

4921--A

2011-2012 Regular Sessions

I N S E N A T E

April 29, 2011

Introduced by Sens. SALAND, SKELOS, FLANAGAN, MAZIARZ, ALESI, BALL, BONACIC, DeFRANCISCO, FARLEY, FUSCHILLO, GALLIVAN, GOLDEN, GRIFFO, GRISANTI, HANNON, JOHNSON, LANZA, LARKIN, LAVALLE, LIBOUS, LITTLE, MARCELLINO, MARTINS, McDONALD, NOZZOLIO, O'MARA, OPPENHEIMER, RANZENHOFFER, RITCHIE, ROBACH, SEWARD, YOUNG, ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to prohibiting bullying on school property or at school functions

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

1 Section 1. Legislative intent. In recent years, New York has taken
2 steps to ensure that school pupils, teachers and other personnel are
3 provided with a safe and secure learning environment. However, egre-
4 gious incidents of bullying, both in person and through the use of tech-
5 nology, continue to plague all of our students. The legislature recog-
6 nizes that bullying manifests in many forms and for innumerable reasons.
7 The legislature finds it is vital to protect all students from acts of
8 bullying, therefore, this legislation expands upon the provisions of
9 chapter 482 of the laws of 2010.
10 While the physical wounds may heal, the effects of bullying can last a
11 lifetime. Therefore, the legislature finds that prohibiting bullying is
12 an appropriate means to enhance the safety of students in New York
13 state's public schools. Furthermore, in today's age of advanced technol-
14 ogy, twenty-four hour connectivity and social networking, students who
15 are subjected to acts of bullying have no reprieve. Taunts and acts of
16 bullying that begin in school follow students home every day, and have
17 lasting impacts on such students. Conversely, bullying through the use
18 of technology can begin away from school property, yet have devastating

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

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1 effects on the student's ability to learn in a safe environment at
2 school. While bullying through the use of technology may occur away from
3 school property, it can create a hostile environment for the student at
4 school and it can materially and substantially disrupt the educational
5 process. Therefore, to further ensure the safety of students and school
6 employees, it is the intent of the legislature to provide schools with
7 the tools to identify, prevent, and prohibit bullying against all
8 students, both conventional and cyber-bullying.

9 S 2. Short title. This act shall be known and may be cited as the "Law
10 to Encourage the Acceptance of All Differences (LEAD)".

11 S 3. Section 801-a of the education law, as amended by chapter 482 of
12 the laws of 2010, is amended to read as follows:

13 S 801-a. Instruction in civility, citizenship and character education.
14 The regents shall ensure that the course of instruction in grades
15 kindergarten through twelve includes a component on civility, citizen-
16 ship and character education. Such component shall instruct students on
17 the principles of honesty, tolerance, personal responsibility, respect
18 for others WITH AN EMPHASIS ON DISCOURAGING ACTS OF BULLYING AS DEFINED
19 IN SECTION TWELVE OF THIS CHAPTER, observance of laws and rules, courte-
20 sy, dignity and other traits which will enhance the quality of their
21 experiences in, and contributions to, the community. The regents shall
22 determine how to incorporate such component in existing curricula and
23 the commissioner shall promulgate any regulations needed to carry out
24 such determination of the regents. For the purposes of this section,
25 "tolerance," "respect for others" and "dignity" shall include awareness
26 and sensitivity to discrimination or harassment and civility [in the
27 relations of] TOWARD ALL STUDENTS, INCLUDING BUT NOT LIMITED TO, people
28 of different races, weights, national origins, ethnic groups, religions,
29 religious practices, mental or physical abilities, sexual orientations,
30 genders, and sexes.

31 S 4. Paragraph d of subdivision 2 of section 2801 of the education
32 law, as added by chapter 181 of the laws of 2000, is amended to read as
33 follows:

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

38 S 5. Subdivision 2 of section 2801 of the education law is amended by
39 adding a new paragraph f-1 to read as follows:

