

7158

I N S E N A T E

March 17, 2010

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

AN ACT to amend the penal law, in relation to increasing the penalties for hazing; to amend the education law, in relation to prohibiting bullying or cyber-bullying on school property; to amend the penal law, in relation to establishing the crime of aggravated harassment of teachers and school personnel; and to amend the education law, in relation to creating a statewide central registry for bullying, cyber-bullying and hazing complaints

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

1 Section 1. Section 120.16 of the penal law, as amended by chapter 86
2 of the laws of 1988, is amended to read as follows:
3 S 120.16 Hazing in the first degree.
4 A person is guilty of hazing in the first degree when, in the course
5 of another person's initiation into or affiliation with any organiza-
6 tion, he OR SHE intentionally or recklessly engages in conduct which
7 creates a substantial risk of SERIOUS physical injury OR DEATH to such
8 other person or a third person and thereby causes such SERIOUS injury OR
9 DEATH TO SUCH PERSON OR TO A THIRD PERSON.
10 Hazing in the first degree is a class [A misdemeanor] D FELONY.
11 S 2. Section 120.17 of the penal law, as added by chapter 86 of the
12 laws of 1988, is amended to read as follows:
13 S 120.17 Hazing in the second degree.
14 A person is guilty of hazing in the second degree when, in the course
15 of another person's initiation or affiliation with any organization, he
16 OR SHE intentionally or recklessly engages in conduct which creates a
17 substantial risk of physical injury to such other person or a third
18 person AND THEREBY CAUSES SUCH INJURY.
19 Hazing in the second degree is a [violation] CLASS E FELONY.
20 S 3. The penal law is amended by adding two new sections 120.19 and
21 120.26 to read as follows:
22 S 120.19 HAZING IN THE THIRD DEGREE.

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

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1 A PERSON IS GUILTY OF HAZING IN THE THIRD DEGREE WHEN, IN THE COURSE
2 OF ANOTHER PERSON'S INITIATION OR AFFILIATION WITH ANY ORGANIZATION, HE
3 OR SHE INTENTIONALLY OR RECKLESSLY ENGAGES IN CONDUCT WHICH CREATES A
4 SUBSTANTIAL RISK OF PHYSICAL INJURY TO SUCH OTHER PERSON OR A THIRD
5 PERSON.

6 HAZING IN THE THIRD DEGREE IS A CLASS A MISDEMEANOR.

7 S 120.26 FAILURE TO REPORT HAZING.

8 A PERSON IS GUILTY OF FAILURE TO REPORT HAZING WHEN A PERSON KNOWS
9 THAT ANOTHER PERSON IS THE VICTIM OF HAZING AND FAILS TO REPORT SUCH
10 CRIME TO AN APPROPRIATE LAW ENFORCEMENT OFFICIAL AS SOON AS REASONABLY
11 PRACTICABLE.

12 FAILURE TO REPORT HAZING IS A CLASS B MISDEMEANOR.

13 S 4. Legislative intent. In recent years, the state legislature has
14 taken several steps to ensure that school pupils, teachers and other
15 personnel are provided with a safe and secure learning environment on
16 all school property. Through the enactment of provisions requiring the
17 fingerprinting of a school district's prospective employees and the
18 enactment of the Safe Schools Against Violence in Education Act, the
19 legislature has ensured the increased safety of our schools. However,
20 to address concerns that harassment of pupils and school personnel
21 through acts of bullying or cyber-bullying can be both disruptive to the
22 learning process and harmful, mentally and/or physically, to intended
23 victims, the legislature finds that enactment of this section and
24 sections five through ten of this act to prohibit bullying and cyber-
25 bullying on school property, which shall be known and may be noted as
26 the "Schools as Safe Harbors Act," is necessary and appropriate to
27 further ensure that New York state's public schools be made as safe as
28 possible.

29 S 5. Section 801-a of the education law, as added by chapter 181 of
30 the laws of 2000, is amended to read as follows:

31 S 801-a. Instruction in civility, citizenship and character education.
32 The regents shall ensure that the course of instruction in grades
33 kindergarten through twelve includes a component on civility, citizen-
34 ship and character education. Such component shall instruct students on
35 the principles of honesty, tolerance, personal responsibility, respect
36 for others, observance of laws and rules, courtesy, dignity and other
37 traits which will enhance the quality of their experiences in, and
38 contributions to, the community. SUCH COMPONENT SHALL ALSO ADDRESS
39 METHODS OF DISCOURAGING ACTS OF BULLYING AND CYBER-BULLYING, AS DEFINED
40 IN SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAP-
41 TER, AGAINST FELLOW STUDENTS. The regents shall determine how to incor-
42 porate such component in existing curricula and the commissioner shall
43 promulgate any regulations needed to carry out such determination of the
44 regents.

