

7497

I N S E N A T E

May 29, 2012

Introduced by Sen. SALAND -- (at request of the NYC Education (see sed))
-- 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 discipline for inappropriate sexual conduct

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

1 Section 1. Legislative intent. School employees hold important posi-
2 tions in our communities, not only as educators, but often as mentors
3 and advisors. They are professionally and personally placed in a posi-
4 tion of trust. The vast majority of educators are conscientious and
5 talented and should be credited with a significant part of the overall
6 success of our youth. They play an integral role in both the child's
7 life, as well as the community as a whole; which makes a violation of
8 this position of trust even more pronounced. To that end, reports of
9 cases of inappropriate sexual conduct between educators and students
10 have increased. At times, this behavior involves an educator with a
11 student in a continuum of inappropriate behavior that is intended to
12 create and advance an intimate or sexual relationship with the student.
13 These tragic and heinous cases often result in life-long harm to the
14 student's physical, psychological and educational well-being. Given the
15 serious consequences of these actions, it imperative that the discipli-
16 nary procedures related to this type of misconduct are congruent with
17 the egregiousness of the behavior. Greater protection is needed to more
18 effectively deal with inappropriate sexual conduct by a small minority
19 of school employees to help facilitate a safer environment for our
20 students, target inappropriate behavior, and preserve the integrity of
21 our educational system.

22 S 2. Paragraph a of subdivision 2 of section 3020-a of the education
23 law, as amended by section 1 of part B of chapter 57 of the laws of
24 2012, is amended to read as follows:

25 a. Upon receipt of the charges, the clerk or secretary of the school
26 district or employing board shall immediately notify said board thereof.
27 Within five days after receipt of charges, the employing board, in exec-

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

LBD16061-01-2

1 utive session, shall determine, by a vote of a majority of all the
2 members of such board, whether probable cause exists to bring a disci-
3 plinary proceeding against an employee pursuant to this section. If such
4 determination is affirmative, a written statement specifying (i) the
5 charges in detail, (ii) ANY OF THE CHARGES THAT HAVE BEEN DESIGNATED AS
6 INVOLVING INAPPROPRIATE SEXUAL CONDUCT, AS DEFINED IN SUBDIVISION SIX OF
7 THIS SECTION; (III) the maximum penalty which will be imposed by the
8 board if the employee does not request a hearing or that will be sought
9 by the board if the employee is found guilty of the charges after a
10 hearing and [(iii)] (IV) the employee's rights under this section, shall
11 be immediately forwarded to the accused employee by certified or regis-
12 tered mail, return receipt requested or by personal delivery to the
13 employee.

14 S 3. Paragraph b of subdivision 2 of section 3020-a of the education
15 law, as amended by section 1 of part B of chapter 57 of the laws of
16 2012, is amended to read as follows:

17 b. The employee may be suspended pending a hearing on the charges and
18 the final determination thereof. The suspension shall be with pay,
19 except the employee may be suspended without pay if (I) the employee has
20 entered a guilty plea to or has been convicted of a felony crime
21 concerning the criminal sale or possession of a controlled substance, a
22 precursor of a controlled substance, or drug paraphernalia as defined in
23 article two hundred twenty or two hundred twenty-one of the penal
24 law[;], or a felony crime involving the physical abuse of a minor or
25 student; OR (II) PURSUANT TO PARAGRAPH E OF THIS SUBDIVISION, A HEARING
26 OFFICER HAS FOUND PROBABLE CAUSE THAT THE EMPLOYEE HAS COMMITTED INAP-
27 PROPRIATE SEXUAL CONDUCT AS DEFINED IN THIS SECTION. The employee shall
28 be terminated without a hearing, as provided for in this section, upon
29 conviction of a sex offense, as defined in subparagraph two of paragraph
30 b of subdivision seven-a of section three hundred five of this chapter.
31 To the extent this section applies to an employee acting as a school
32 administrator or supervisor, as defined in subparagraph three of para-
33 graph b of subdivision seven-b of section three hundred five of this
34 chapter, such employee shall be terminated without a hearing, as
35 provided for in this section, upon conviction of a felony offense
36 defined in subparagraph two of paragraph b of subdivision seven-b of
37 section three hundred five of this chapter.

