S T A T E O F N E W Y O R K

31

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to conduct on school property and at school-authorized activities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 2 of the education law is amended by adding a new subdivision 20 to read as follows:

20. SCHOOL-AUTHORIZED ACTIVITY. THE TERM "SCHOOL-AUTHORIZED ACTIVITY" MEANS ANY ACTIVITY IN WHICH ATTENDANCE OR PARTICIPATION IS RELATED TO A SCHOOL OR SCHOOL PROGRAM AND HAS BEEN AUTHORIZED BY THE BOARD OF EDUCATION, THE BOARD OF TRUSTEES, A COMMON SCHOOL DISTRICT, A SUPERINTENDENT OF SCHOOLS, A DISTRICT SUPERINTENDENT, A PRINCIPAL OR THE DESIGNEE OF ANY SUCH PERSON, AND SHALL INCLUDE, BUT NOT BE LIMITED TO, SCHOOL FUNCTIONS, ATHLETIC EVENTS, FIELD TRIPS, PLAYGROUND ACTIVITIES, AND SCHOOL-SPONSORED EXTRA-CURRICULAR EVENTS OR ACTIVITIES, PROVIDED THAT FOR PURPOSES OF REPORTING CRIME ALLEGED TO HAVE OCCURRED DURING SCHOOL-AUTHORIZED ACTIVITY, SUCH REPORTS SHALL BE MADE TO THE LOCAL LAW ENFORCEMENT AGENCY OR PRECINCT WHICH HAS JURISDICTION OF THE LOCATION WHERE THE CRIME IS ALLEGED TO HAVE OCCURRED, IF DIFFERENT FROM THE JURISDICTION OR PRECINCT IN WHICH THE SCHOOL ITSELF IS PHYSICALLY LOCATED.

S 2. Subdivision 2 of section 2801 of the education law, as added by chapter 181 of the laws of 2000, the opening paragraph and paragraphs a and c as amended by chapter 380 of the laws of 2001, is amended to read as follows:

2. The board of education or the trustees, as defined in section two of this chapter, of every school district within the state, however created, and every board of cooperative educational services and county vocational extension board, shall adopt and amend, as appropriate, a code of conduct for the maintenance of order on school property, includ-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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ing a school function OR SCHOOL-AUTHORIZED ACTIVITY, which shall govern the conduct of students, teachers and other school personnel as well as visitors and shall provide for the enforcement thereof. Such policy may be adopted by the school board or trustees only after at least one public hearing that provides for the participation of school personnel, parents, students and any other interested parties. Such code of conduct shall include, at a minimum:

a. provisions regarding conduct, dress and language deemed appropriate and acceptable on school property, including a school function OR SCHOOL-AUTHORIZED ACTIVITY, and conduct, dress and language deemed unacceptable and inappropriate on school property, including a school function OR SCHOOL-AUTHORIZED ACTIVITY, and provisions regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students and visitors on school property, including a school function OR SCHOOL-AUTHORIZED ACTIVITY, including the appropriate range of disciplinary measures which may be imposed for violation of such code, and the roles of teachers, administrators, other school personnel, the board of education and parents;

b. standards and procedures to assure security and safety of students and school personnel;

c. provisions for the removal from the classroom and from school property, including a school function OR SCHOOL-AUTHORIZED ACTIVITY, of students and other persons who violate the code;

d. disciplinary measures to be taken in incidents involving the possession or use of illegal substances or weapons, the use of physical force, vandalism, violation of another student's civil rights and threats of violence;

e. provisions for detention, suspension and removal from the classroom of students, consistent with section thirty-two hundred fourteen of this chapter and other applicable federal, state and local laws including provisions for the school authorities to establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom, placed in detention, or suspended from school;

f. procedures by which violations are reported, determined, discipline measures imposed and discipline measures carried out;

g. provisions ensuring such code and the enforcement thereof are in compliance with state and federal laws relating to students with disabilities;

h. provisions setting forth the procedures by which local law enforcement agencies OR PRECINCTS IN THE JURISDICTIONS WHERE CODE VIOLATIONS OCCUR shall be notified of code violations which constitute a crime;

i. provisions setting forth the circumstances under and procedures by which persons in parental relation to the student shall be notified of code violations;