45 S 6. Subdivision 2 of section 2801 of the education law is amended by
46 adding a new paragraph a-1 to read as follows:

47 A-1. PROVISIONS PROHIBITING BULLYING AND CYBER-BULLYING ON SCHOOL
48 PROPERTY, INCLUDING A SCHOOL FUNCTION, PURSUANT TO SECTION TWENTY-EIGHT
49 HUNDRED THREE OF THIS ARTICLE;

50 S 7. Subdivision 2 of section 2801 of the education law is amended by
51 adding a new paragraph f-1 to read as follows:

52 F-1. WHEN ANY SCHOOL EMPLOYEE HAVING REASONABLE CAUSE TO SUSPECT THAT
53 A STUDENT HAS COMMITTED AN ACT OF BULLYING OR CYBER-BULLYING, AS DEFINED
54 IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS ARTICLE, THE SCHOOL
55 EMPLOYEE SHALL REPORT SUCH INCIDENT TO THE PRINCIPAL, OR DESIGNEE THERE-
56 OF, WHO IN TURN SHALL REPORT SUCH INCIDENT TO THE SUPERINTENDENT, UPON

1 A DETERMINATION BY THE PRINCIPAL, OR DESIGNEE THEREOF, THAT THERE IS A
2 REASONABLE SUSPICION THAT THE ACT OCCURRED. FAILURE OF AN EMPLOYEE TO
3 MAKE A REPORT PURSUANT TO THIS PARAGRAPH MAY NOT BE THE BASIS FOR ANY
4 DISCIPLINARY ACTION OR PROFESSIONAL MISCONDUCT CHARGE AGAINST THE
5 EMPLOYEE;

6 S 8. The education law is amended by adding a new section 2803 to read
7 as follows:

8 S 2803. BULLYING AND CYBER-BULLYING PROHIBITED. 1. FOR PURPOSES OF
9 THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

10 A. "PUBLIC SCHOOL" MEANS:

11 (I) A PUBLIC ELEMENTARY OR SECONDARY SCHOOL, KINDERGARTEN OR PRE-KIN-
12 DERGARTEN PROGRAM, ADULT OR CONTINUING EDUCATION PROGRAM OR OTHER EDUCA-
13 TIONAL PROGRAM OPERATED BY A SCHOOL DISTRICT, CHARTER SCHOOL, BOARD OF
14 COOPERATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTEN-
15 SION BOARDS; AND

16 (II) A SCHOOL OR EDUCATIONAL PROGRAM THAT SERVES STUDENTS IN ANY OF
17 GRADES KINDERGARTEN THROUGH TWELVE AND IS OPERATED BY THE DEPARTMENT, OR
18 IS OPERATED OR SUPERVISED BY ANOTHER STATE AGENCY OR A POLITICAL SUBDI-
19 VISION AND IS SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED TWELVE OF
20 THIS CHAPTER.

21 B. "PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM" MEANS AN APPROVED
22 PROVIDER OF SPECIAL EDUCATION PROGRAMS AND SERVICES UNDER SECTION
23 FORTY-FOUR HUNDRED TEN OF THIS CHAPTER, AN APPROVED PRIVATE RESIDENTIAL
24 OR NON-RESIDENTIAL SCHOOL FOR THE PROVISION OF SPECIAL SERVICES OR
25 PROGRAMS PURSUANT TO SUBDIVISION TWO OF SECTION FORTY-FOUR HUNDRED ONE
26 OF THIS CHAPTER, A STATE-SUPPORTED SCHOOL SUBJECT TO THE PROVISIONS OF
27 ARTICLE EIGHTY-FIVE OF THIS CHAPTER OR ANY OTHER AGENCY OR ENTITY THAT
28 PROVIDES SPECIAL EDUCATION PROGRAMS OR SERVICES PURSUANT TO THE
29 PROVISIONS OF ARTICLE EIGHTY-ONE OR EIGHTY-NINE OF THIS CHAPTER.

30 C. "SCHOOL PROPERTY" MEANS IN OR WITHIN ANY BUILDING, STRUCTURE,
31 ATHLETIC PLAYING FIELD, PLAYGROUND, PARKING LOT OR LAND CONTAINED WITHIN
32 THE REAL PROPERTY BOUNDARY LINE OF A PUBLIC SCHOOL OR A PUBLICLY FUNDED
33 SPECIAL EDUCATION PROGRAM; OR IN OR ON A SCHOOL BUS, AS DEFINED IN
34 SECTION ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW; AND A
35 "SCHOOL FUNCTION" MEANS A SCHOOL SPONSORED EXTRA-CURRICULAR EVENT OR
36 ACTIVITY.