38 S 4. Subdivision 2 of section 3020-a of the education law is amended
39 by adding a new paragraph e to read as follows:

40 E. WHERE THE EMPLOYEE IS CHARGED BY CRIMINAL COMPLAINT OR INDICTMENT
41 WITH CRIMINAL CONDUCT UNDER ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW
42 AGAINST A STUDENT OR MINOR OR WHERE THE EMPLOYING BOARD HAS FILED A
43 CHARGE OF INAPPROPRIATE SEXUAL CONDUCT AGAINST THE EMPLOYEE, THE EMPLOY-
44 ING BOARD MAY REQUEST A PROBABLE CAUSE HEARING BEFORE A HEARING OFFICER.

45 (I) WHERE A CRIMINAL COMPLAINT OR INDICTMENT HAS BEEN FILED CHARGING
46 THE EMPLOYEE WITH CRIMINAL CONDUCT UNDER ARTICLE ONE HUNDRED THIRTY OF
47 THE PENAL LAW AGAINST A STUDENT OR MINOR, THE PROBABLE CAUSE HEARING
48 SHALL TAKE PLACE WITHIN FIFTEEN DAYS OF THE FILING OF SUCH CRIMINAL
49 COMPLAINT OR INDICTMENT, AND SUCH CRIMINAL COMPLAINT OR INDICTMENT SHALL
50 BE SUFFICIENT TO ESTABLISH PROBABLE CAUSE WITHOUT FURTHER TESTIMONY.

51 (II) IN ALL OTHER CASES, WHERE THE EMPLOYING BOARD HAS FILED A CHARGE
52 OF INAPPROPRIATE SEXUAL CONDUCT, SUCH PROBABLE CAUSE HEARING SHALL TAKE
53 PLACE WITHIN TEN DAYS OF THE EMPLOYEE'S REQUEST FOR A HEARING ON THE
54 CHARGES AND SHALL NOT EXCEED ONE HALF DAY IN LENGTH. FOR PURPOSES OF
55 THIS PARAGRAPH, PROBABLE CAUSE SHALL BE FOUND TO EXIST WHERE EVIDENCE OR
56 INFORMATION WHICH APPEARS RELIABLE DISCLOSES FACTS AND CIRCUMSTANCES

1 MAKING IT LIKELY THAT INAPPROPRIATE SEXUAL CONDUCT IN FACT OCCURRED AND
2 THE EMPLOYEE CHARGED COMMITTED THE CONDUCT. TO ESTABLISH PROBABLE CAUSE,
3 AN INVESTIGATOR OR SCHOOL DISTRICT OFFICIAL SHALL BE PRESENT AND SHALL
4 TESTIFY AT THE PROBABLE CAUSE HEARING. THE EMPLOYING BOARD MAY ALSO BE
5 REQUIRED TO PRODUCE WRITTEN STATEMENTS FROM THE VICTIM OR WITNESSES, IF
6 ANY. THE EMPLOYEE SHALL HAVE AN OPPORTUNITY TO RESPOND ORALLY TO THE
7 OFFER OF PROOF. THE HEARING OFFICER MAY ASK RELEVANT QUESTIONS OR MAKE
8 FURTHER INQUIRY AT THE REQUEST OF THE EMPLOYEE. THE HEARING SHALL NOT
9 REQUIRE TESTIMONY OF OTHER WITNESSES NOR SHALL CROSS-EXAMINATION BE
10 PERMITTED.

11 (III) SHOULD THE EMPLOYING BOARD MEET ITS BURDEN OF ESTABLISHING PROB-
12 ABLE CAUSE OF INAPPROPRIATE SEXUAL CONDUCT, THE EMPLOYEE SHALL REMAIN
13 SUSPENDED WITHOUT PAY DURING THE PENDENCY OF THE DISCIPLINARY ACTION,
14 AND THE FINAL HEARING ON THE CHARGES SHALL BE COMPLETED WITHIN THE TIME-
15 FRAME SET FORTH IN SUBPARAGRAPH (VI) OF PARAGRAPH C OF SUBDIVISION THREE
16 OF THIS SECTION.

