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

7161

I N S E N A T E

March 18, 2010

Introduced by Sen. HANNON -- 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 directing the commissioner of education to establish rules and regulations for the treatment and monitoring of students of school districts, boards of cooperative educational services and nonpublic schools who suffer mild traumatic brain injuries; and to amend the general obligations law, in relation to liability for youth athletic activities and authorizing youth athletic leagues to adopt such rules and regulations for the treatment and monitoring of athletes who suffer mild traumatic brain injuries

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

Section 1. Section 305 of the education law is amended by adding a new subdivision 42 to read as follows:

42. A. THE COMMISSIONER, IN CONSULTATION AND COOPERATION WITH THE ADVISORY COMMITTEE ESTABLISHED PURSUANT TO PARAGRAPH B OF THIS SUBDIVISION, SHALL:

(I) PROMULGATE, IMPLEMENT AND REGULARLY UPDATE RULES AND REGULATIONS ESTABLISHING THE MINIMUM STANDARDS FOR ALL SCHOOL DISTRICTS, BOARDS OF COOPERATIVE EDUCATIONAL SERVICES AND NONPUBLIC SCHOOLS RELATING TO THE TREATMENT AND MONITORING OF PUPILS WHO SUFFER MILD TRAUMATIC BRAIN INJURIES, ALSO REFERRED TO AS "CONCUSSIONS", WHILE RECEIVING INSTRUCTION OR ENGAGING IN ANY SCHOOL SPONSORED OR RELATED ACTIVITY. SUCH RULES AND REGULATIONS SHALL PROVIDE FOR THE APPROPRIATE LEVEL OF MONITORING THE CONDITION, BOTH MENTAL AND PHYSICAL, OF EVERY PUPIL WHO HAS SUFFERED A MILD TRAUMATIC BRAIN INJURY, AND PROVIDE APPROPRIATE RESTRICTIONS ON PARTICIPATION IN ATHLETIC ACTIVITIES BY SUCH PUPILS, INCLUDING, BUT NOT LIMITED TO, THE EXAMINATION BY AND WRITTEN APPROVAL OF THE CHIEF MEDICAL OFFICER OF THE SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES OR NONPUBLIC SCHOOL PRIOR TO THE RESUMPTION OF ATHLETIC ACTIVITIES BY A PUPIL WHO HAS SUFFERED A MILD TRAUMATIC BRAIN INJURY. ALL RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS SUBPARAGRAPH SHALL, AT A MINIMUM, BE CONSISTENT AND COMPLY WITH THE BASELINE GUIDELINES FOR

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

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MILD TRAUMATIC BRAIN INJURIES ESTABLISHED BY THE CENTERS FOR DISEASE CONTROL AND PREVENTION OF THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES;

(II) PROMULGATE AND DISTRIBUTE TO ALL SCHOOL DISTRICTS, BOARDS OF COOPERATIVE EDUCATIONAL SERVICES AND NONPUBLIC SCHOOLS AN INFORMATION PAMPHLET TO EDUCATE COACHES, PUPILS PARTICIPATING IN INTERSCHOLASTIC SPORTS, PUPILS WHO HAVE SUFFERED MILD TRAUMATIC BRAIN INJURIES AND PERSONS IN PARENTAL RELATION TO A PUPIL ON THE NATURE AND RISKS OF MILD TRAUMATIC BRAIN INJURIES. A COPY OF SUCH PAMPHLET SHALL BE PROVIDED TO EVERY TEACHER OF PHYSICAL EDUCATION, COACH OF INTERSCHOLASTIC TEAMS, EVERY INTERSCHOLASTIC STUDENT-ATHLETE, EVERY PUPIL WHO SUFFERS A MILD TRAUMATIC BRAIN INJURY AND THE PERSON IN PARENTAL RELATION TO EACH PUPIL WHO PARTICIPATES IN AN INTERSCHOLASTIC SPORT OR HAS SUFFERED A MILD TRAUMATIC BRAIN INJURY; AND

(III) PROMULGATE AND DISTRIBUTE TO ALL SCHOOL DISTRICTS, BOARDS OF COOPERATIVE EDUCATIONAL SERVICES AND NONPUBLIC SCHOOLS A FORM WHICH ATTESTS TO RECEIPT OF THE PAMPHLET ESTABLISHED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH AND THAT THE SIGNATORS HAVE READ AND UNDERSTAND THE NATURE AND RISKS OF MILD TRAUMATIC BRAIN INJURIES. NO PUPIL SHALL PRACTICE FOR OR ENGAGE IN INTERSCHOLASTIC SPORTS UNTIL SUCH PUPIL AND THE PERSON IN PARENTAL RELATION TO HIM OR HER HAVE SIGNED SUCH FORM.