37 D. "BULLYING" MEANS THREATENING, STALKING OR SEEKING TO COERCE OR
38 COMPEL A PERSON TO DO SOMETHING; ENGAGING IN VERBAL OR PHYSICAL CONDUCT
39 THAT THREATENS ANOTHER WITH HARM, INCLUDING INTIMIDATION THROUGH THE USE
40 OF EPITHETS OR SLURS INVOLVING RACE, ETHNICITY, NATIONAL ORIGIN, RELI-
41 GION, RELIGIOUS PRACTICES, GENDER, OR DISABILITY.

42 E. "CYBER-BULLYING" MEANS A COURSE OF CONDUCT OR REPEATED ACTS OF
43 ABUSIVE BEHAVIOR BY COMMUNICATING THROUGH ELECTRONIC MEANS, WITH A
44 PERSON ANONYMOUSLY OR OTHERWISE OVER A PERIOD OF TIME COMMITTING SUCH
45 ACTS AS, BUT NOT LIMITED TO, TAUNTING, INSULTING, HUMILIATING, HARASS-
46 ING, MENACING, SENDING HATE MAIL OR EMBARRASSING PHOTOGRAPHS.

47 2. NO STUDENT SHALL BE SUBJECT TO BULLYING OR CYBER-BULLYING BY ANY
48 STUDENT OF A PUBLIC SCHOOL OR PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM.

49 3. A. ANY PERSON FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS
50 SECTION IN A PUBLIC SCHOOL OR ON SCHOOL PROPERTY SHALL BE SUBJECT TO
51 DISCIPLINARY ACTION IN ACCORDANCE WITH THE DISTRICT'S CODE OF CONDUCT
52 ADOPTED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE AND
53 THE DISCIPLINE PROCEDURES APPLICABLE TO STUDENTS OR EMPLOYEES OF THE
54 PUBLIC SCHOOL. ANY PERSON FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF
55 THIS SECTION IN A PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM SHALL BE

1 SUBJECT TO DISCIPLINE UNDER THE POLICIES AND PROCEDURES OF SUCH PROGRAM
2 GOVERNING STUDENT CONDUCT OR EMPLOYEE DISCIPLINE.

3 B. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CREATE A PRIVATE
4 CAUSE OF ACTION.

5 4. NOTHING IN THIS SECTION SHALL APPLY, OR BE CONSTRUED TO APPLY, TO
6 PRIVATE, RELIGIOUS OR DENOMINATIONAL EDUCATIONAL INSTITUTIONS. NOR SHALL
7 THIS SECTION PRECLUDE OR LIMIT, OR BE PERCEIVED TO PRECLUDE OR LIMIT,
8 ANY RIGHT OR CAUSE OF ACTION PROVIDED UNDER ANY LOCAL, STATE OR FEDERAL
9 ORDINANCE, LAW, RULE OR REGULATION.

10 5. A PLAIN-LANGUAGE, AGE-APPROPRIATE DESCRIPTION OF THE POLICIES
11 OUTLINED IN SUBDIVISION TWO OF THIS SECTION SHALL BE DISTRIBUTED TO
12 EMPLOYEES, STUDENTS AND PARENTS OF EACH PUBLIC SCHOOL OR PUBLICLY-FUNDED
13 SPECIAL EDUCATION PROGRAM ON AT LEAST AN ANNUAL BASIS. IN THE CASE OF
14 PUBLIC SCHOOLS, SUCH REQUIREMENT SHALL BE MET BY INCLUDING SUCH
15 DESCRIPTION IN THE SUMMARY OF THE CODE OF CONDUCT PROVIDED TO EACH
16 STUDENT AND MAILED TO PARENTS PURSUANT TO SUBDIVISION FOUR OF SECTION
17 TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE.

18 6. THE PROVISIONS OF THIS SECTION SHALL BE SEVERABLE, AND IF ANY COURT
19 OF COMPETENT JURISDICTION DECLARES ANY PHRASE, CLAUSE, SENTENCE OR
20 PROVISION OF THIS ARTICLE TO BE INVALID, OR ITS APPLICABILITY TO ANY
21 GOVERNMENT AGENCY, PERSON OR CIRCUMSTANCE, IS DECLARED INVALID, THE
22 REMAINDER OF THIS ARTICLE AND ITS RELEVANT APPLICABILITY SHALL NOT BE
23 AFFECTED.