17 S 5. Subdivisions 4 and 5 of section 3020-a of the education law, as
18 amended by section 1 of part B of chapter 57 of the laws of 2012, are
19 amended to read as follows:

20 4. Post hearing procedures. a. [The] (I) IN ANY CASE THAT INCLUDES A
21 CHARGE DESIGNATED BY THE EMPLOYING BOARD AS INVOLVING INAPPROPRIATE
22 SEXUAL CONDUCT THE HEARING OFFICER SHALL PREPARE A DECISION ON ALL
23 CHARGES WITHIN THIRTY DAYS OF THE LAST DAY OF THE FINAL HEARING, OR IN
24 THE CASE OF AN EXPEDITED HEARING WITHIN TEN DAYS OF THE SUCH EXPEDITED
25 HEARING, AND SHALL FORWARD A COPY THEREOF TO THE COMMISSIONER WHO SHALL
26 IMMEDIATELY FORWARD COPIES OF THE DECISION TO THE EMPLOYEE AND TO THE
27 CLERK OR SECRETARY OF THE EMPLOYING BOARD. THE DECISION SHALL INCLUDE
28 THE HEARING OFFICER'S FINDINGS OF FACT ON EACH CHARGE, AND HIS OR HER
29 CONCLUSIONS WITH REGARD TO EACH CHARGE BASED ON SAID FINDINGS, AND SHALL
30 STATE WHAT PENALTY OR OTHER ACTION, SHOULD BE TAKEN. IN THOSE CASES
31 WHERE A HEARING OFFICER FINDS THAT INAPPROPRIATE SEXUAL CONDUCT HAS
32 OCCURRED THE DECISION SHALL INCLUDE A PENALTY OF TERMINATION UNLESS THE
33 HEARING OFFICER, IN WRITING, IDENTIFIES SPECIFIC REASONS FOR INCLUDING A
34 LESSER PENALTY OR OTHER ACTION.

35 (II) THE HEARING OFFICER SHALL INDICATE IN THE DECISION WHETHER ANY OF
36 THE CHARGES BROUGHT BY THE EMPLOYING BOARD SHALL BE FOUND FRIVOLOUS AS
37 DEFINED IN SECTION EIGHTY-THREE HUNDRED THREE-A OF THE CIVIL PRACTICE
38 LAW AND RULES. IF THE HEARING OFFICER'S DECISION IS THAT ALL OF THE
39 CHARGES BROUGHT AGAINST THE EMPLOYEE BE FOUND FRIVOLOUS, THE HEARING
40 OFFICER SHALL RECOMMEND THAT THE EMPLOYING BOARD REIMBURSE THE DEPART-
41 MENT THE REASONABLE COSTS SAID DEPARTMENT INCURRED AS A RESULT OF THE
42 PROCEEDING AND REIMBURSE THE EMPLOYEE THE REASONABLE COSTS, INCLUDING
43 BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, THE EMPLOYEE INCURRED IN
44 DEFENDING THE CHARGES. IF THE HEARING OFFICER'S DECISION IS THAT SOME
45 BUT NOT ALL OF THE CHARGES BROUGHT AGAINST THE EMPLOYEE BE FOUND FRIVO-
46 LOUS, THE HEARING OFFICER SHALL RECOMMEND THAT THE EMPLOYING BOARD REIM-
47 BURSE THE DEPARTMENT A PORTION OF THE REASONABLE COSTS SAID DEPARTMENT
48 INCURRED AS A RESULT OF THE PROCEEDING AND REIMBURSE THE EMPLOYEE A
49 PORTION OF THE REASONABLE COSTS, INCLUDING BUT NOT LIMITED TO REASONABLE
50 ATTORNEYS' FEES, THE EMPLOYEE INCURRED IN DEFENDING THE CHARGES.

51 (III) FOLLOWING RECEIPT OF THE HEARING OFFICER'S DECISION, THE EMPLOY-
52 ING BOARD SHALL RENDER A WRITTEN DECISION ADOPTING, MODIFYING OR REJECT-
53 ING THE HEARING OFFICER'S DECISION, INCLUDING FINDINGS OF FACT, CONCLU-
54 SIONS AND PENALTIES, IN WHOLE OR IN PART. IF THE EMPLOYING BOARD DOES
55 NOT ADOPT THE DECISION OF THE HEARING OFFICER, THE EMPLOYING BOARD SHALL
56 EXPLAIN ITS REASONING IN THE WRITTEN DECISION. THE EMPLOYING BOARD SHALL

