

931

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. ORTIZ -- Multi-Sponsored by -- M. of A. CUSICK,
GALEF, HIKIND, MAGEE, PERRY, J. RIVERA, ROBINSON, 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

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

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

5 ARTICLE 62

6 EDUCATION QUALITY AND TEACHER AND PRINCIPAL
7 PROTECTION ACT

8 SECTION 3070. LEGISLATIVE FINDINGS.

9 3071. DEFINITIONS.

10 3072. LIABILITY.

11 3073. PUNITIVE AND EXEMPLARY DAMAGES.

12 3074. FALSE REPORTS.

13 3075. FRIVOLOUS ACTIONS; ATTORNEY'S FEES; COST.

14 3076. CONTINGENCY FEES; PENALTY.

15 3077. INSURANCE.

16 S 3070. LEGISLATIVE FINDINGS. THE LEGISLATURE FINDS THAT ENSURING THE
17 QUALITY OF PRIMARY AND SECONDARY PUBLIC EDUCATION IS A COMPELLING STATE
18 INTEREST. THE EDUCATIONAL ENVIRONMENT OF STUDENTS IS OFTEN NOT CONDUCTIVE
19 TO LEARNING. VIOLENCE IS SOMETIMES A THREAT, WHILE OTHER TIMES EDUCATORS
20 MAY LACK THE AUTHORITY TO MAINTAIN SAFETY AND DISCIPLINE IN THE PUBLIC
21 SCHOOLS. THE FILING OF MERITLESS LAWSUITS AGAINST SCHOOL DISTRICTS,
22 TEACHERS, ADMINISTRATORS, AND OTHER SCHOOL EMPLOYEES INTERFERES WITH
23 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.

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1 SUCH LAWSUITS ARISE OUT OF THE GOOD FAITH EFFORTS OF EDUCATORS TO MAIN-
2 TAIN CLASSROOM DISCIPLINE OR ADDRESS THREATS TO STUDENT SAFETY. MERIT-
3 LESS LITIGATION ALSO DIVERTS FINANCIAL AND PERSONNEL RESOURCES TO LITI-
4 GATION DEFENSE ACTIVITIES AND REDUCES THE AVAILABILITY OF SUCH RESOURCES
5 FOR EDUCATIONAL OPPORTUNITIES FOR STUDENTS. THE LEGISLATURE FURTHER
6 FINDS THAT LEGISLATION TO DETER MERITLESS LAWSUITS AND SANCTION DELIB-
7 ERATELY FALSE REPORTS AGAINST EDUCATORS IS A RATIONAL AND APPROPRIATE
8 METHOD TO ADDRESS THIS COMPELLING PUBLIC INTEREST.

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

11 1. "EDUCATIONAL ENTITY" MEANS THE DEPARTMENT OF EDUCATION OR ANY OTHER
12 BODY, BOARD OR AGENCY THAT GOVERNS ONE OR MORE PUBLIC PRIMARY OR SECOND-
13 ARY SCHOOLS.

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

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

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

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

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

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

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

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

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

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

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

- 6 (A) EXPULSION;
- 7 (B) SUSPENSION FOR A PERIOD OF TIME TO BE DETERMINED BY THE COURT;
- 8 (C) COMMUNITY SERVICE OF A TYPE AND FOR A PERIOD OF TIME TO BE DETER-
- 9 MINED BY THE COURT; OR
- 10 (D) ANY OTHER SANCTION AS THE COURT IN ITS DISCRETION MAY DEEM APPRO-
- 11 PRIATE.

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

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

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

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

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

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

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

44 S 3. This act shall take effect November 1, 2011.