24 S 9. 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 BULLYING,
27 CYBER-BULLYING OR violence and weapons possession. Any school employee
28 having reasonable cause to suspect that a person has committed an act of
29 BULLYING OR CYBER-BULLYING AS SUCH TERM IS DEFINED IN SECTION
30 TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER OR violence while in or on
31 school property, or having reasonable cause to suspect that a person has
32 committed an act of BULLYING OR CYBER-BULLYING AS SUCH TERM IS DEFINED
33 IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER OR violence upon a
34 student, school employee or volunteer either upon school grounds 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 who in good faith reports such information to school officials, to the
39 commissioner, or to law enforcement authorities, shall have immunity
40 from any civil liability that may arise from the making of such report,
41 and no school district or school district employee shall take, request
42 or cause a retaliatory action against any such employee who makes such
43 report.

44 S 10. The penal law is amended by adding a new section 240.33 to read
45 as follows:

46 S 240.33 AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL PERSONNEL.

47 A PERSON IS GUILTY OF AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL
48 PERSONNEL WHEN, WITH INTENT TO HARASS, ANNOY OR ALARM A PERSON WHOM HE
49 OR SHE KNOWS OR REASONABLY SHOULD KNOW TO BE A TEACHER, ADMINISTRATOR OR
50 OTHER STAFF MEMBER OF A PUBLIC OR PRIVATE ELEMENTARY, INTERMEDIATE,
51 JUNIOR HIGH, VOCATIONAL OR HIGH SCHOOL, ENGAGED IN THE COURSE OF HIS OR
52 HER EMPLOYMENT, HE OR SHE STRIKES, SHOVS OR KICKS SUCH TEACHER, ADMIN-
53 ISTRATOR OR OTHER STAFF MEMBER, AND WHEN SUCH CONDUCT TAKES PLACE ON
54 SCHOOL PROPERTY AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THE
55 EDUCATION LAW WHERE SUCH TEACHER, ADMINISTRATOR OR OTHER STAFF MEMBER IS
56 EMPLOYED OR ASSIGNED ON THE DATE OF SUCH CONDUCT.

1 AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL PERSONNEL IS A CLASS B
2 MISDEMEANOR.

3 S 11. The education law is amended by adding a new section 2804 to
4 read as follows:

5 S 2804. STATEWIDE CENTRAL REGISTER FOR RECEIPT OF BULLYING, CYBER-BUL-
6 LYING AND HAZING COMPLAINTS. 1. THE COMMISSIONER SHALL CREATE A CENTRAL
7 REGISTER IN THE DEPARTMENT CAPABLE OF RECEIVING TELEPHONE CALLS ALLEGING
8 BULLYING, CYBER-BULLYING AND HAZING.

9 2. THERE SHALL BE A SINGLE STATEWIDE TELEPHONE NUMBER THAT ALL PERSONS
10 MAY USE TO MAKE TELEPHONE CALLS ALLEGING BULLYING, CYBER-BULLYING AND/OR
11 HAZING. ALL SUCH ALLEGATIONS SHALL BE REPORTED BY THE DEPARTMENT TO THE
12 APPROPRIATE SCHOOL WHERE THE ALLEGED INCIDENT HAS OCCURRED AND LAW
13 ENFORCEMENT AGENCY WHERE IT SHALL BE DETERMINED IF A CRIME OF BULLYING,
14 CYBER-BULLYING OR HAZING HAS OCCURRED. A REPORT SHALL ALSO BE MADE TO
15 THE SCHOOL DISTRICT IN WHICH THE ALLEGED INCIDENT OCCURRED. WHEN ANY
16 ALLEGATIONS CONTAINED IN SUCH TELEPHONE CALLS COULD REASONABLY CONSTI-
17 TUTE A CRIME OF BULLYING, CYBER-BULLYING OR HAZING, SUCH ALLEGATIONS
18 SHALL BE IMMEDIATELY TRANSMITTED ORALLY OR ELECTRONICALLY BY THE DEPART-
19 MENT TO THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY FOR INVESTIGATION.
20 THE INABILITY OF THE PERSON CALLING THE REGISTER TO IDENTIFY THE ALLEGED
21 PERPETRATOR SHALL, IN NO CIRCUMSTANCE, CONSTITUTE THE SOLE CAUSE FOR THE
22 REGISTER TO REJECT SUCH ALLEGATION OR FAIL TO TRANSMIT SUCH ALLEGATION
23 FOR INVESTIGATION. IF THE RECORDS INDICATE A PREVIOUS REPORT CONCERNING
24 A SUBJECT OF THE REPORT, OTHER PERSONS NAMED IN THE REPORT OR OTHER
25 PERTINENT INFORMATION, THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY
26 SHALL BE IMMEDIATELY NOTIFIED OF THE FACT.

27 S 12. This act shall take effect on the first of November next
28 succeeding the date on which it shall have become a law.