

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:

- 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-

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

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

- 8 a. provisions regarding conduct, dress and language deemed appropriate
9 and acceptable on school property, including a school function OR
10 SCHOOL-AUTHORIZED ACTIVITY, and conduct, dress and language deemed unac-
11 ceptable and inappropriate on school property, including a school func-
12 tion OR SCHOOL-AUTHORIZED ACTIVITY, and provisions regarding acceptable
13 civil and respectful treatment of teachers, school administrators, other
14 school personnel, students and visitors on school property, including a
15 school function OR SCHOOL-AUTHORIZED ACTIVITY, including the appropriate
16 range of disciplinary measures which may be imposed for violation of
17 such code, and the roles of teachers, administrators, other school
18 personnel, the board of education and parents;
- 19 b. standards and procedures to assure security and safety of students
20 and school personnel;
- 21 c. provisions for the removal from the classroom and from school prop-
22 erty, including a school function OR SCHOOL-AUTHORIZED ACTIVITY, of
23 students and other persons who violate the code;
- 24 d. disciplinary measures to be taken in incidents involving the
25 possession or use of illegal substances or weapons, the use of physical
26 force, vandalism, violation of another student's civil rights and
27 threats of violence;
- 28 e. provisions for detention, suspension and removal from the classroom
29 of students, consistent with section thirty-two hundred fourteen of this
30 chapter and other applicable federal, state and local laws including
31 provisions for the school authorities to establish policies and proce-
32 dures to ensure the provision of continued educational programming and
33 activities for students removed from the classroom, placed in detention,
34 or suspended from school;
- 35 f. procedures by which violations are reported, determined, discipline
36 measures imposed and discipline measures carried out;
- 37 g. provisions ensuring such code and the enforcement thereof are in
38 compliance with state and federal laws relating to students with disa-
39 bilities;
- 40 h. provisions setting forth the procedures by which local law enforce-
41 ment agencies OR PRECINCTS IN THE JURISDICTIONS WHERE CODE VIOLATIONS
42 OCCUR shall be notified of code violations which constitute a crime;
- 43 i. provisions setting forth the circumstances under and procedures by
44 which persons in parental relation to the student shall be notified of
45 code violations;
- 46 j. provisions setting forth the circumstances under and procedures by
47 which a complaint in criminal court, a juvenile delinquency petition or
48 person in need of supervision petition as defined in articles three and
49 seven of the family court act will be filed;
- 50 k. circumstances under and procedures by which referral to appropriate
51 human service agencies shall be made;
- 52 l. a minimum suspension period, for students who repeatedly are
53 substantially disruptive of the educational process or substantially
54 interfere with the teacher's authority over the classroom, provided that
55 the suspending authority may reduce such period on a case by case basis
56 to be consistent with any other state and federal law. For purposes of

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

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

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

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

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

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

18 (3) possesses, while on school district property OR WHILE PARTICIPAT-
19 ING IN A SCHOOL-AUTHORIZED ACTIVITY, a gun, knife, explosive or incendi-
20 ary bomb, or other dangerous instrument capable of causing physical
21 injury or death;

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

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

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

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

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

38 (1) No pupil may be suspended for a period in excess of five school
39 days unless such pupil and the person in parental relation to such pupil
40 shall have had an opportunity for a fair hearing, upon reasonable
41 notice, at which such pupil shall have the right of representation by
42 counsel, with the right to question witnesses against such pupil and to
43 present witnesses and other evidence on his or her behalf. Where the
44 pupil is a student with a disability or a student presumed to have a
45 disability, the provisions of paragraph g of this subdivision shall also
46 apply. Where a pupil has been suspended in accordance with this subpara-
47 graph by a superintendent of schools, district superintendent of
48 schools, or community superintendent, the superintendent shall
49 personally hear and determine the proceeding or may, in his or her
50 discretion, designate a hearing officer to conduct the hearing. The
51 hearing officer shall be authorized to administer oaths and to issue
52 subpoenas in conjunction with the proceeding before him or her. A record
53 of the hearing shall be maintained, but no stenographic transcript shall
54 be required and a tape recording shall be deemed a satisfactory record.
55 The hearing officer shall make findings of fact and recommendations as
56

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

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

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

53 S 6. Subparagraphs 1 and 2 of paragraph d of subdivision 3 of section
54 3214 of the education law, as amended by chapter 425 of the laws of
55 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

1 SCHOOL-AUTHORIZED ACTIVITIES shall be suspended for a period of not less
2 than one calendar year from participation in such program. The proce-
3 dures of this subdivision shall apply to such a suspension of a nonpub-
4 lic school pupil. A superintendent of schools, district superintendent
5 of schools or community superintendent shall have the authority to modi-
6 fy this suspension requirement for each student on a case-by-case basis.
7 The determination of a superintendent shall be subject to review by the
8 board of education pursuant to paragraph c of this subdivision and the
9 commissioner pursuant to section three hundred ten of this chapter.
10 Nothing in this subdivision shall be deemed to authorize the suspension
11 of a student with a disability in violation of the individuals with
12 disabilities education act or article eighty-nine of this chapter. A
13 superintendent shall refer the pupil under the age of sixteen who has
14 been determined to have brought a weapon to school OR TO A SCHOOL-AU-
15 THORIZED ACTIVITY in violation of this subdivision to a presentment
16 agency for a juvenile delinquency proceeding consistent with article
17 three of the family court act except a student fourteen or fifteen years
18 of age who qualifies for juvenile offender status under subdivision
19 forty-two of section 1.20 of the criminal procedure law. A superinten-
20 dent shall refer any pupil sixteen years of age or older or a student
21 fourteen or fifteen years of age who qualifies for juvenile offender
22 status under subdivision forty-two of section 1.20 of the criminal
23 procedure law, who has been determined to have brought a weapon to
24 school OR TO A SCHOOL-AUTHORIZED ACTIVITY in violation of this subdivi-
25 sion to the appropriate law enforcement officials.

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

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

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