

1144

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. McDONOUGH, KOLB -- Multi-Sponsored by -- M. of A. FITZPATRICK, THIELE -- read once and referred to the Committee on Education

AN ACT to amend the education law and the penal law, in relation to improving student safety at school functions

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 two new
2 subdivisions 20 and 21 to read as follows:

3 20. SCHOOL PROPERTY. THE TERM "SCHOOL PROPERTY" MEANS IN OR WITHIN ANY
4 BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD, PLAYGROUND, PARKING LOT OR
5 LAND CONTAINED WITHIN THE REAL PROPERTY BOUNDARY LINE OF A PUBLIC
6 ELEMENTARY OR SECONDARY SCHOOL; OR IN OR ON A SCHOOL BUS, AS DEFINED IN
7 SECTION ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW.

8 21. SCHOOL FUNCTION. THE TERM "SCHOOL FUNCTION" MEANS A SCHOOL-SPON-
9 SORED EXTRA-CURRICULAR EVENT OR ACTIVITY, ON OR OFF SCHOOL PROPERTY.

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

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

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

17 (2) commits, while on school district property OR AT A SCHOOL
18 FUNCTION, an act of violence upon another student or any other person
19 lawfully upon said property;

20 (3) possesses, while on school district property OR AT A SCHOOL FUNC-
21 TION, a gun, knife, explosive or incendiary bomb, or other dangerous
22 instrument capable of causing physical injury or death;

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

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1 (4) displays, while on school district property OR AT A SCHOOL FUNC-
2 TION, what appears to be a gun, knife, explosive or incendiary bomb or
3 other dangerous instrument capable of causing death or physical injury;

4 (5) threatens, while on school district property OR AT A SCHOOL FUNC-
5 TION, to use any instrument that appears capable of causing physical
6 injury or death;

7 (6) knowingly and intentionally damages or destroys the personal prop-
8 erty of a teacher, administrator, other school district employee or any
9 person lawfully upon school district property OR AT A SCHOOL FUNCTION;
10 or

11 (7) knowingly and intentionally damages or destroys school district
12 property.

13 S 3. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of
14 the education law, as amended by chapter 430 of the laws of 2006, is
15 amended to read as follows:

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

50 S 4. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of
51 the education law, as amended by chapter 380 of the laws of 2001, is
52 amended to read as follows:

53 (1) No pupil may be suspended for a period in excess of five school
54 days unless such pupil and the person in parental relation to such pupil
55 shall have had an opportunity for a fair hearing, upon reasonable
56 notice, at which such pupil shall have the right of representation by

1 counsel, with the right to question witnesses against such pupil and to
2 present witnesses and other evidence on his behalf. Where a pupil has
3 been suspended in accordance with this subdivision by a superintendent
4 of schools, district superintendent of schools, or community superinten-
5 dent, the superintendent shall personally hear and determine the
6 proceeding or may, in his discretion, designate a hearing officer to
7 conduct the hearing. The hearing officer shall be authorized to adminis-
8 ter oaths and to issue subpoenas in conjunction with the proceeding
9 before him. A record of the hearing shall be maintained, but no steno-
10 graphic transcript shall be required and a tape recording shall be
11 deemed a satisfactory record. The hearing officer shall make findings of
12 fact and recommendations as to the appropriate measure of discipline to
13 the superintendent. The report of the hearing officer shall be advisory
14 only, and the superintendent may accept all or any part thereof. An
15 appeal will lie from the decision of the superintendent to the board of
16 education who shall make its decision solely upon the record before it.
17 The board may adopt in whole or in part the decision of the superinten-
18 dent of schools. Where the basis for the suspension is, in whole or in
19 part, the possession on school grounds [or], school property OR AT A
20 SCHOOL FUNCTION by the student of any firearm, rifle, shotgun, dagger,
21 dangerous knife, dirk, razor, stiletto or any of the weapons, instru-
22 ments or appliances specified in subdivision one of section 265.01 of
23 the penal law, the hearing officer or superintendent shall not be barred
24 from considering the admissibility of such weapon, instrument or appli-
25 ance as evidence, notwithstanding a determination by a court in a crimi-
26 nal or juvenile delinquency proceeding that the recovery of such weapon,
27 instrument or appliance was the result of an unlawful search or seizure.

28 S 5. Section 3028-c of the education law, as added by chapter 181 of
29 the laws of 2000, is amended to read as follows:

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

45 S 6. Subdivision 10 of section 120.05 of the penal law, as added by
46 chapter 181 of the laws of 2000, is amended to read as follows:

47 10. Acting at a place the person knows, or reasonably should know, is
48 on school grounds OR AT A SCHOOL FUNCTION and with intent to cause phys-
49 ical injury, he or she:

50 (a) causes such injury to an employee of a school or public school
51 district; or

52 (b) not being a student of such school or public school district,
53 causes physical injury to another, and such other person is a student of
54 such school who is attending or present for educational purposes. For
55 purposes of this subdivision the term "school grounds" shall have the
56 meaning set forth in subdivision fourteen of section 220.00 of this

1 [chapter] PART AND THE TERM "SCHOOL FUNCTION" SHALL HAVE THE MEANING SET
2 FORTH IN SUBDIVISION TWENTY-ONE OF SECTION TWO OF THE EDUCATION LAW.
3 S 7. This act shall take effect on the first of November next succeed-
4 ing the date on which it shall have become a law; provided that the
5 amendments to subparagraph 1 of paragraph c of subdivision 3 of section
6 3214 of the education law made by section three of this act shall be
7 subject to the expiration and reversion of such subparagraph pursuant to
8 section 8 of chapter 430 of the laws of 2006, as amended, when upon such
9 date the provisions of section four of this act shall take effect.
10 Provided further, however that effective immediately, the addition,
11 amendment and/or repeal of any rule or regulation necessary for the
12 implementation of this act on its effective date is authorized and
13 directed to be made and completed on or before such effective date.