j. provisions setting forth the circumstances under and procedures by which a complaint in criminal court, a juvenile delinquency petition or person in need of supervision petition as defined in articles three and seven of the family court act will be filed;

k. circumstances under and procedures by which referral to appropriate human service agencies shall be made;

l. a minimum suspension period, for students who repeatedly are substantially disruptive of the educational process or substantially interfere with the teacher's authority over the classroom, provided that the suspending authority may reduce such period on a case by case basis to be consistent with any other state and federal law. For purposes of

this section, the definition of "repeatedly are substantially disruptive" shall be determined in accordance with the regulations of the commissioner; and

m. a minimum suspension period for acts that would qualify the pupil to be defined as a violent pupil pursuant to paragraph a of subdivision two-a of section thirty-two hundred fourteen of this chapter, provided that the suspending authority may reduce such period on a case by case basis to be consistent with any other state and federal law.

S 3. Paragraph a of subdivision 2-a of section 3214 of the education law, as added by chapter 181 of the laws of 2000, is amended to read as follows:

a. Violent pupil. For the purposes of this section, a violent pupil is an elementary or secondary student under twenty-one years of age who:

(1) commits an act of violence upon a teacher, administrator or other school employee;

(2) commits, while on school district property OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY, an act of violence upon another student or any other person lawfully upon said property;

(3) possesses, while on school district property OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY, a gun, knife, explosive or incendiary bomb, or other dangerous instrument capable of causing physical injury or death;

(4) displays, while on school district property OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY, what appears to be a gun, knife, explosive or incendiary bomb or other dangerous instrument capable of causing death or physical injury;

(5) threatens, while on school district property OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY, to use any instrument that appears capable of causing physical injury or death;

(6) knowingly and intentionally damages or destroys the personal property of a teacher, administrator, other school district employee or any person lawfully upon school district property OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY; or

(7) knowingly and intentionally damages or destroys school district property.

S 4. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of the education law, as amended by chapter 430 of the laws of 2006, is amended to read as follows:

(1) No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his or her behalf. Where the pupil is a student with a disability or a student presumed to have a disability, the provisions of paragraph g of this subdivision shall also apply. Where a pupil has been suspended in accordance with this subparagraph by a superintendent of schools, district superintendent of schools, or community superintendent, the superintendent shall personally hear and determine the proceeding or may, in his or her discretion, designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him or her. A record of the hearing shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and recommendations as

to the appropriate measure of discipline to the superintendent. The report of the hearing officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools. Where the basis for the suspension is, in whole or in part, the possession on school grounds [or], school property OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

S 5. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of the education law, as amended by chapter 380 of the laws of 2001, is amended to read as follows:

(1) No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his behalf. Where a pupil has been suspended in accordance with this subdivision by a superintendent of schools, district superintendent of schools, or community superintendent, the superintendent shall personally hear and determine the proceeding or may, in his discretion, designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him. A record of the hearing shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and recommendations as to the appropriate measure of discipline to the superintendent. The report of the hearing officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools. Where the basis for the suspension is, in whole or in part, the possession on school grounds [or], school property OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

S 6. Subparagraphs 1 and 2 of paragraph d of subdivision 3 of section 3214 of the education law, as amended by chapter 425 of the laws of 2002, are amended to read as follows:

(1) Consistent with the federal gun-free schools act, any public school pupil who is determined under this subdivision to have brought a firearm to or possessed a firearm at a public school OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY shall be suspended for a period of not less than one calendar year and any nonpublic school pupil participating in a program operated by a public school district using funds from the elementary and secondary education act of nineteen hundred sixty-five who is determined under this subdivision to have brought a firearm to or possessed a firearm at a public school or other premises used by the school district to provide such programs OR SCHOOL-AUTHORIZED ACTIVITIES shall be suspended for a period of not less than one calendar year from participation in such program. The procedures of this subdivision shall apply to such a suspension of a nonpublic school pupil. A superintendent of schools, district superintendent of schools or community superintendent shall have the authority to modify this suspension requirement for each student on a case-by-case basis. The determination of a superintendent shall be subject to review by the board of education pursuant to paragraph c of this subdivision and the commissioner pursuant to section three hundred ten of this chapter. Nothing in this subdivision shall be deemed to authorize the suspension of a student with a disability in violation of the individuals with disabilities education act or article eighty-nine of this chapter. A superintendent shall refer the pupil under the age of sixteen who has been determined to have brought a weapon or firearm to school OR TO A SCHOOL-AUTHORIZED ACTIVITY in violation of this subdivision to a presentment agency for a juvenile delinquency proceeding consistent with article three of the family court act except a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law. A superintendent shall refer any pupil sixteen years of age or older or a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law, who has been determined to have brought a weapon or firearm to school OR TO A SCHOOL-AUTHORIZED ACTIVITY in violation of this subdivision to the appropriate law enforcement officials.

