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

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 29, 2009

Introduced by M. of A. THIELE, KOLB, WALKER, ALFANO, BALL, BARRA, SALADINO -- Multi-Sponsored by -- M. of A. BACALLES, BURLING, CROUCH, DUPREY, GIGLIO, HAYES, QUINN, REILICH, SAYWARD, SPANO, TEDISCO, TOBACCO -- read once and referred 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:

Section 1. Section 120.16 of the penal law, as amended by chapter 86 of the laws of 1988, is amended to read as follows:

S 120.16 Hazing in the first degree.

A person is guilty of hazing in the first degree when, in the course of another person's initiation into or affiliation with any organization, he OR SHE intentionally or recklessly engages in conduct which creates a substantial risk of SERIOUS physical injury OR DEATH to such other person or a third person and thereby causes such SERIOUS injury OR DEATH TO SUCH PERSON OR TO A THIRD PERSON.

Hazing in the first degree is a class [A misdemeanor] D FELONY.

S 2. Section 120.17 of the penal law, as added by chapter 86 of the laws of 1988, is amended to read as follows:

S 120.17 Hazing in the second degree.

A person is guilty of hazing in the second degree when, in the course of another person's initiation or affiliation with any organization, he OR SHE intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person or a third person AND THEREBY CAUSES SUCH INJURY.

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

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Hazing in the second degree is a [violation] CLASS E FELONY.

S 3. The penal law is amended by adding two new sections 120.19 and 120.26 to read as follows:

S 120.19 HAZING IN THE THIRD DEGREE.

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

HAZING IN THE THIRD DEGREE IS A CLASS A MISDEMEANOR.

S 120.26 FAILURE TO REPORT HAZING.

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

FAILURE TO REPORT HAZING IS A CLASS B MISDEMEANOR.

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

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

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

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

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

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

F-1. WHEN ANY SCHOOL EMPLOYEE HAVING REASONABLE CAUSE TO SUSPECT THAT A STUDENT HAS COMMITTED AN ACT OF BULLYING OR CYBER-BULLYING, AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS ARTICLE, THE SCHOOL EMPLOYEE SHALL REPORT SUCH INCIDENT TO THE PRINCIPAL, OR DESIGNEE THEREOF, WHO IN TURN SHALL REPORT SUCH INCIDENT TO THE SUPERINTENDENT, UPON A DETERMINATION BY THE PRINCIPAL, OR DESIGNEE THEREOF, THAT THERE IS A REASONABLE SUSPICION THAT THE ACT OCCURRED. FAILURE OF AN EMPLOYEE TO MAKE A REPORT PURSUANT TO THIS PARAGRAPH MAY NOT BE THE BASIS FOR ANY DISCIPLINARY ACTION OR PROFESSIONAL MISCONDUCT CHARGE AGAINST THE EMPLOYEE;

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

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

A. "PUBLIC SCHOOL" MEANS:

(I) A PUBLIC ELEMENTARY OR SECONDARY SCHOOL, KINDERGARTEN OR PRE-KINDERGARTEN PROGRAM, ADULT OR CONTINUING EDUCATION PROGRAM OR OTHER EDUCATIONAL PROGRAM OPERATED BY A SCHOOL DISTRICT, CHARTER SCHOOL, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTENSION BOARDS; AND

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

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

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

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

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

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

3. A. ANY PERSON FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION IN A PUBLIC SCHOOL OR ON SCHOOL PROPERTY SHALL BE SUBJECT TO DISCIPLINARY ACTION IN ACCORDANCE WITH THE DISTRICT'S CODE OF CONDUCT

ADOPTED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE AND THE DISCIPLINE PROCEDURES APPLICABLE TO STUDENTS OR EMPLOYEES OF THE PUBLIC SCHOOL. ANY PERSON FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION IN A PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM SHALL BE SUBJECT TO DISCIPLINE UNDER THE POLICIES AND PROCEDURES OF SUCH PROGRAM GOVERNING STUDENT CONDUCT OR EMPLOYEE DISCIPLINE.

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

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

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

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

S 9. Section 3028-c of the education law, as added by chapter 181 of the laws of 2000, is amended to read as follows:

S 3028-c. Protection of school employees who report acts of BULLYING, CYBER-BULLYING OR violence and weapons possession. Any school employee having reasonable cause to suspect that a person has committed an act of BULLYING OR CYBER-BULLYING AS SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER OR violence while in or on school property, or having reasonable cause to suspect that a person has committed an act of BULLYING OR CYBER-BULLYING AS SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER OR violence upon a student, school employee or volunteer either upon school grounds or elsewhere, or having reasonable cause to suspect that a person has brought a gun, knife, bomb or other instrument capable of or that appears capable of causing death or physical injury upon school grounds who in good faith reports such information to school officials, to the commissioner, or to law enforcement authorities, shall have immunity from any civil liability that may arise from the making of such report, and no school district or school district employee shall take, request or cause a retaliatory action against any such employee who makes such report.

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

S 240.33 AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL PERSONNEL.

A PERSON IS GUILTY OF AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL PERSONNEL WHEN, WITH INTENT TO HARASS, ANNOY OR ALARM A PERSON WHOM HE OR SHE KNOWS OR REASONABLY SHOULD KNOW TO BE A TEACHER, ADMINISTRATOR OR OTHER STAFF MEMBER OF A PUBLIC OR PRIVATE ELEMENTARY, INTERMEDIATE, JUNIOR HIGH, VOCATIONAL OR HIGH SCHOOL, ENGAGED IN THE COURSE OF HIS OR HER EMPLOYMENT, HE OR SHE STRIKES, SHOVES OR KICKS SUCH TEACHER, ADMIN-

ISTRATOR OR OTHER STAFF MEMBER, AND WHEN SUCH CONDUCT TAKES PLACE ON SCHOOL PROPERTY AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THE EDUCATION LAW WHERE SUCH TEACHER, ADMINISTRATOR OR OTHER STAFF MEMBER IS EMPLOYED OR ASSIGNED ON THE DATE OF SUCH CONDUCT.

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

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

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

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

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