

4278

2011-2012 Regular Sessions

I N A S S E M B L Y

February 2, 2011

Introduced by M. of A. P. RIVERA -- Multi-Sponsored by -- M. of A.
ZEBROWSKI -- read once and referred 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 ASSEM-
BLY, 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. The opening paragraph and paragraphs a, c and h of subdivision 2
17 of section 2801 of the education law, the opening paragraph and para-
18 graphs a and c as amended by chapter 380 of the laws of 2001, and para-
19 graph h as added by chapter 181 of the laws of 2000, are amended to read
20 as follows:
21 The board of education or the trustees, as defined in section two of
22 this chapter, of every school district within the state, however
23 created, and every board of cooperative educational services and county
24 vocational extension board, shall adopt and amend, as appropriate, a
25 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;

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;

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;

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

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

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

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

(3) possesses, while on school district property OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY, a gun, knife, explosive or incendiary bomb, or other dangerous instrument capable of causing physical injury or death;

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

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

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

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

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

(1) No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil

1 shall have had an opportunity for a fair hearing, upon reasonable
2 notice, at which such pupil shall have the right of representation by
3 counsel, with the right to question witnesses against such pupil and to
4 present witnesses and other evidence on his or her behalf. Where the
5 pupil is a student with a disability or a student presumed to have a
6 disability, the provisions of paragraph g of this subdivision shall also
7 apply. Where a pupil has been suspended in accordance with this subpara-
8 graph by a superintendent of schools, district superintendent of
9 schools, or community superintendent, the superintendent shall
10 personally hear and determine the proceeding or may, in his or her
11 discretion, designate a hearing officer to conduct the hearing. The
12 hearing officer shall be authorized to administer oaths and to issue
13 subpoenas in conjunction with the proceeding before him or her. A record
14 of the hearing shall be maintained, but no stenographic transcript shall
15 be required and a tape recording shall be deemed a satisfactory record.
16 The hearing officer shall make findings of fact and recommendations as
17 to the appropriate measure of discipline to the superintendent. The
18 report of the hearing officer shall be advisory only, and the super-
19 intendent may accept all or any part thereof. An appeal will lie from
20 the decision of the superintendent to the board of education who shall
21 make its decision solely upon the record before it. The board may adopt
22 in whole or in part the decision of the superintendent of schools.
23 Where the basis for the suspension is, in whole or in part, the
24 possession on school grounds [or], school property OR WHILE PARTICIPAT-
25 ING IN A SCHOOL-AUTHORIZED ACTIVITY by the student of any firearm,
26 rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of
27 the weapons, instruments or appliances specified in subdivision one of
28 section 265.01 of the penal law, the hearing officer or superintendent
29 shall not be barred from considering the admissibility of such weapon,
30 instrument or appliance as evidence, notwithstanding a determination by
31 a court in a criminal or juvenile delinquency proceeding that the recov-
32 ery of such weapon, instrument or appliance was the result of an unlaw-
33 ful search or seizure.

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

37 (1) No pupil may be suspended for a period in excess of five school
38 days unless such pupil and the person in parental relation to such pupil
39 shall have had an opportunity for a fair hearing, upon reasonable
40 notice, at which such pupil shall have the right of representation by
41 counsel, with the right to question witnesses against such pupil and to
42 present witnesses and other evidence on his behalf. Where a pupil has
43 been suspended in accordance with this subdivision by a superintendent
44 of schools, district superintendent of schools, or community superinten-
45 dent, the superintendent shall personally hear and determine the
46 proceeding or may, in his discretion, designate a hearing officer to
47 conduct the hearing. The hearing officer shall be authorized to adminis-
48 ter oaths and to issue subpoenas in conjunction with the proceeding
49 before him. A record of the hearing shall be maintained, but no steno-
50 graphic transcript shall be required and a tape recording shall be
51 deemed a satisfactory record. The hearing officer shall make findings of
52 fact and recommendations as to the appropriate measure of discipline to
53 the superintendent. The report of the hearing officer shall be advisory
54 only, and the superintendent may accept all or any part thereof. An
55 appeal will lie from the decision of the superintendent to the board of
56 education who shall make its decision solely upon the record before it.

