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

1253--C

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sens. SALAND, ALESI, BONACIC, DeFRANCISCO, ESPADA, FARLEY, FLANAGAN, FUSCHILLO, GOLDEN, GRIFFO, HANNON, O. JOHNSON, LANZA, LARKIN, LAVALLE, LEIBELL, LIBOUS, LITTLE, MARCELLINO, MAZIARZ, McDONALD, MORAHAN, NOZZOLIO, PADAVAN, RANZENHOFER, ROBACH, SEWARD, SKELOS, VOLKER, WINNER, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to prohibiting bullying on school property; and to amend the penal law, in relation to establishing the crime of aggravated harassment of teachers, school personnel and school board members

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

Section 1. Legislative intent. In recent years, New York has taken steps to ensure that school pupils, teachers and other personnel are provided with a safe and secure learning environment. However, egregious incidents of bullying, both in person and through the use of technology, have increased. Bullying can come in many forms, and while the physical wounds may heal, the effects of bullying can last a lifetime. Therefore, the legislature finds that prohibiting bullying on school property is an appropriate means to enhance the safety of New York state's public schools.

S 2. Short title. This act shall be known and may be cited as the "anti-bullying act".

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

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S 3. 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 WITH AN EMPHASIS ON DISCOURAGING ACTS OF BULLYING AS DEFINED IN SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER, observance of laws and rules, courtesy, dignity and other traits which will enhance the quality of their experiences in, and contributions to, the community. 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 4. Paragraph d of subdivision 2 of section 2801 of the education law, as added by chapter 181 of the laws of 2000, is amended to read as follows:

d. disciplinary measures to be taken in incidents involving the possession or use of illegal substances or weapons, the use of physical force, BULLYING, vandalism, violation of another student's civil rights and threats of violence;

S 5. Subdivision 2 of section 2801 of the education law is amended by adding a new paragraph f-1 to read as follows:

F-1. PROCEDURES BY WHICH ANY SCHOOL EMPLOYEE, HAVING REASONABLE CAUSE TO SUSPECT THAT A STUDENT HAS BEEN THE VICTIM OF BULLYING OR HAS COMMITTED AN ACT OF BULLYING AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS ARTICLE, SHALL BE REQUIRED TO REPORT SUCH INCIDENT TO THE PRINCIPAL OR DESIGNEE THEREOF. IF THE PRINCIPAL OR HIS OR HER DESIGNEE DETERMINES THAT THERE IS A REASONABLE CAUSE TO BELIEVE THAT THE INCIDENT OCCURRED, HE OR SHE SHALL REPORT SUCH INCIDENT TO THE SUPERINTENDENT. ANY EMPLOYEE WHO REASONABLY AND IN GOOD FAITH MAKES A REPORT OF AN ACT OF BULLYING TO THE PRINCIPAL OR DESIGNEE THEREOF SHALL HAVE IMMUNITY FROM CIVIL LIABILITY WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS;

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

S 2803. BULLYING PROHIBITED. 1. FOR PURPOSES OF THIS SECTION, THE TERM "BULLYING" SHALL MEAN THE SEVERE OR REPEATED USE BY ONE OR MORE STUDENTS OR SCHOOL EMPLOYEES OF A WRITTEN, VERBAL OR ELECTRONIC EXPRESSION, OR A PHYSICAL ACT OR GESTURE, OR ANY COMBINATION THEREOF, DIRECTED AT A STUDENT THAT HAS THE EFFECT OF: (I) CAUSING PHYSICAL INJURY, SERIOUS PHYSICAL INJURY OR EMOTIONAL HARM TO THE STUDENT OR DAMAGE TO THE STUDENT'S PROPERTY; (II) PLACING THE STUDENT IN REASONABLE FEAR OF HARM TO HIMSELF OR HERSELF OR OF DAMAGE TO HIS OR HER PROPERTY; (III) CREATING A HOSTILE ENVIRONMENT AT SCHOOL FOR THE STUDENT; OR (IV) MATERIALLY AND SUBSTANTIALLY DISRUPTING THE EDUCATIONAL PROCESS OR THE ORDERLY OPERATION OF A SCHOOL. THE TERM BULLYING SHALL INCLUDE COMMUNICATIONS OR DISSEMINATION OF ANY MATERIAL THROUGH THE USE OF TECHNOLOGY OR ELECTRONIC MEANS.

2. NO STUDENT OR SCHOOL EMPLOYEE SHALL SUBJECT ANY STUDENT OF A PUBLIC SCHOOL OR PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM TO BULLYING AS DEFINED IN THIS SECTION.

3. ANY STUDENT OR SCHOOL EMPLOYEE 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 APPLICABLE DISCIPLINE PROCEDURES. ANY STUDENT OR SCHOOL EMPLOYEE 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 CONDUCT.

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 SECTION TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE 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 7. 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 OR violence and weapons possession. Any school employee having reasonable cause to suspect that a person has committed an act of 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 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 8. 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, ADMINISTRATOR 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 9. This act shall take effect on the first of September next succeeding the date on which it shall have become a law.