

2009-2010 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2009

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Introduced by Sen. FUSCHILLO -- 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 conduct on school property and at school-authorized activities

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 a new  
2     subdivision 20 to read as follows:  
3     20. SCHOOL-AUTHORIZED ACTIVITY. THE TERM "SCHOOL-AUTHORIZED ACTIVITY"  
4     MEANS ANY ACTIVITY IN WHICH ATTENDANCE OR PARTICIPATION IS RELATED TO A  
5     SCHOOL OR SCHOOL PROGRAM AND HAS BEEN AUTHORIZED BY THE BOARD OF EDUCA-  
6     TION, THE BOARD OF TRUSTEES, A COMMON SCHOOL DISTRICT, A SUPERINTENDENT  
7     OF SCHOOLS, A DISTRICT SUPERINTENDENT, A PRINCIPAL OR THE DESIGNEE OF  
8     ANY SUCH PERSON, AND SHALL INCLUDE, BUT NOT BE LIMITED TO, SCHOOL FUNC-  
9     TIONS, ATHLETIC EVENTS, FIELD TRIPS, PLAYGROUND ACTIVITIES, AND SCHOOL-  
10    SPONSORED EXTRA-CURRICULAR EVENTS OR ACTIVITIES, PROVIDED THAT FOR  
11    PURPOSES OF REPORTING CRIME ALLEGED TO HAVE OCCURRED DURING SCHOOL-AU-  
12    THORIZED ACTIVITY, SUCH REPORTS SHALL BE MADE TO THE LOCAL LAW ENFORCE-  
13    MENT AGENCY OR PRECINCT WHICH HAS JURISDICTION OF THE LOCATION WHERE THE  
14    CRIME IS ALLEGED TO HAVE OCCURRED, IF DIFFERENT FROM THE JURISDICTION OR  
15    PRECINCT IN WHICH THE SCHOOL ITSELF IS PHYSICALLY LOCATED.  
16    S 2. Subdivision 2 of section 2801 of the education law, as added by  
17    chapter 181 of the laws of 2000, the opening paragraph and paragraphs a  
18    and c as amended by chapter 380 of the laws of 2001, is amended to read  
19    as follows:  
20    2. The board of education or the trustees, as defined in section two  
21    of this chapter, of every school district within the state, however  
22    created, and every board of cooperative educational services and county  
23    vocational extension board, shall adopt and amend, as appropriate, a  
24    code of conduct for the maintenance of order on school property, includ-

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

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ing a school function OR SCHOOL-AUTHORIZED ACTIVITY, which shall govern the conduct of students, teachers and other school personnel as well as visitors and shall provide for the enforcement thereof. Such policy may be adopted by the school board or trustees only after at least one public hearing that provides for the participation of school personnel, parents, students and any other interested parties. Such code of conduct shall include, at a minimum:

a. provisions regarding conduct, dress and language deemed appropriate and acceptable on school property, including a school function OR SCHOOL-AUTHORIZED ACTIVITY, and conduct, dress and language deemed unacceptable and inappropriate on school property, including a school function OR SCHOOL-AUTHORIZED ACTIVITY, and provisions regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students and visitors on school property, including a school function OR SCHOOL-AUTHORIZED ACTIVITY, including the appropriate range of disciplinary measures which may be imposed for violation of such code, and the roles of teachers, administrators, other school personnel, the board of education and parents;

b. standards and procedures to assure security and safety of students and school personnel;

c. provisions for the removal from the classroom and from school property, including a school function OR SCHOOL-AUTHORIZED ACTIVITY, of students and other persons who violate the code;