1 The board may adopt in whole or in part the decision of the superinten-
2 dent of schools. Where the basis for the suspension is, in whole or in
3 part, the possession on school grounds [or], school property OR WHILE
4 PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY by the student of any
5 firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto
6 or any of the weapons, instruments or appliances specified in subdivi-
7 sion one of section 265.01 of the penal law, the hearing officer or
8 superintendent shall not be barred from considering the admissibility of
9 such weapon, instrument or appliance as evidence, notwithstanding a
10 determination by a court in a criminal or juvenile delinquency proceed-
11 ing that the recovery of such weapon, instrument or appliance was the
12 result of an unlawful search or seizure.

13 S 6. Paragraph d of subdivision 3 of section 3214 of the education
14 law, as amended by chapter 181 of the laws of 2000, is amended to read
15 as follows:

16 d. Consistent with the federal gun-free schools act of nineteen
17 hundred ninety-four, any public school pupil who is determined under
18 this subdivision to have brought a weapon to school OR TO A SCHOOL-AU-
19 THORIZED ACTIVITY shall be suspended for a period of not less than one
20 calendar year and any nonpublic school pupil participating in a program
21 operated by a public school district using funds from the elementary and
22 secondary education act of nineteen hundred sixty-five who is determined
23 under this subdivision to have brought a weapon to a public school or
24 other premises used by the school district to provide such programs OR
25 SCHOOL-AUTHORIZED ACTIVITIES shall be suspended for a period of not less
26 than one calendar year from participation in such program. The proce-
27 dures of this subdivision shall apply to such a suspension of a nonpub-
28 lic school pupil. A superintendent of schools, district superintendent
29 of schools or community superintendent shall have the authority to modi-
30 fy this suspension requirement for each student on a case-by-case basis.
31 The determination of a superintendent shall be subject to review by the
32 board of education pursuant to paragraph c of this subdivision and the
33 commissioner pursuant to section three hundred ten of this chapter.
34 Nothing in this subdivision shall be deemed to authorize the suspension
35 of a student with a disability in violation of the individuals with
36 disabilities education act or article eighty-nine of this chapter. A
37 superintendent shall refer the pupil under the age of sixteen who has
38 been determined to have brought a weapon to school OR TO A SCHOOL-AU-
39 THORIZED ACTIVITY in violation of this subdivision to a presentment
40 agency for a juvenile delinquency proceeding consistent with article
41 three of the family court act except a student fourteen or fifteen years
42 of age who qualifies for juvenile offender status under subdivision
43 forty-two of section 1.20 of the criminal procedure law. A superinten-
44 dent shall refer any pupil sixteen years of age or older or a student
45 fourteen or fifteen years of age who qualifies for juvenile offender
46 status under subdivision forty-two of section 1.20 of the criminal
47 procedure law, who has been determined to have brought a weapon to
48 school OR TO A SCHOOL-AUTHORIZED ACTIVITY in violation of this subdivi-
49 sion to the appropriate law enforcement officials.

50 S 7. Section 3028-c of the education law, as added by chapter 181 of
51 the laws of 2000, is amended to read as follows:

52 S 3028-c. Protection of school employees who report acts of violence
53 and weapons possession. Any school employee having reasonable cause to
54 suspect that a person has committed an act of violence while in or on
55 school property OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY,
56 or having reasonable cause to suspect that a person has committed an act

1 of violence upon a student, school employee or volunteer either upon
2 school grounds, WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY or
3 elsewhere, or having reasonable cause to suspect that a person has
4 brought a gun, knife, bomb or other instrument capable of or that
5 appears capable of causing death or physical injury upon school grounds
6 OR WHILE PARTICIPATING IN A SCHOOL-AUTHORIZED ACTIVITY who in good faith
7 reports such information to school officials, to the commissioner, or to
8 law enforcement authorities, shall have immunity from any civil liabil-
9 ity that may arise from the making of such report, and no school
10 district or school district employee shall take, request or cause a
11 retaliatory action against any such employee who makes such report.
12 S 8. This act shall take effect on the first of July next succeeding
13 the date on which it shall have become a law, provided that the amend-
14 ments to subparagraph 1 of paragraph c of subdivision 3 of section 3214
15 of the education law, made by section four of this act, shall be subject
16 to the expiration and reversion of such subparagraph pursuant to section
17 8 of chapter 430 of the laws of 2006, as amended, when upon such date
18 section five of this act shall take effect.