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

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I N S E N A T E

May 4, 2010

Introduced by Sen. DUANE -- 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 enacting the dignity for all students act

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

Section 1. Short title. This act shall be known and may be cited as the "dignity for all students act".

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

ARTICLE 2

DIGNITY FOR ALL STUDENTS

SECTION 10. LEGISLATIVE INTENT.
11. DEFINITIONS.
12. DISCRIMINATION AND HARASSMENT PROHIBITED.
13. POLICIES AND GUIDELINES.
14. COMMISSIONER'S RESPONSIBILITIES.
15. REPORTING BY COMMISSIONER.
16. PROTECTION OF PEOPLE WHO REPORT DISCRIMINATION OR HARASSMENT.
17. APPLICATION.
18. SEVERABILITY AND CONSTRUCTION.

S 10. LEGISLATIVE INTENT. THE LEGISLATURE FINDS THAT STUDENTS' ABILITY TO LEARN AND TO MEET HIGH ACADEMIC STANDARDS, AND A SCHOOL'S ABILITY TO EDUCATE ITS STUDENTS, ARE COMPROMISED BY INCIDENTS OF DISCRIMINATION OR HARASSMENT INCLUDING BULLYING, TAUNTING OR INTIMIDATION. IT IS HEREBY DECLARED TO BE THE POLICY OF THE STATE TO AFFORD ALL STUDENTS IN PUBLIC SCHOOLS AN ENVIRONMENT FREE OF DISCRIMINATION AND HARASSMENT. THE PURPOSE OF THIS ARTICLE IS TO FOSTER CIVILITY IN PUBLIC SCHOOLS AND TO PREVENT AND PROHIBIT CONDUCT WHICH IS INCONSISTENT WITH A SCHOOL'S EDUCATIONAL MISSION.

S 11. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "SCHOOL PROPERTY" SHALL MEAN IN OR WITHIN ANY BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD, PLAYGROUND, PARKING LOT, OR LAND CONTAINED WITHIN THE REAL PROPERTY BOUNDARY LINE OF A PUBLIC ELEMENTARY OR SECONDARY

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

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SCHOOL; OR IN OR ON A SCHOOL BUS, AS DEFINED IN SECTION ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW.

2. "SCHOOL FUNCTION" SHALL MEAN A SCHOOL-SPONSORED EXTRA-CURRICULAR EVENT OR ACTIVITY.

3. "DISABILITY" SHALL MEAN DISABILITY AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE LAW.

4. "EMPLOYEE" SHALL MEAN EMPLOYEE AS DEFINED IN SUBDIVISION THREE OF SECTION ELEVEN HUNDRED TWENTY-FIVE OF THIS TITLE.

5. "SEXUAL ORIENTATION" SHALL MEAN ACTUAL OR PERCEIVED HETEROSEXUALITY, HOMOSEXUALITY OR BISEXUALITY.

6. "GENDER" SHALL MEAN ACTUAL OR PERCEIVED SEX AND SHALL INCLUDE A PERSON'S GENDER IDENTITY OR EXPRESSION.

7. "SOCIAL NETWORKING WEBSITE" SHALL MEAN A WEBSITE OFFERED BY A COMMERCIAL ENTITY THAT PERMITS REGISTERED USERS TO CREATE AN ONLINE PROFILE THAT INCLUDES DETAILED PERSONAL INFORMATION, PERMITS REGISTERED USERS TO CREATE AN ON-LINE JOURNAL AND SHARE SUCH A JOURNAL WITH OTHERS, ELICITS HIGHLY-PERSONALIZED INFORMATION FROM USERS AND ENABLES COMMUNICATION AMONG USERS.