40 F-1. PROCEDURES BY WHICH ANY SCHOOL EMPLOYEE, HAVING REASONABLE CAUSE
41 TO SUSPECT THAT A STUDENT HAS BEEN THE VICTIM OF BULLYING OR HAS COMMIT-
42 TED AN ACT OF BULLYING AS DEFINED IN SECTION TWELVE OF THIS CHAPTER,
43 SHALL BE REQUIRED TO REPORT SUCH INCIDENT TO THE PRINCIPAL OR DESIGNEE
44 THEREOF. IF THE PRINCIPAL OR HIS OR HER DESIGNEE DETERMINES THAT THERE
45 IS A REASONABLE CAUSE TO BELIEVE THAT THE INCIDENT OCCURRED, HE OR SHE
46 SHALL REPORT SUCH INCIDENT TO THE SUPERINTENDENT. ANY EMPLOYEE WHO
47 REASONABLY AND IN GOOD FAITH MAKES A REPORT OF AN ACT OF BULLYING TO THE
48 PRINCIPAL OR DESIGNEE THEREOF SHALL HAVE IMMUNITY FROM CIVIL LIABILITY
49 WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS;

50 S 6. Section 11 of the education law, as added by chapter 482 of the
51 laws of 2010, is amended to read as follows:

52 S 11. Definitions. For the purposes of this article, the following
53 terms shall have the following meanings:

54 1. "School property" AND "SCHOOL FUNCTION" shall [mean in or within
55 any building, structure, athletic playing field, playground, parking
56 lot, or land contained within the real property boundary line of a

1 public elementary or secondary school; or in or on a school bus, as
2 defined in section one hundred forty-two of the vehicle and traffic law.

3 2. "School function" shall mean a school-sponsored extra-curricular
4 event or activity] HAVE THE SAME MEANINGS AS SET FORTH IN SUBDIVISION
5 ONE OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER.

6 [3.] 2. "Disability" shall mean disability as defined in subdivision
7 twenty-one of section two hundred ninety-two of the executive law.

8 [4. "Employee" shall mean employee as defined in subdivision three of
9 section eleven hundred twenty-five of this title.

10 5.] 3. "Sexual orientation" shall mean actual or perceived heterosexu-
11 ality, homosexuality or bisexuality.

12 [6.] 4. "Gender" shall mean actual or perceived sex and shall include
13 a person's gender identity or expression.

14 [7. "Harassment" shall mean the creation] 5. "CREATION of a hostile
15 environment [by]" SHALL MEAN ENGAGING IN conduct or [by] verbal threats,
16 intimidation or abuse that has or would have the effect of unreasonably
17 and substantially interfering with a student's educational performance,
18 opportunities or benefits, or mental, emotional or physical well-being;
19 or conduct, verbal threats, intimidation or abuse that reasonably causes
20 or would reasonably be expected to cause [a] ANY student to fear for his
21 or her physical safety[; such conduct, verbal threats, intimidation or
22 abuse includes but is not limited to conduct, verbal threats, intimid-
23 idation or abuse based on a person's actual or perceived race, color,
24 weight, national origin, ethnic group, religion, religious practice,
25 disability, sexual orientation, gender or sex] OR DAMAGE HIS OR HER
26 PROPERTY.

27 6. "BULLYING" SHALL MEAN THE SEVERE OR REPEATED USE BY ONE OR MORE
28 STUDENTS OR SCHOOL EMPLOYEES OF A WRITTEN, VERBAL OR ELECTRONIC
29 EXPRESSION, OR A PHYSICAL ACT OR GESTURE, OR ANY COMBINATION THEREOF,
30 DIRECTED AT A STUDENT THAT EITHER REACHES SCHOOL PROPERTY OR A SCHOOL
31 FUNCTION OR CREATES A REASONABLY FORESEEABLE RISK THAT IT COULD REACH
32 SCHOOL PROPERTY OR A SCHOOL FUNCTION AND SUBSTANTIALLY IMPACT THE SCHOOL
33 ENVIRONMENT: (I) CAUSING PHYSICAL INJURY, SERIOUS PHYSICAL INJURY OR
34 EMOTIONAL HARM TO THE STUDENT OR DAMAGE TO THE STUDENT'S PROPERTY; (II)
35 CREATING A HOSTILE ENVIRONMENT AT SCHOOL FOR THE STUDENT; OR (III) OR
36 WOULD OTHERWISE MATERIALLY AND SUBSTANTIALLY DISRUPT THE EDUCATIONAL
37 PROCESS OR THE ORDERLY OPERATION OF A SCHOOL. THE TERM BULLYING SHALL
38 INCLUDE COMMUNICATIONS OR DISSEMINATION OF ANY MATERIAL THROUGH WRITTEN,
39 VERBAL OR ELECTRONIC EXPRESSIONS WHICH CREATE A HOSTILE ENVIRONMENT AT
40 SCHOOL OR DISRUPT THE EDUCATIONAL PROCESS AS SET FORTH IN SUBPARAGRAPHS
41 (II) AND (III) OF THIS PARAGRAPH, REGARDLESS OF WHETHER THE COMMUNI-
42 CATION IS INITIATED ON OR OFF SCHOOL PROPERTY. ACTS OF BULLYING SHALL
43 INCLUDE, BUT NOT BE LIMITED TO, THOSE ACTS WHICH ARE MOTIVATED BY A
44 STUDENT'S ACTUAL OR PERCEIVED RACE, COLOR, WEIGHT, NATIONAL ORIGIN,
45 ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIEN-
46 TATION, GENDER, OR SEX.

