

4576

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 5, 2009

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Introduced by M. of A. P. RIVERA -- Multi-Sponsored by -- M. of A.  
ZEBROWSKI -- read once and referred 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 2 of the education law is amended by adding a new  
2     subdivision 20 to read as follows:  
3     20. SCHOOL-AUTHORIZED ACTIVITY. THE TERM "SCHOOL-AUTHORIZED ACTIVITY"  
4     MEANS ANY ACTIVITY IN WHICH ATTENDANCE OR PARTICIPATION IS RELATED TO A  
5     SCHOOL OR SCHOOL PROGRAM AND HAS BEEN AUTHORIZED BY THE BOARD OF EDUCA-  
6     TION, THE BOARD OF TRUSTEES, A COMMON SCHOOL DISTRICT, A SUPERINTENDENT  
7     OF SCHOOLS, A DISTRICT SUPERINTENDENT, A PRINCIPAL OR THE DESIGNEE OF  
8     ANY SUCH PERSON, AND SHALL INCLUDE, BUT NOT BE LIMITED TO, SCHOOL FUNC-  
9     TIONS, ATHLETIC EVENTS, FIELD TRIPS, PLAYGROUND ACTIVITIES, AND SCHOOL-  
10    SPONSORED EXTRA-CURRICULAR EVENTS OR ACTIVITIES, PROVIDED THAT FOR  
11    PURPOSES OF REPORTING CRIME ALLEGED TO HAVE OCCURRED DURING SCHOOL-AU-  
12    THORIZED ACTIVITY, SUCH REPORTS SHALL BE MADE TO THE LOCAL LAW ENFORCE-  
13    MENT AGENCY OR PRECINCT WHICH HAS JURISDICTION OF THE LOCATION WHERE THE  
14    CRIME IS ALLEGED TO HAVE OCCURRED, IF DIFFERENT FROM THE JURISDICTION OR  
15    PRECINCT IN WHICH THE SCHOOL ITSELF IS PHYSICALLY LOCATED.  
16    S 2. Subdivision 2 of section 2801 of the education law, as added by  
17    chapter 181 of the laws of 2000, the opening paragraph and paragraphs a  
18    and c as amended by chapter 380 of the laws of 2001, is amended to read  
19    as follows:  
20    2. The board of education or the trustees, as defined in section two  
21    of this chapter, of every school district within the state, however  
22    created, and every board of cooperative educational services and county  
23    vocational extension board, shall adopt and amend, as appropriate, a  
24    code of conduct for the maintenance of order on school property, includ-  
25    ing a school function OR SCHOOL-AUTHORIZED ACTIVITY, which shall govern

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

LBD00918-01-9

1 the conduct of students, teachers and other school personnel as well as  
2 visitors and shall provide for the enforcement thereof. Such policy may  
3 be adopted by the school board or trustees only after at least one  
4 public hearing that provides for the participation of school personnel,  
5 parents, students and any other interested parties. Such code of conduct  
6 shall include, at a minimum:

7 a. provisions regarding conduct, dress and language deemed appropriate  
8 and acceptable on school property, including a school function OR  
9 SCHOOL-AUTHORIZED ACTIVITY, and conduct, dress and language deemed unac-  
10 ceptable and inappropriate on school property, including a school func-  
11 tion OR SCHOOL-AUTHORIZED ACTIVITY, and provisions regarding acceptable  
12 civil and respectful treatment of teachers, school administrators, other  
13 school personnel, students and visitors on school property, including a  
14 school function OR SCHOOL-AUTHORIZED ACTIVITY, including the appropriate  
15 range of disciplinary measures which may be imposed for violation of  
16 such code, and the roles of teachers, administrators, other school  
17 personnel, the board of education and parents;

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

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

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

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

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

36 g. provisions ensuring such code and the enforcement thereof are in  
37 compliance with state and federal laws relating to students with disa-  
38 bilities;

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

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

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

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

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

tive" 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

1 report of the hearing officer shall be advisory only, and the super-  
2 intendent may accept all or any part thereof. An appeal will lie from  
3 the decision of the superintendent to the board of education who shall  
4 make its decision solely upon the record before it. The board may adopt  
5 in whole or in part the decision of the superintendent of schools.  
6 Where the basis for the suspension is, in whole or in part, the  
7 possession on school grounds [or], school property OR WHILE PARTICIPAT-  
8 ING IN A SCHOOL-AUTHORIZED ACTIVITY by the student of any firearm,  
9 rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of  
10 the weapons, instruments or appliances specified in subdivision one of  
11 section 265.01 of the penal law, the hearing officer or superintendent  
12 shall not be barred from considering the admissibility of such weapon,  
13 instrument or appliance as evidence, notwithstanding a determination by  
14 a court in a criminal or juvenile delinquency proceeding that the recov-  
15 ery of such weapon, instrument or appliance was the result of an unlaw-  
16 ful search or seizure.