(2) Nothing in this paragraph shall be deemed to mandate such action by a school district pursuant to subdivision one of this section where such weapon or firearm is possessed or brought to school OR TO A SCHOOL-AUTHORIZED ACTIVITY with the written authorization of such educational institution in a manner authorized by article two hundred sixty-five of the penal law for activities approved and authorized by the trustees or board of education or other governing body of the public school and such governing body adopts appropriate safeguards to ensure student safety.

S 7. Paragraph d of subdivision 3 of section 3214 of the education law, as amended by chapter 181 of the laws of 2000, is amended to read as follows:

d. Consistent with the federal gun-free schools act of nineteen hundred ninety-four, any public school pupil who is determined under this subdivision to have brought a weapon to school OR TO A SCHOOL-AUTHORIZED ACTIVITY shall be suspended for a period of not less than one calendar year and any nonpublic school pupil participating in a program operated by a public school district using funds from the elementary and secondary education act of nineteen hundred sixty-five who is determined under this subdivision to have brought a weapon to a public school or other premises used by the school district to provide such programs OR

SCHOOL-AUTHORIZED ACTIVITIES shall be suspended for a period of not less than one calendar year from participation in such program. The procedures of this subdivision shall apply to such a suspension of a nonpublic school pupil. A superintendent of schools, district superintendent of schools or community superintendent shall have the authority to modify this suspension requirement for each student on a case-by-case basis. The determination of a superintendent shall be subject to review by the board of education pursuant to paragraph c of this subdivision and the commissioner pursuant to section three hundred ten of this chapter. Nothing in this subdivision shall be deemed to authorize the suspension of a student with a disability in violation of the individuals with disabilities education act or article eighty-nine of this chapter. A superintendent shall refer the pupil under the age of sixteen who has been determined to have brought a weapon to school OR TO A SCHOOL-AUTHORIZED ACTIVITY in violation of this subdivision to a presentment agency for a juvenile delinquency proceeding consistent with article three of the family court act except a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law. A superintendent shall refer any pupil sixteen years of age or older or a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law, who has been determined to have brought a weapon to school OR TO A SCHOOL-AUTHORIZED ACTIVITY in violation of this subdivision to the appropriate law enforcement officials.

S 8. Section 3028-c of the education law, as added by chapter 181 of the laws of 2000, is amended to read as follows:

S 3028-c. Protection of school employees who report acts of violence and weapons possession. Any school employee having reasonable cause to suspect that a person has committed an act of violence while in or on school property OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY, or having reasonable cause to suspect that a person has committed an act of violence upon a student, school employee or volunteer either upon school grounds, WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY or elsewhere, or having reasonable cause to suspect that a person has brought a gun, knife, bomb or other instrument capable of or that appears capable of causing death or physical injury upon school grounds OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY who in good faith reports such information to school officials, to the commissioner, or to law enforcement authorities, shall have immunity from any civil liability that may arise from the making of such report, and no school district or school district employee shall take, request or cause a retaliatory action against any such employee who makes such report.

S 9. This act shall take effect on the first of July next succeeding the date on which it shall have become a law, provided that the amendments to subparagraph 1 of paragraph c of subdivision 3 of section 3214 of the education law, made by section four of this act, shall be subject to the expiration and reversion of such subparagraph pursuant to section 8 of chapter 430 of the laws of 2006, as amended, when upon such date section five of this act shall take effect, provided, further, that the amendments to subparagraphs 1 and 2 of paragraph d of subdivision 3 of section 3214 of the education law, made by section six of this act, shall be subject to the expiration and reversion of such paragraph pursuant to section 4 of chapter 425 of the laws of 2002, as amended, when upon such date the provisions of section seven of this act shall take effect.