47 S 7. Section 12 of the education law, as added by chapter 482 of the
48 laws of 2010, is amended to read as follows:

49 S 12. [Discrimination and harassment] BULLYING AND DISCRIMINATION
50 prohibited. 1. No student shall be subjected to [harassment] BULLYING by
51 employees or students on school property [or at a school function; nor
52 shall any].

53 A. NO STUDENT OR SCHOOL EMPLOYEE SHALL SUBJECT ANY STUDENT OF A PUBLIC
54 SCHOOL OR PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM TO BULLYING AS
55 DEFINED IN THIS ARTICLE.

1 B. ANY STUDENT OR SCHOOL EMPLOYEE FOUND TO BE IN VIOLATION OF SUBDIVI-
2 SION TWO OF THIS SECTION IN A PUBLIC SCHOOL OR ON SCHOOL PROPERTY SHALL
3 BE SUBJECT TO DISCIPLINARY ACTION IN ACCORDANCE WITH THE DISTRICT'S CODE
4 OF CONDUCT ADOPTED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED ONE OF THIS
5 ARTICLE AND THE APPLICABLE DISCIPLINE PROCEDURES, INCLUDING ANY DISCI-
6 PLINE PROCEDURES OUTLINED IN A COLLECTIVE BARGAINING AGREEMENT PURSUANT
7 TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. ANY STUDENT OR SCHOOL
8 EMPLOYEE FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION IN
9 A PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM SHALL BE SUBJECT TO DISCI-
10 PLINE UNDER THE POLICIES AND PROCEDURES OF SUCH PROGRAM GOVERNING
11 CONDUCT.

12 C. NOTHING IN THIS SECTION SHALL APPLY, OR BE CONSTRUED TO APPLY, TO
13 PRIVATE, RELIGIOUS OR DENOMINATIONAL EDUCATIONAL INSTITUTIONS. NOR SHALL
14 THIS SECTION PRECLUDE OR LIMIT, OR BE PERCEIVED TO PRECLUDE OR LIMIT,
15 ANY RIGHT OR CAUSE OF ACTION PROVIDED UNDER ANY LOCAL, STATE OR FEDERAL
16 ORDINANCE, LAW, RULE OR REGULATION.

17 2. NO student SHALL be subjected to discrimination based on a person's
18 actual or perceived race, color, weight, national origin, ethnic group,
19 religion, religious practice, disability, sexual orientation, gender, or
20 sex by school employees or students on school property or at a school
21 function. Nothing in this subdivision shall be construed to prohibit a
22 denial of admission into, or exclusion from, a course of instruction
23 based on a person's gender that would be permissible under section thir-
24 ty-two hundred one-a or paragraph (a) of subdivision two of section
25 twenty-eight hundred fifty-four of this chapter and title IX of the
26 Education Amendments of 1972 (20 U.S.C. section 1681, et. seq.), or to
27 prohibit, as discrimination based on disability, actions that would be
28 permissible under section 504 of the Rehabilitation Act of 1973.

29 [2. An age-appropriate version of the policy outlined in subdivision
30 one of this section, written in plain-language, shall be included in the
31 code of conduct adopted by boards of education and the trustees or sole
32 trustee pursuant to section twenty-eight hundred one of this chapter and
33 a summary of such policy shall be included in any summaries required by
34 such section twenty-eight hundred one.]