8. "HARASSMENT" SHALL MEAN THE CREATION OF A HOSTILE ENVIRONMENT BY CONDUCT OR BY VERBAL THREATS, INTIMIDATION OR ABUSE THAT HAS OR WOULD HAVE THE EFFECT OF UNREASONABLY AND SUBSTANTIALLY INTERFERING WITH A STUDENT'S EDUCATIONAL PERFORMANCE, OPPORTUNITIES OR BENEFITS, OR MENTAL, EMOTIONAL OR PHYSICAL WELL-BEING; OR CONDUCT, VERBAL THREATS, INTIMIDATION OR ABUSE THAT REASONABLY CAUSES OR WOULD REASONABLY BE EXPECTED TO CAUSE A STUDENT TO FEAR FOR HIS OR HER PHYSICAL SAFETY; SUCH CONDUCT, VERBAL THREATS, INTIMIDATION OR ABUSE INCLUDES BUT IS NOT LIMITED TO CONDUCT, VERBAL OR WRITTEN THREATS THROUGH AN INTERNET SERVICE SUCH AS E-MAIL, CHAT ROOM, DISCUSSION GROUP, INSTANT MESSAGING OR SOCIAL NETWORKING SITES, EITHER ON OR OFF SCHOOL PROPERTY, INTIMIDATION OR ABUSE BASED ON A PERSON'S ACTUAL OR PERCEIVED RACE, COLOR, WEIGHT, NATIONAL ORIGIN, ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIENTATION, GENDER OR SEX.

S 12. DISCRIMINATION AND HARASSMENT PROHIBITED. 1. NO STUDENT SHALL BE SUBJECTED TO HARASSMENT BY EMPLOYEES OR STUDENTS ON SCHOOL PROPERTY OR AT A SCHOOL FUNCTION NOR SHALL ANY STUDENT BE SUBJECTED TO HARASSMENT BY EMPLOYEES OR STUDENTS THROUGH VERBAL OR WRITTEN THREATS THROUGH AN INTERNET SERVICE SUCH AS E-MAIL, CHAT ROOM, DISCUSSION GROUP, INSTANT MESSAGING, OR SOCIAL NETWORKING SITES ON OR OFF SCHOOL PROPERTY OR FUNCTION; NOR SHALL ANY STUDENT BE SUBJECTED TO DISCRIMINATION BASED ON A PERSON'S ACTUAL OR PERCEIVED RACE, COLOR, WEIGHT, NATIONAL ORIGIN, ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIENTATION, GENDER, OR SEX BY SCHOOL EMPLOYEES OR STUDENTS ON SCHOOL PROPERTY OR AT A SCHOOL FUNCTION. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO PROHIBIT A DENIAL OF ADMISSION INTO, OR EXCLUSION FROM, A COURSE OF INSTRUCTION BASED ON A PERSON'S GENDER THAT WOULD BE PERMISSIBLE UNDER SECTION THIRTY-TWO HUNDRED ONE-A OR PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION TWENTY-EIGHT HUNDRED FIFTY-FOUR OF THIS CHAPTER AND TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 (20 U.S.C. SECTION 1681, ET. SEQ.), OR TO PROHIBIT, AS DISCRIMINATION BASED ON DISABILITY, ACTIONS THAT WOULD BE PERMISSIBLE UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973.

2. AN AGE-APPROPRIATE VERSION OF THE POLICY OUTLINED IN SUBDIVISION ONE OF THIS SECTION, WRITTEN IN PLAIN-LANGUAGE, SHALL BE INCLUDED IN THE CODE OF CONDUCT ADOPTED BY BOARDS OF EDUCATION AND THE TRUSTEES OR SOLE TRUSTEE PURSUANT TO SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER AND

A SUMMARY OF SUCH POLICY SHALL BE INCLUDED IN ANY SUMMARIES REQUIRED BY SUCH SECTION TWENTY-EIGHT HUNDRED ONE.