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

e. provisions for detention, suspension and removal from the classroom of students, consistent with section thirty-two hundred fourteen of this chapter and other applicable federal, state and local laws including provisions for the school authorities to establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom, placed in detention, or suspended from school;

f. procedures by which violations are reported, determined, discipline measures imposed and discipline measures carried out;

g. provisions ensuring such code and the enforcement thereof are in compliance with state and federal laws relating to students with disabilities;

h. provisions setting forth the procedures by which local law enforcement agencies OR PRECINCTS IN THE JURISDICTIONS WHERE CODE VIOLATIONS OCCUR shall be notified of code violations which constitute a crime;

i. provisions setting forth the circumstances under and procedures by which persons in parental relation to the student shall be notified of code violations;

j. provisions setting forth the circumstances under and procedures by which a complaint in criminal court, a juvenile delinquency petition or person in need of supervision petition as defined in articles three and seven of the family court act will be filed;

k. circumstances under and procedures by which referral to appropriate human service agencies shall be made;

l. a minimum suspension period, for students who repeatedly are substantially disruptive of the educational process or substantially interfere with the teacher's authority over the classroom, provided that the suspending authority may reduce such period on a case by case basis to be consistent with any other state and federal law. For purposes of

1 this section, the definition of "repeatedly are substantially disruptive" shall be determined in accordance with the regulations of the  
2 commissioner; and

3  
4 m. a minimum suspension period for acts that would qualify the pupil  
5 to be defined as a violent pupil pursuant to paragraph a of subdivision  
6 two-a of section thirty-two hundred fourteen of this chapter, provided  
7 that the suspending authority may reduce such period on a case by case  
8 basis to be consistent with any other state and federal law.

9 S 3. Paragraph a of subdivision 2-a of section 3214 of the education  
10 law, as added by chapter 181 of the laws of 2000, is amended to read as  
11 follows:

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

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

16 (2) commits, while on school district property OR WHILE PARTICIPATING  
17 IN A SCHOOL-AUTHORIZED ACTIVITY, an act of violence upon another student  
18 or any other person lawfully upon said property;

19 (3) possesses, while on school district property OR WHILE PARTICIPAT-  
20 ING IN A SCHOOL-AUTHORIZED ACTIVITY, a gun, knife, explosive or incendi-  
21 ary bomb, or other dangerous instrument capable of causing physical  
22 injury or death;

23 (4) displays, while on school district property OR WHILE PARTICIPATING  
24 IN A SCHOOL-AUTHORIZED ACTIVITY, what appears to be a gun, knife,  
25 explosive or incendiary bomb or other dangerous instrument capable of  
26 causing death or physical injury;

27 (5) threatens, while on school district property OR WHILE PARTICIPAT-  
28 ING IN A SCHOOL-AUTHORIZED ACTIVITY, to use any instrument that appears  
29 capable of causing physical injury or death;

30 (6) knowingly and intentionally damages or destroys the personal prop-  
31 erty of a teacher, administrator, other school district employee or any  
32 person lawfully upon school district property OR WHILE PARTICIPATING IN  
33 A SCHOOL-AUTHORIZED ACTIVITY; or

34 (7) knowingly and intentionally damages or destroys school district  
35 property.

36 S 4. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of  
37 the education law, as amended by chapter 430 of the laws of 2006, is  
38 amended to read as follows:

39 (1) No pupil may be suspended for a period in excess of five school  
40 days unless such pupil and the person in parental relation to such pupil  
41 shall have had an opportunity for a fair hearing, upon reasonable  
42 notice, at which such pupil shall have the right of representation by  
43 counsel, with the right to question witnesses against such pupil and to  
44 present witnesses and other evidence on his or her behalf. Where the  
45 pupil is a student with a disability or a student presumed to have a  
46 disability, the provisions of paragraph g of this subdivision shall also  
47 apply. Where a pupil has been suspended in accordance with this subpara-  
48 graph by a superintendent of schools, district superintendent of  
49 schools, or community superintendent, the superintendent shall  
50 personally hear and determine the proceeding or may, in his or her  
51 discretion, designate a hearing officer to conduct the hearing. The  
52 hearing officer shall be authorized to administer oaths and to issue  
53 subpoenas in conjunction with the proceeding before him or her. A record  
54 of the hearing shall be maintained, but no stenographic transcript shall  
55 be required and a tape recording shall be deemed a satisfactory record.  
56 The hearing officer shall make findings of fact and recommendations as