35 S 8. Sections 13, 14, 15 and 16 of the education law, as added by
36 chapter 482 of the laws of 2010, are amended to read as follows:

37 S 13. Policies and guidelines. The board of education and the trustees
38 or sole trustee of every school district shall create policies and
39 guidelines that shall include, but not be limited to:

40 1. Policies intended to create a school environment that is free from
41 discrimination or [harassment] BULLYING; AND

42 2. Guidelines to be used in school training programs to discourage the
43 development of discrimination or [harassment] BULLYING and that are
44 designed:

45 a. to raise the awareness and sensitivity of school employees to
46 potential discrimination or [harassment] BULLYING, and

47 b. to enable employees to prevent and respond to discrimination or
48 [harassment; and

49 3. Guidelines relating to the development of nondiscriminatory
50 instructional and counseling methods, and requiring that at least one
51 staff member at every school be thoroughly trained to handle human
52 relations in the areas of race, color, weight, national origin, ethnic
53 group, religion, religious practice, disability, sexual orientation,
54 gender, and sex] BULLYING.

55 S 14. Commissioner's responsibilities. The commissioner shall:

1 1. Provide direction, which may include development of model policies
2 and, to the extent possible, direct services, to school districts
3 related to preventing discrimination and [harassment] BULLYING and to
4 fostering an environment in every school where all children can learn
5 free of manifestations of bias;

6 2. Provide grants, from funds appropriated for such purpose, to local
7 school districts to assist them in implementing the guidelines set forth
8 in this section; and

9 3. Promulgate regulations to assist school districts in implementing
10 this article including, but not limited to, regulations to assist school
11 districts in developing measured, balanced, and age-appropriate
12 responses to violations of this policy, with remedies and procedures
13 focusing on intervention and education.

14 4. THE COMMISSIONER SHALL PRESCRIBE REGULATIONS REQUIRING THAT ALL
15 PERSONS APPLYING ON OR AFTER SEPTEMBER SECOND, TWO THOUSAND THIRTEEN FOR
16 A TEACHING CERTIFICATE OR LICENSE, INCLUDING BUT NOT LIMITED TO A
17 CERTIFICATE OR LICENSE VALID FOR SERVICE AS A CLASSROOM TEACHER, SCHOOL
18 ADMINISTRATOR OR SUPERVISOR OR SUPERINTENDENT OF SCHOOLS, SHALL, IN
19 ADDITION TO ALL OTHER CERTIFICATION OR LICENSING REQUIREMENTS, HAVE
20 COMPLETED TRAINING IN THE IDENTIFICATION AND MITIGATION OF BULLYING IN
21 AREAS INCLUDING BUT NOT LIMITED TO RACE, COLOR, WEIGHT, NATIONAL ORIGIN,
22 ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIENT-
23 TATION, GENDER AND SEX.

24 S 15. Reporting by commissioner. The commissioner shall create a
25 procedure under which material incidents of discrimination and [harass-
26 ment] BULLYING on school [grounds or at a school function] PROPERTY, AS
27 SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAP-
28 TER, are reported to the department at least on an annual basis. Such
29 procedure shall provide that such reports shall, wherever possible, also
30 delineate the specific nature of such incidents of discrimination or
31 [harassment] BULLYING, provided that the commissioner may comply with
32 the requirements of this section through use of the existing uniform
33 violent incident reporting system. In addition the department may
34 conduct research or undertake studies to determine compliance throughout
35 the state with the provisions of this article.

36 S 16. Protection of people who report discrimination or [harassment]
37 BULLYING. Any person having reasonable cause to suspect that a student
38 has been subjected to discrimination or [harassment] BULLYING by an
39 employee or student, on school [grounds or at a school function,] PROP-
40 ERTY, AS SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF
41 THIS CHAPTER, who, acting reasonably and in good faith, either reports
42 such information to school officials, to the commissioner, or to law
43 enforcement authorities or otherwise initiates, testifies, participates
44 or assists in any formal or informal proceedings under this article,
45 shall have immunity from any civil liability that may arise from the
46 making of such report or from initiating, testifying, participating or
47 assisting in such formal or informal proceedings, and no school district
48 or employee shall take, request or cause a retaliatory action against
49 any such person who, acting reasonably and in good faith, either makes
50 such a report or initiates, testifies, participates or assists in such
51 formal or informal proceedings.

52 S 9. This act shall take effect July 1, 2013; provided that if chapter
53 482 of the laws of 2010 shall not have taken effect prior to such date
54 then this act shall take effect on the same date and in the same manner
55 as such chapter 482 of the laws of 2010, takes effect.