S 13. POLICIES AND GUIDELINES. THE BOARD OF EDUCATION AND THE TRUSTEES OR SOLE TRUSTEE OF EVERY SCHOOL DISTRICT SHALL CREATE POLICIES AND GUIDELINES THAT SHALL INCLUDE, BUT NOT BE LIMITED TO:

1. POLICIES INTENDED TO CREATE A SCHOOL ENVIRONMENT THAT IS FREE FROM DISCRIMINATION OR HARASSMENT;

2. GUIDELINES TO BE USED IN SCHOOL TRAINING PROGRAMS TO DISCOURAGE THE DEVELOPMENT OF DISCRIMINATION OR HARASSMENT AND THAT ARE DESIGNED:

A. TO RAISE THE AWARENESS AND SENSITIVITY OF SCHOOL EMPLOYEES TO POTENTIAL DISCRIMINATION OR HARASSMENT, AND

B. TO ENABLE EMPLOYEES TO PREVENT AND RESPOND TO DISCRIMINATION OR HARASSMENT; AND

3. GUIDELINES RELATING TO THE DEVELOPMENT OF NONDISCRIMINATORY INSTRUCTIONAL AND COUNSELING METHODS, AND REQUIRING THAT AT LEAST ONE STAFF MEMBER AT EVERY SCHOOL BE THOROUGHLY TRAINED TO HANDLE HUMAN RELATIONS IN THE AREAS OF RACE, COLOR, WEIGHT, NATIONAL ORIGIN, ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIENTATION, GENDER, AND SEX.

S 14. COMMISSIONER'S RESPONSIBILITIES. THE COMMISSIONER SHALL:

1. PROVIDE DIRECTION, WHICH MAY INCLUDE DEVELOPMENT OF MODEL POLICIES AND, TO THE EXTENT POSSIBLE, DIRECT SERVICES, TO SCHOOL DISTRICTS RELATED TO PREVENTING DISCRIMINATION AND HARASSMENT AND TO FOSTERING AN ENVIRONMENT IN EVERY SCHOOL WHERE ALL CHILDREN CAN LEARN FREE OF MANIFESTATIONS OF BIAS;

2. PROVIDE GRANTS, FROM FUNDS APPROPRIATED FOR SUCH PURPOSE, TO LOCAL SCHOOL DISTRICTS TO ASSIST THEM IN IMPLEMENTING THE GUIDELINES SET FORTH IN THIS SECTION; AND

3. PROMULGATE REGULATIONS TO ASSIST SCHOOL DISTRICTS IN IMPLEMENTING THIS ARTICLE INCLUDING, BUT NOT LIMITED TO, REGULATIONS TO ASSIST SCHOOL DISTRICTS IN DEVELOPING MEASURED, BALANCED, AND AGE-APPROPRIATE RESPONSES TO VIOLATIONS OF THIS POLICY, WITH REMEDIES AND PROCEDURES FOCUSING ON INTERVENTION AND EDUCATION.

S 15. REPORTING BY COMMISSIONER. THE COMMISSIONER SHALL CREATE A PROCEDURE UNDER WHICH MATERIAL INCIDENTS OF DISCRIMINATION AND HARASSMENT ON SCHOOL GROUNDS OR AT A SCHOOL FUNCTION ARE REPORTED TO THE DEPARTMENT AT LEAST ON AN ANNUAL BASIS. SUCH PROCEDURE SHALL PROVIDE THAT SUCH REPORTS SHALL, WHEREVER POSSIBLE, ALSO DELINEATE THE SPECIFIC NATURE OF SUCH INCIDENTS OF DISCRIMINATION OR HARASSMENT, PROVIDED THAT THE COMMISSIONER MAY COMPLY WITH THE REQUIREMENTS OF THIS SECTION THROUGH USE OF THE EXISTING UNIFORM VIOLENT INCIDENT REPORTING SYSTEM. IN ADDITION THE DEPARTMENT MAY CONDUCT RESEARCH OR UNDERTAKE STUDIES TO DETERMINE COMPLIANCE THROUGHOUT THE STATE WITH THE PROVISIONS OF THIS ARTICLE.