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

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

52 S 6. Subparagraphs 1 and 2 of paragraph d of subdivision 3 of section  
53 3214 of the education law, as amended by chapter 425 of the laws of  
54 2002, are amended to read as follows:

55 (1) Consistent with the federal gun-free schools act, any public  
56 school pupil who is determined under this subdivision to have brought a

1 firearm to or possessed a firearm at a public school OR WHILE PARTIC-  
2 IPATING IN A SCHOOL-AUTHORIZED ACTIVITY shall be suspended for a period  
3 of not less than one calendar year and any nonpublic school pupil  
4 participating in a program operated by a public school district using  
5 funds from the elementary and secondary education act of nineteen  
6 hundred sixty-five who is determined under this subdivision to have  
7 brought a firearm to or possessed a firearm at a public school or other  
8 premises used by the school district to provide such programs OR  
9 SCHOOL-AUTHORIZED ACTIVITIES shall be suspended for a period of not less  
10 than one calendar year from participation in such program. The proce-  
11 dures of this subdivision shall apply to such a suspension of a nonpub-  
12 lic school pupil. A superintendent of schools, district superintendent  
13 of schools or community superintendent shall have the authority to modi-  
14 fy this suspension requirement for each student on a case-by-case basis.  
15 The determination of a superintendent shall be subject to review by the  
16 board of education pursuant to paragraph c of this subdivision and the  
17 commissioner pursuant to section three hundred ten of this chapter.  
18 Nothing in this subdivision shall be deemed to authorize the suspension  
19 of a student with a disability in violation of the individuals with  
20 disabilities education act or article eighty-nine of this chapter. A  
21 superintendent shall refer the pupil under the age of sixteen who has  
22 been determined to have brought a weapon or firearm to school OR TO A  
23 SCHOOL-AUTHORIZED ACTIVITY in violation of this subdivision to a  
24 presentment agency for a juvenile delinquency proceeding consistent with  
25 article three of the family court act except a student fourteen or  
26 fifteen years of age who qualifies for juvenile offender status under  
27 subdivision forty-two of section 1.20 of the criminal procedure law. A  
28 superintendent shall refer any pupil sixteen years of age or older or a  
29 student fourteen or fifteen years of age who qualifies for juvenile  
30 offender status under subdivision forty-two of section 1.20 of the crim-  
31 inal procedure law, who has been determined to have brought a weapon or  
32 firearm to school OR TO A SCHOOL-AUTHORIZED ACTIVITY in violation of  
33 this subdivision to the appropriate law enforcement officials.

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

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

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

1 dures of this subdivision shall apply to such a suspension of a nonpub-  
2 lic school pupil. A superintendent of schools, district superintendent  
3 of schools or community superintendent shall have the authority to modi-  
4 fy this suspension requirement for each student on a case-by-case basis.  
5 The determination of a superintendent shall be subject to review by the  
6 board of education pursuant to paragraph c of this subdivision and the  
7 commissioner pursuant to section three hundred ten of this chapter.  
8 Nothing in this subdivision shall be deemed to authorize the suspension  
9 of a student with a disability in violation of the individuals with  
10 disabilities education act or article eighty-nine of this chapter. A  
11 superintendent shall refer the pupil under the age of sixteen who has  
12 been determined to have brought a weapon to school OR TO A SCHOOL-AU-  
13 THORIZED ACTIVITY in violation of this subdivision to a presentment  
14 agency for a juvenile delinquency proceeding consistent with article  
15 three of the family court act except a student fourteen or fifteen years  
16 of age who qualifies for juvenile offender status under subdivision  
17 forty-two of section 1.20 of the criminal procedure law. A superinten-  
18 dent shall refer any pupil sixteen years of age or older or a student  
19 fourteen or fifteen years of age who qualifies for juvenile offender  
20 status under subdivision forty-two of section 1.20 of the criminal  
21 procedure law, who has been determined to have brought a weapon to  
22 school OR TO A SCHOOL-AUTHORIZED ACTIVITY in violation of this subdivi-  
23 sion to the appropriate law enforcement officials.

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

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

42 S 9. This act shall take effect on the first of July next succeeding  
43 the date on which it shall have become a law, provided that the amend-  
44 ments to subparagraph 1 of paragraph c of subdivision 3 of section 3214  
45 of the education law, made by section four of this act, shall be subject  
46 to the expiration and reversion of such subparagraph pursuant to section  
47 8 of chapter 430 of the laws of 2006, as amended, when upon such date  
48 section five of this act shall take effect, provided, further, that the  
49 amendments to subparagraphs 1 and 2 of paragraph d of subdivision 3 of  
50 section 3214 of the education law, made by section six of this act,  
51 shall be subject to the expiration and reversion of such paragraph  
52 pursuant to section 4 of chapter 425 of the laws of 2002, as amended,  
53 when upon such date the provisions of section seven of this act shall  
54 take effect.