSION TO REVIEW STATUTES RELATIVE TO IMPLEMENTATION OF THE SCHOOL BULLYING LAW"*

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Attorney General Coakley and other distinguished Commission members, my name is Richard Cole. I want to thank the Commission for the opportunity to testify today.

By way of background, I am a civil rights attorney, former assistant attorney general and Civil Rights Division Chief in the Massachusetts Office of Attorney General, and former National Chair of the Civil Rights Working Group of the National Association of Attorneys General ("NAAG"). I am the principal of Cole Civil Rights and Safe Schools Consulting, providing technical assistance, training, and policy and strategic assistance to educators and law enforcement on school climate and safety and in addressing harassment, bullying and hate crimes in schools and cyberspace. I also provide legal assistance to parents whose children are targets of harassment or bullying.

I speak from the perspective of a strong supporter of the state's bullying law, enacted in response to the compelling need for clear standards governing the prevention, reporting and response to bullying in schools.

Consistent with your legislative mandate, I make the following recommendations for inclusion in the Commission's report to the general court:

1. That the bullying law is amended to include a provision requiring that each school district and other applicable educational entities report annually the status of its implementation of its "*Bullying Prevention and Intervention Plan*," as amended, to the Department of Elementary and Secondary Education ("DESE"). It was an important first step to require school districts to draft and file complete anti-bullying plans with DESE, in compliance with the law. However, if schools are to successfully combat bullying, they must implement

their plans effectively so as to meet the law's goals and requirements. I also recommend that the law provide that DESE perform audits periodically to ensure effective implementation of plans. Although DESE has taken significant steps, with limited resources, to oversee the law's implementation, and should be commended for doing so, I believe the reporting and auditing requirements will help further ensure that all schools are taking the steps necessary to protect their students from bullying.

2. Mandate that school districts and other applicable educational entities annually report to DESE data related to specific categories of bullying-type behaviors, with DESE issuing an annual report to the public, identifying local and statewide data trends and other important information. The U.S. Department of Education already requires districts with more than 3,000 students to report data related to federal civil rights laws in education.

3. To protect the law from legal or constitutional challenge, I recommend amending the first clause in G.L. Chapter 71, Section 37O (a), defining *"bullying," which* states, "(i) *causes physical or emotional harm to the victim or damage to the victim's property," to* instead state *"*(i) *causes physical harm to the victim or damage to the victim's property, or causes emotional harm to the victim, so long as a similarly situated student would reasonably suffer emotional harm;"* thereby establishing an objective standard so that students cannot unreasonably dictate or define what behavior constitutes bullying.

4. Amending Section 37O (f) of the bullying law to hold superintendents responsible for implementation and oversight of school-based "*Bullying Prevention and Intervention Plans,*" in addition to the "*school principal or the person who holds a comparable position,"* as the law currently provides. The law should make clear that superintendents are also responsible for ensuring

that each district school is complying with both the district's and the school-based plan. For school-based bullying prevention, reporting and response plans to succeed, they require district-wide leadership, standards, support and coordination. This cannot effectively occur, however, if implementation and oversight responsibility for school-based plans is placed solely on school leaders, rather than on leaders at both the district and school levels.

5. As for further criminalizing bullying-type behavior, I start from the perspective that criminal prosecution is rarely necessary or appropriate when schools respond to bullying by taking appropriate disciplinary, corrective and remedial action to stop the behavior, prevent it from reoccurring, and address the impact of the behavior on the student victim and the school community. There are, of course, egregious behaviors and circumstances that compel the need for criminal charges. At this time, however, I am unable to identify the need for additional criminal laws to address those behaviors and circumstances.
   I do note, however, that creating the crime of *"bullying,"* is unworkable, where it would criminalize, for example, bullying-type behaviors such as social exclusion and name-calling. Rather, I recommend that the Commission only propose an expansion of the criminal law where it identifies a specific bullying-type behavior that may cause serious harm to student bullying victims and is not already covered by our state criminal laws.

6. Amending Section 37O (d) of the bullying law to require professional development to include providing staff with the skills and strategies needed for addressing broader school climate and culture issues, in addition to the specific skills and strategies for bullying prevention and intervention. In my experience, bullying prevention programs are not successful unless schools also effectively address their broader climate and culture issues.

7. Even as a civil rights attorney who represents student victims of harassment and bullying, and not student perpetrators, I suggest caution in mandating parental legal responsibility or liability for bullying. To do so would raise many practical and equity-related concerns in its application. Most parents are unaware of or do not have control over their child's bullying-type behaviors, despite good faith efforts. Parental responsibility also would not obviate a school's legal responsibility for addressing bullying, under state law, or peer harassment of students, under federal and state civil rights laws, based on race, color, national origin, sex, religion, sexual orientation or disability. Nevertheless, if the Commission decides to recommend a form of legal responsibility for parents, I suggest consideration of only a non-criminal form of parental responsibility, but only where (a) it is determined that it would serve as an effective constraint on unreasonable and willful parental inaction or non-cooperation, and only where (b) after actual notice or knowledge of bullying-related behavior, parents act with deliberate indifference to addressing their child's behavior, and (c) their child then re-engages in bullying-type behavior, causing another student harm, as defined by the state bullying law.

Thank you again for providing me the opportunity to speak before the Commission. I hope my testimony assists the Commission in meeting its legislative mandate.