1 to the appropriate measure of discipline to the superintendent. The  
2 report of the hearing officer shall be advisory only, and the super-  
3 intendent may accept all or any part thereof. An appeal will lie from  
4 the decision of the superintendent to the board of education who shall  
5 make its decision solely upon the record before it. The board may adopt  
6 in whole or in part the decision of the superintendent of schools.  
7 Where the basis for the suspension is, in whole or in part, the  
8 possession on school grounds [or], school property OR WHILE PARTICIPAT-  
9 ING IN A SCHOOL-AUTHORIZED ACTIVITY by the student of any firearm,  
10 rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of  
11 the weapons, instruments or appliances specified in subdivision one of  
12 section 265.01 of the penal law, the hearing officer or superintendent  
13 shall not be barred from considering the admissibility of such weapon,  
14 instrument or appliance as evidence, notwithstanding a determination by  
15 a court in a criminal or juvenile delinquency proceeding that the recov-  
16 ery of such weapon, instrument or appliance was the result of an unlaw-  
17 ful search or seizure.

18 S 5. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of  
19 the education law, as amended by chapter 380 of the laws of 2001, is  
20 amended to read as follows:

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

53 S 6. Subparagraphs 1 and 2 of paragraph d of subdivision 3 of section  
54 3214 of the education law, as amended by chapter 425 of the laws of  
55 2002, are amended to read as follows:

1 (1) Consistent with the federal gun-free schools act, any public  
2 school pupil who is determined under this subdivision to have brought a  
3 firearm to or possessed a firearm at a public school OR WHILE PARTIC-  
4 IPATING IN A SCHOOL-AUTHORIZED ACTIVITY shall be suspended for a period  
5 of not less than one calendar year and any nonpublic school pupil  
6 participating in a program operated by a public school district using  
7 funds from the elementary and secondary education act of nineteen  
8 hundred sixty-five who is determined under this subdivision to have  
9 brought a firearm to or possessed a firearm at a public school or other  
10 premises used by the school district to provide such programs OR  
11 SCHOOL-AUTHORIZED ACTIVITIES shall be suspended for a period of not less  
12 than one calendar year from participation in such program. The proce-  
13 dures of this subdivision shall apply to such a suspension of a nonpub-  
14 lic school pupil. A superintendent of schools, district superintendent  
15 of schools or community superintendent shall have the authority to modi-  
16 fy this suspension requirement for each student on a case-by-case basis.  
17 The determination of a superintendent shall be subject to review by the  
18 board of education pursuant to paragraph c of this subdivision and the  
19 commissioner pursuant to section three hundred ten of this chapter.  
20 Nothing in this subdivision shall be deemed to authorize the suspension  
21 of a student with a disability in violation of the individuals with  
22 disabilities education act or article eighty-nine of this chapter. A  
23 superintendent shall refer the pupil under the age of sixteen who has  
24 been determined to have brought a weapon or firearm to school OR TO A  
25 SCHOOL-AUTHORIZED ACTIVITY in violation of this subdivision to a  
26 presentment agency for a juvenile delinquency proceeding consistent with  
27 article three of the family court act except a student fourteen or  
28 fifteen years of age who qualifies for juvenile offender status under  
29 subdivision forty-two of section 1.20 of the criminal procedure law. A  
30 superintendent shall refer any pupil sixteen years of age or older or a  
31 student fourteen or fifteen years of age who qualifies for juvenile  
32 offender status under subdivision forty-two of section 1.20 of the crim-  
33 inal procedure law, who has been determined to have brought a weapon or  
34 firearm to school OR TO A SCHOOL-AUTHORIZED ACTIVITY in violation of  
35 this subdivision to the appropriate law enforcement officials.

