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

7547

2009-2010 Regular Sessions

I N  A S S E M B L Y

April 14, 2009

Introduced by M. of A. ORTIZ -- Multi-Sponsored by -- M. of A. CUSICK, DIAZ, ESPAILLAT, GALEF, HIKIND, MAGEE, PERRY, J. RIVERA, ROBINSON, SEMINERIO, TOWNS, WEISENBERG -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to establishing liability protection for public school educators

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

Section 1. This act shall be known and may be cited as the "education quality and teacher and principal protection act".

S 2. The education law is amended by adding a new article 62 to read as follows:

ARTICLE 62

EDUCATION QUALITY AND TEACHER AND PRINCIPAL PROTECTION ACT

SECTION 3070. LEGISLATIVE FINDINGS.
3071. DEFINITIONS.
3072. LIABILITY.
3073. PUNITIVE AND EXEMPLARY DAMAGES.
3074. FALSE REPORTS.
3075. FRIVOLOUS ACTIONS; ATTORNEY'S FEES; COST.
3076. CONTINGENCY FEES; PENALTY.
3077. INSURANCE.

S 3070. LEGISLATIVE FINDINGS. THE LEGISLATURE FINDS THAT ENSURING THE QUALITY OF PRIMARY AND SECONDARY PUBLIC EDUCATION IS A COMPELLING STATE INTEREST. THE EDUCATIONAL ENVIRONMENT OF STUDENTS IS OFTEN NOT CONDUCIVE TO LEARNING. VIOLENCE IS SOMETIMES A THREAT, WHILE OTHER TIMES EDUCATORS MAY LACK THE AUTHORITY TO MAINTAIN SAFETY AND DISCIPLINE IN THE PUBLIC SCHOOLS. THE FILING OF MERITLESS LAWSUITS AGAINST SCHOOL DISTRICTS, TEACHERS, ADMINISTRATORS, AND OTHER SCHOOL EMPLOYEES INTERFERES WITH ATTEMPTS TO ENSURE THE QUALITY OF PUBLIC EDUCATION, PARTICULARLY WHERE

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

LBD10946-01-9

SUCH LAWSUITS ARISE OUT OF THE GOOD FAITH EFFORTS OF EDUCATORS TO MAINTAIN CLASSROOM DISCIPLINE OR ADDRESS THREATS TO STUDENT SAFETY. MERITLESS LITIGATION ALSO DIVERTS FINANCIAL AND PERSONNEL RESOURCES TO LITIGATION DEFENSE ACTIVITIES AND REDUCES THE AVAILABILITY OF SUCH RESOURCES FOR EDUCATIONAL OPPORTUNITIES FOR STUDENTS. THE LEGISLATURE FURTHER FINDS THAT LEGISLATION TO DETER MERITLESS LAWSUITS AND SANCTION DELIBERATELY FALSE REPORTS AGAINST EDUCATORS IS A RATIONAL AND APPROPRIATE METHOD TO ADDRESS THIS COMPELLING PUBLIC INTEREST.

S 3071. DEFINITIONS. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING TERMS SHALL MEAN:

1. "EDUCATIONAL ENTITY" MEANS THE DEPARTMENT OF EDUCATION OR ANY OTHER BODY, BOARD OR AGENCY THAT GOVERNS ONE OR MORE PUBLIC PRIMARY OR SECONDARY SCHOOLS.

2. "EMPLOYEE" MEANS ANY INDIVIDUAL ELECTED OR APPOINTED TO AN EDUCATIONAL ENTITY OR WHO PROVIDES STUDENT-RELATED SERVICES TO THAT EDUCATIONAL ENTITY ON A CONTRACTUAL BASIS. THE TERM EMPLOYEE SHALL ALSO INCLUDE AN AUTHORIZED VOLUNTEER WHO PROVIDES STUDENT-RELATED SERVICES TO THE EDUCATIONAL ENTITY.