B. THERE SHALL BE ESTABLISHED, WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SUBDIVISION, AN ADVISORY COMMITTEE TO THE COMMISSIONER. SUCH COMMITTEE SHALL BE COMPOSED OF THREE MEMBERS, WITH TWO MEMBERS APPOINTED BY THE COMMISSIONER AND ONE MEMBER APPOINTED BY THE COMMISSIONER OF HEALTH. ONE OF THE MEMBERS APPOINTED BY THE COMMISSIONER SHALL BE AN ATHLETIC DIRECTOR OF A SCHOOL DISTRICT IN THIS STATE. ALL MEMBERS OF THE COMMITTEE SHALL HAVE KNOWLEDGE OF THE NATURE AND RISKS OF MILD TRAUMATIC BRAIN INJURY.

C. THE RULES AND REGULATIONS ESTABLISHED PURSUANT TO THIS SUBDIVISION SHALL BE DEEMED TO BE THE MINIMUM STANDARDS THAT MUST BE COMPLIED WITH BY EVERY SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES AND NONPUBLIC SCHOOL RELATING TO MILD TRAUMATIC BRAIN INJURIES. NOTHING IN THIS SUBDIVISION SHALL PROHIBIT ANY SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES OR NONPUBLIC SCHOOL FROM ADOPTING AND IMPLEMENTING MORE STRINGENT STANDARDS.

S 2. Section 901 of the education law is amended by adding a new subdivision 3 to read as follows:

3. THE HEAD HEALTH CARE PROFESSIONAL IN EACH SCHOOL DISTRICT SHALL ENSURE IMPLEMENTATION OF THE RULES AND REGULATIONS RELATING TO MILD TRAUMATIC BRAIN INJURIES ESTABLISHED PURSUANT TO SUBDIVISION FORTY-TWO OF SECTION THREE HUNDRED FIVE OF THIS CHAPTER.

S 3. Article 9 of the general obligations law is amended by adding a new title 3 to read as follows:

TITLE 3

LIABILITY FOR YOUTH ATHLETIC PROGRAMS

SECTION 9-301. LIABILITY OF SCHOOL DISTRICTS AND NOT-FOR-PROFIT YOUTH SPORTS PROGRAMS FOR ATHLETICS.

S 9-301. LIABILITY OF SCHOOL DISTRICTS AND NOT-FOR-PROFIT YOUTH SPORTS PROGRAMS FOR ATHLETICS. 1. A SCHOOL DISTRICT OR NOT-FOR-PROFIT YOUTH SPORTS PROGRAM SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY OR DEATH OF A PERSON DUE TO ACTION OR INACTION OF ANY OTHER PERSON EMPLOYED BY, VOLUNTEERING WITH OR UNDER CONTRACT WITH SUCH NOT-FOR-PROFIT YOUTH PROGRAM IF:

A. THE ACTION OR INACTION TAKES PLACE ON SCHOOL DISTRICT PROPERTY DURING THE DELIVERY OF SERVICE BY THE NOT-FOR-PROFIT YOUTH SPORTS PROGRAM;

B. THE NOT-FOR-PROFIT YOUTH SPORTS PROGRAM PROVIDES PROOF OF BEING INSURED UNDER AN ACCIDENT AND LIABILITY POLICY FROM AN INSURER AUTHORIZED TO DO BUSINESS IN THIS STATE, THAT COVERS ANY PERSONAL INJURY OR DEATH ARISING FROM DELIVERY OF SERVICES. SUCH COVERAGE SHALL BE NOT LESS THAN FIFTY THOUSAND DOLLARS DUE TO BODILY INJURY OR DEATH TO ANY SINGLE PERSON, AND NOT LESS THAN ONE HUNDRED THOUSAND DOLLARS DUE TO BODILY INJURY OR DEATH TO TWO OR MORE PERSONS IN ANY SINGLE INCIDENT; AND

C. THE NOT-FOR-PROFIT YOUTH SPORTS PROGRAM PROVIDES SUCH PROOF OF INSURANCE TO THE SCHOOL DISTRICT PRIOR TO USING THE FACILITIES OF SUCH DISTRICT.

2. FOR THE PURPOSES OF THIS SECTION, "YOUTH SPORTS PROGRAM" MEANS ANY PROGRAM ORGANIZED FOR RECREATIONAL ATHLETIC COMPETITION AND/OR INSTRUCTION AND THE PARTICIPANTS IN WHICH ARE (A) NINETEEN YEARS OLD OR YOUNGER, OR (B) PHYSICALLY OR MENTALLY DISABLED, REGARDLESS OF AGE.

3. ANY NOT-FOR-PROFIT YOUTH SPORTS PROGRAM MAY ADOPT AND IMPLEMENT THE STANDARDS AND REQUIREMENTS FOR MILD TRAUMATIC BRAIN INJURIES, ESTABLISHED BY THE COMMISSIONER OF EDUCATION PURSUANT TO SUBDIVISION FORTY-TWO OF SECTION THREE HUNDRED FIVE OF THE EDUCATION LAW. NOTHING IN THIS TITLE SHALL BE DEEMED TO PROHIBIT THE ADOPTION AND IMPLEMENTATION OF STANDARDS WHICH ARE MORE STRINGENT.

S 4. This act shall take effect on the first of July next succeeding the date on which it shall have become a law; provided, that, effective immediately, any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date.