36 (2) Nothing in this paragraph shall be deemed to mandate such action  
37 by a school district pursuant to subdivision one of this section where  
38 such weapon or firearm is possessed or brought to school OR TO A  
39 SCHOOL-AUTHORIZED ACTIVITY with the written authorization of such educa-  
40 tional institution in a manner authorized by article two hundred sixty-  
41 five of the penal law for activities approved and authorized by the  
42 trustees or board of education or other governing body of the public  
43 school and such governing body adopts appropriate safeguards to ensure  
44 student safety.

45 S 7. Paragraph d of subdivision 3 of section 3214 of the education  
46 law, as amended by chapter 181 of the laws of 2000, is amended to read  
47 as follows:

48 d. Consistent with the federal gun-free schools act of nineteen  
49 hundred ninety-four, any public school pupil who is determined under  
50 this subdivision to have brought a weapon to school OR TO A SCHOOL-AU-  
51 THORIZED ACTIVITY shall be suspended for a period of not less than one  
52 calendar year and any nonpublic school pupil participating in a program  
53 operated by a public school district using funds from the elementary and  
54 secondary education act of nineteen hundred sixty-five who is determined  
55 under this subdivision to have brought a weapon to a public school or  
56 other premises used by the school district to provide such programs OR

1 SCHOOL-AUTHORIZED ACTIVITIES shall be suspended for a period of not less  
2 than one calendar year from participation in such program. The proce-  
3 dures of this subdivision shall apply to such a suspension of a nonpub-  
4 lic school pupil. A superintendent of schools, district superintendent  
5 of schools or community superintendent shall have the authority to modi-  
6 fy this suspension requirement for each student on a case-by-case basis.  
7 The determination of a superintendent shall be subject to review by the  
8 board of education pursuant to paragraph c of this subdivision and the  
9 commissioner pursuant to section three hundred ten of this chapter.  
10 Nothing in this subdivision shall be deemed to authorize the suspension  
11 of a student with a disability in violation of the individuals with  
12 disabilities education act or article eighty-nine of this chapter. A  
13 superintendent shall refer the pupil under the age of sixteen who has  
14 been determined to have brought a weapon to school OR TO A SCHOOL-AU-  
15 THORIZED ACTIVITY in violation of this subdivision to a presentment  
16 agency for a juvenile delinquency proceeding consistent with article  
17 three of the family court act except a student fourteen or fifteen years  
18 of age who qualifies for juvenile offender status under subdivision  
19 forty-two of section 1.20 of the criminal procedure law. A superinten-  
20 dent shall refer any pupil sixteen years of age or older or a student  
21 fourteen or fifteen years of age who qualifies for juvenile offender  
22 status under subdivision forty-two of section 1.20 of the criminal  
23 procedure law, who has been determined to have brought a weapon to  
24 school OR TO A SCHOOL-AUTHORIZED ACTIVITY in violation of this subdivi-  
25 sion to the appropriate law enforcement officials.

26 S 8. Section 3028-c of the education law, as added by chapter 181 of  
27 the laws of 2000, is amended to read as follows:

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

44 S 9. This act shall take effect on the first of July next succeeding  
45 the date on which it shall have become a law, provided that the amend-  
46 ments to subparagraph 1 of paragraph c of subdivision 3 of section 3214  
47 of the education law, made by section four of this act, shall be subject  
48 to the expiration and reversion of such subparagraph pursuant to section  
49 8 of chapter 430 of the laws of 2006, as amended, when upon such date  
50 section five of this act shall take effect, provided, further, that the  
51 amendments to subparagraphs 1 and 2 of paragraph d of subdivision 3 of  
52 section 3214 of the education law, made by section six of this act,  
53 shall be subject to the expiration and reversion of such paragraph  
54 pursuant to section 4 of chapter 425 of the laws of 2002, as amended,  
55 when upon such date the provisions of section seven of this act shall  
56 take effect.