S 3072. LIABILITY. 1. AN EDUCATIONAL ENTITY OR ITS EMPLOYEES SHALL NOT BE SUBJECT TO LIABILITY FOR TAKING ANY ACTION REGARDING THE SUPERVISION, GRADING, SUSPENSION, EXPULSION OR DISCIPLINE OF STUDENTS WHILE SUCH STUDENTS ARE ON THE PROPERTY OF THE EDUCATIONAL ENTITY OR ARE UNDER THE SUPERVISION OF THE EDUCATIONAL ENTITY OR ITS EMPLOYEES. HOWEVER, THIS IMMUNITY SHALL NOT APPLY IF SUCH ACTION VIOLATED AN EXPRESS STATUTE, RULE, REGULATION OR CLEARLY ARTICULATED POLICY OF THE STATE OR EDUCATIONAL ENTITY. THE BURDEN OF PROOF OF SUCH A VIOLATION SHALL REST WITH THE PARTY BRINGING THE ACTION AND MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE TO THE COURT AS PART OF A SUMMARY PROCEEDING.

2. AN EDUCATIONAL ENTITY AND ITS EMPLOYEES SHALL NOT BE SUBJECT TO LIABILITY FOR MAKING A REPORT CONSISTENT WITH FEDERAL LAW TO THE APPROPRIATE LAW ENFORCEMENT AUTHORITIES OR OFFICIALS OF AN EDUCATIONAL ENTITY IF THE INDIVIDUAL MAKING THE REPORT HAS REASONABLE GROUNDS TO SUSPECT THAT A STUDENT IS:

(A) UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE OR A CONTROLLED SUBSTANCE NOT LAWFULLY PRESCRIBED TO THAT INDIVIDUAL;

(B) IN POSSESSION OF A FIREARM, ALCOHOLIC BEVERAGE OR A CONTROLLED SUBSTANCE NOT LAWFULLY PRESCRIBED TO THAT INDIVIDUAL; OR

(C) INVOLVED IN THE ILLEGAL SOLICITATION, SALE OR DISTRIBUTION OF A FIREARM, ALCOHOLIC BEVERAGE OR CONTROLLED SUBSTANCE NOT LAWFULLY PRESCRIBED TO THAT INDIVIDUAL.

S 3073. PUNITIVE AND EXEMPLARY DAMAGES. 1. AN EDUCATIONAL ENTITY SHALL NOT BE LIABLE FOR PUNITIVE OR EXEMPLARY DAMAGES. AN EMPLOYEE SHALL NOT BE LIABLE FOR PUNITIVE OR EXEMPLARY DAMAGES FOR ACTS OR OMISSIONS WITHIN THE COURSE AND SCOPE OF EMPLOYMENT.

2. FOR THE PURPOSES OF THIS SECTION, AN EMPLOYEE WHO ACTS WITH SPECIFIC INTENT TO CAUSE HARM SHALL NOT BE CONSIDERED AS ACTING WITHIN THE COURSE AND SCOPE OF EMPLOYMENT.

S 3074. FALSE REPORTS. 1. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, ANY PERSON EIGHTEEN YEARS OF AGE OR OLDER WHO ACTS WITH SPECIFIC INTENT IN MAKING A FALSE ACCUSATION OF CRIMINAL ACTIVITY AGAINST AN EMPLOYEE OF AN EDUCATIONAL ENTITY TO LAW ENFORCEMENT AUTHORITIES, SCHOOL DISTRICT OFFICIALS OR PERSONNEL, OR BOTH, SHALL BE SUBJECT TO A CIVIL FINE OF UP TO TWO THOUSAND DOLLARS.

2. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, ANY PUBLIC SCHOOL STUDENT BETWEEN THE AGES OF SEVEN AND SEVENTEEN, INCLUSIVE, WHO ACTS WITH SPECIFIC INTENT IN MAKING A FALSE ACCUSATION OF CRIMINAL ACTIVITY

AGAINST AN EMPLOYEE OF AN EDUCATIONAL ENTITY TO LAW ENFORCEMENT AUTHORITIES, SCHOOL DISTRICT OFFICIALS OR PERSONNEL, OR BOTH, MAY, AT THE DISCRETION OF THE COURT, AND IN ACCORDANCE WITH THE PROVISIONS OF THE FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT, 20 U.S.C.A. SS 1400 ET SEQ., BE SUBJECT TO ANY OF THE FOLLOWING:

(A) EXPULSION;

(B) SUSPENSION FOR A PERIOD OF TIME TO BE DETERMINED BY THE COURT;

(C) COMMUNITY SERVICE OF A TYPE AND FOR A PERIOD OF TIME TO BE DETERMINED BY THE COURT; OR

(D) ANY OTHER SANCTION AS THE COURT IN ITS DISCRETION MAY DEEM APPROPRIATE.

3. THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO STATEMENTS REGARDING INDIVIDUALS ELECTED OR APPOINTED TO A SCHOOL BOARD.

4. THIS ARTICLE SHALL NOT BE DEEMED TO LIMIT THE CIVIL OR CRIMINAL LIABILITY OF THOSE PERSONS WHO MAKE FALSE STATEMENTS ALLEGING CRIMINAL ACTIVITY BY OTHERS.

S 3075. FRIVOLOUS ACTIONS; ATTORNEY'S FEES; COST. 1. IN ANY CIVIL ACTION OR PROCEEDING AGAINST AN EDUCATIONAL ENTITY OR ITS EMPLOYEE IN WHICH THE EDUCATIONAL ENTITY OR ITS EMPLOYEE PREVAIL, THE COURT SHALL AWARD COST AND REASONABLE ATTORNEY'S FEES TO THE PREVAILING DEFENDANT OR DEFENDANTS. THE COURT IN ITS DISCRETION MAY DETERMINE WHETHER SUCH FEES AND COSTS ARE TO BE BORNE BY THE PLAINTIFF'S ATTORNEY, THE PLAINTIFF, OR BOTH.

2. EXPERT WITNESS FEES MAY BE INCLUDED AS PART OF THE COSTS AWARDED UNDER THIS SECTION.

S 3076. CONTINGENCY FEES; PENALTY. 1. NO ATTORNEY SHALL CHARGE, DEMAND, RECEIVE OR COLLECT FOR SERVICES RENDERED, FEES IN EXCESS OF TWENTY-FIVE PERCENT OF ANY CIVIL JUDGEMENT RENDERED AGAINST AN EDUCATIONAL ENTITY OR ITS EMPLOYEES, OR ANY SETTLEMENT ENTERED INTO PURSUANT TO LAW.

2. ANY INTERESTED PERSON MAY FILE A CIVIL ACTION OR PETITION WITH THE APPROPRIATE COURT TO RESCIND ANY PROVISION OF THE ATTORNEY FEE CONTRACT INCONSISTENT WITH THIS SECTION AND TO COMPEL DISGORGEMENT OF ANY FEES PAID IN EXCESS OF THE AMOUNTS ALLOWED UNDER THIS SECTION. IN ADDITION, A COURT WITH JURISDICTION OVER THE MATTER SHALL IMPOSE A FINE AGAINST THE ATTORNEY THAT IS EQUAL TO OR LESS THAN THE AMOUNT OF MONEY SOUGHT BY THE ATTORNEY IN EXCESS OF THE AMOUNT PERMITTED BY THIS SECTION, BUT IN ANY EVENT NOT LESS THAN TWO THOUSAND DOLLARS.

S 3077. INSURANCE. UNLESS OTHERWISE PROVIDED BY LAW, THE EXISTENCE OF ANY POLICY OF INSURANCE INDEMNIFYING AN EDUCATIONAL ENTITY AGAINST LIABILITY FOR DAMAGES SHALL NOT BE CONSIDERED A WAIVER OF ANY DEFENSE OTHERWISE AVAILABLE TO THE EDUCATIONAL ENTITY OR ITS EMPLOYEES IN THE DEFENSE OF THE CLAIM.

S 3. This act shall take effect November 1, 2009.