S 16. PROTECTION OF PEOPLE WHO REPORT DISCRIMINATION OR HARASSMENT. ANY PERSON HAVING REASONABLE CAUSE TO SUSPECT THAT A STUDENT HAS BEEN SUBJECTED TO DISCRIMINATION OR HARASSMENT BY AN EMPLOYEE OR STUDENT, ON SCHOOL GROUNDS OR AT A SCHOOL FUNCTION, WHO, ACTING REASONABLY AND IN GOOD FAITH, EITHER REPORTS SUCH INFORMATION TO SCHOOL OFFICIALS, TO THE COMMISSIONER, OR TO LAW ENFORCEMENT AUTHORITIES OR OTHERWISE INITIATES, TESTIFIES, PARTICIPATES OR ASSISTS IN ANY FORMAL OR INFORMAL PROCEEDINGS UNDER THIS ARTICLE, SHALL HAVE IMMUNITY FROM ANY CIVIL LIABILITY THAT MAY ARISE FROM THE MAKING OF SUCH REPORT OR FROM INITIATING, TESTIFYING, PARTICIPATING OR ASSISTING IN SUCH FORMAL OR INFORMAL PROCEEDINGS, AND NO SCHOOL DISTRICT OR EMPLOYEE SHALL TAKE, REQUEST OR CAUSE A RETALIATORY ACTION AGAINST ANY SUCH PERSON WHO, ACTING REASONABLY AND IN GOOD

FAITH, EITHER MAKES SUCH A REPORT OR INITIATES, TESTIFIES, PARTICIPATES OR ASSISTS IN SUCH FORMAL OR INFORMAL PROCEEDINGS.

S 17. APPLICATION. NOTHING IN THIS ARTICLE SHALL:

1. APPLY TO PRIVATE, RELIGIOUS OR DENOMINATIONAL EDUCATIONAL INSTITUTIONS; OR

2. PRECLUDE OR LIMIT ANY RIGHT OR CAUSE OF ACTION PROVIDED UNDER ANY LOCAL, STATE OR FEDERAL ORDINANCE, LAW OR REGULATION INCLUDING BUT NOT LIMITED TO ANY REMEDIES OR RIGHTS AVAILABLE UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, TITLE VII OF THE CIVIL RIGHTS LAW OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973 OR THE AMERICANS WITH DISABILITIES ACT OF 1990.

S 18. SEVERABILITY AND CONSTRUCTION. THE PROVISIONS OF THIS ARTICLE 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. THE PROVISIONS OF THIS ARTICLE SHALL BE LIBERALLY CONSTRUED TO GIVE EFFECT TO THE PURPOSES THEREOF.

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, 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. FOR THE PURPOSES OF THIS SECTION, "TOLERANCE," "RESPECT FOR OTHERS" AND "DIGNITY" SHALL INCLUDE AWARENESS AND SENSITIVITY TO DISCRIMINATION OR HARASSMENT AND CIVILITY IN THE RELATIONS OF PEOPLE OF DIFFERENT RACES, WEIGHTS, NATIONAL ORIGINS, ETHNIC GROUPS, RELIGIONS, RELIGIOUS PRACTICES, MENTAL OR PHYSICAL ABILITIES, SEXUAL ORIENTATIONS, GENDERS, AND SEXES.

S 4. Paragraphs l and m of subdivision 2 of section 2801 of the education law, as added by chapter 181 of the laws of 2000, are amended and a new paragraph n is added to read as follows:

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

m. a minimum suspension period for acts that would qualify the pupil to be defined as a violent pupil pursuant to paragraph a of subdivision two-a of section thirty-two hundred fourteen of this chapter, 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[.]; AND

N. PROVISIONS TO COMPLY WITH ARTICLE TWO OF THIS CHAPTER.

S 5. This act shall take effect July 1, 2012, except that any rules or regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date.