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

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I N A S S E M B L Y

April 13, 2012

Introduced by M. of A. GALEF, ABINANTI, DINOWITZ, LUPARDO, REILLY, McDONOUGH, MONTESANO, RA, RAIA -- Multi-Sponsored by -- M. of A. ARROYO, SWEENEY -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to personnel records of classroom teachers

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

Section 1. The education law is amended by adding a new section 3012-d to read as follows:

S 3012-D. PERSONNEL RECORDS OF CLASSROOM TEACHERS. 1. ALL PERSONNEL RECORDS OF CLASSROOM TEACHERS USED TO EVALUATE OR GENERATED AS THE RESULT OF AN EVALUATION OF PERFORMANCE PURSUANT TO SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE, UNDER THE CONTROL OF ANY SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES, SHALL BE USED FOR EVALUATION OF JOB PERFORMANCE ONLY AND SHALL BE CONSIDERED CONFIDENTIAL AND NOT SUBJECT TO INSPECTION OR REVIEW BY A PARENT OF A STUDENT OR ANY OTHER PERSON WITHOUT THE EXPRESS WRITTEN CONSENT OF SUCH TEACHER EXCEPT AS MAY BE MANDATED BY LAWFUL COURT ORDER; PROVIDED THAT A SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES MAY, WITHOUT FIRST OBTAINING CONSENT OR A COURT ORDER, RELEASE DATA SUMMARIZING THE AGGREGATE RESULTS OF SUCH PERFORMANCE EVALUATIONS.

2. PRIOR TO ISSUING SUCH COURT ORDER THE JUDGE MUST REVIEW ALL SUCH REQUESTS AND GIVE INTERESTED PARTIES THE OPPORTUNITY TO BE HEARD. NO SUCH ORDER SHALL ISSUE WITHOUT A CLEAR SHOWING OF FACTS SUFFICIENT TO WARRANT THE JUDGE TO REQUEST RECORDS FOR REVIEW.

3. IF, AFTER SUCH HEARING THE JUDGE CONCLUDES THERE IS A SUFFICIENT BASIS, HE OR SHE SHALL SIGN AN ORDER REQUIRING THAT THE PERSONNEL RECORDS IN QUESTION BE SEALED AND SENT DIRECTLY TO HIM OR HER. HE OR SHE SHALL THEN REVIEW THE FILE AND MAKE A DETERMINATION AS TO WHETHER THE RECORDS ARE RELEVANT AND MATERIAL IN THE ACTION BEFORE HIM OR HER. UPON SUCH A FINDING THE COURT SHALL MAKE THOSE PARTS OF THE RECORD FOUND TO BE RELEVANT AND MATERIAL AVAILABLE TO THE PERSONS SO REQUESTING.

4. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY DISTRICT ATTORNEY OR HIS OR HER ASSISTANTS, THE ATTORNEY GENERAL OR HIS OR HER

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

LBD15241-03-2

DEPUTIES OR ASSISTANTS, A COUNTY ATTORNEY OR HIS OR HER DEPUTIES OR ASSISTANTS, A CORPORATION COUNSEL OR HIS OR HER DEPUTIES OR ASSISTANTS, A TOWN ATTORNEY OR HIS OR HER DEPUTIES OR ASSISTANTS, A VILLAGE ATTORNEY OR HIS OR HER DEPUTIES OR ASSISTANTS, A GRAND JURY, OR ANY AGENCY OF GOVERNMENT WHICH REQUIRES THE RECORDS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, IN THE FURTHERANCE OF THEIR OFFICIAL FUNCTIONS.

S 2. This act shall take effect immediately.