1 FORTHWITH FORWARD A COPY THEREOF TO THE COMMISSIONER WHO SHALL IMME-
2 DIATELY FORWARD A COPY OF THE DECISION TO THE EMPLOYEE. IN THOSE CASES
3 WHERE A PENALTY IS IMPOSED FOR INAPPROPRIATE SEXUAL CONDUCT, SUCH PENAL-
4 TY SHALL BE TERMINATION UNLESS THE EMPLOYING BOARD, IN WRITING, IDENTI-
5 FIES SPECIFIC REASONS FOR IMPOSING A LESSER PENALTY OR OTHER ACTION. IN
6 THOSE CASES WHERE A PENALTY OTHER THAN TERMINATION IS IMPOSED, SUCH
7 PENALTY MAY BE ANY PENALTY AS SET FORTH IN PARAGRAPH A-1 OF THIS SUBDI-
8 VISION, AND IN ADDITION TO OR IN LIEU OF SUCH PENALTIES THE EMPLOYING
9 BOARD MAY IMPOSE REMEDIAL ACTIONS AS SET FORTH IN PARAGRAPH A-1 OF THIS
10 SUBDIVISION.

11 (IV) WITHIN FIFTEEN DAYS OF ISSUANCE OF THE EMPLOYING BOARD'S DECISION
12 THE EMPLOYING BOARD SHALL IMPLEMENT THE DECISION. IF THE DECISION IS A
13 DISMISSAL OF ALL CHARGES OR AN ACQUITTAL THE EMPLOYEE SHALL BE RESTORED
14 TO HIS OR HER POSITION AND RECEIVE BACK PAY WITH INTEREST FOR THE ENTIRE
15 PERIOD OF SUSPENSION WITHOUT PAY AND THE CHARGES EXPUNGED FROM THE
16 EMPLOYMENT RECORD.

17 (V) THE EMPLOYING BOARD SHALL ALSO MAKE A WRITTEN DETERMINATION WITH
18 RESPECT TO ANY RECOMMENDATION OF THE HEARING OFFICER THAT ANY CHARGES BE
19 FOUND FRIVOLOUS AND THAT REIMBURSEMENT SHOULD BE MADE TO THE DEPARTMENT
20 AND THE EMPLOYEE WITH RESPECT TO REASONABLE COSTS INCURRED AS A RESULT
21 OF SUCH CHARGES.

22 (VI) NOT LATER THAN TEN DAYS AFTER RECEIPT OF THE EMPLOYING BOARD'S
23 DECISION, THE EMPLOYEE MAY MAKE AN APPLICATION TO THE NEW YORK STATE
24 SUPREME COURT TO VACATE OR MODIFY THE DECISION OF THE EMPLOYING BOARD
25 PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.
26 THE COURT'S REVIEW SHALL BE LIMITED TO THE GROUNDS SET FORTH IN SUCH
27 SECTION. THE EMPLOYING BOARD'S DETERMINATION SHALL BE DEEMED TO BE FINAL
28 FOR THE PURPOSE OF SUCH PROCEEDING. IF THE EMPLOYING BOARD DETERMINES TO
29 REJECT A RECOMMENDATION BY A HEARING OFFICER THAT ANY CHARGE BE FOUND
30 FRIVOLOUS, AND SUCH DETERMINATION IS FOUND IN SUCH A PROCEEDING TO BE
31 ARBITRARY AND CAPRICIOUS, THE EMPLOYER SHALL BE REQUIRED TO REIMBURSE
32 THE EMPLOYEE FOR THE REASONABLE COSTS, INCLUDING BUT NOT LIMITED TO
33 REASONABLE ATTORNEYS' FEES, THE EMPLOYEE INCURRED IN DEFENDING CHARGES
34 FOUND TO BE FRIVOLOUS, AND THE CHARGES EXPUNGED FROM THE EMPLOYMENT
35 RECORD.

36 (VII) IN NO CASE SHALL THE FILING OR THE PENDENCY OF AN APPEAL DELAY
37 THE IMPLEMENTATION OF THE DECISION OF THE EMPLOYING BOARD UNLESS A COURT
38 ISSUES A STAY OF THE PROCEEDINGS PURSUANT TO ARTICLE SEVENTY-EIGHT OF
39 THE CIVIL PRACTICE LAW AND RULES.

40 (VIII) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION
41 TO THE CONTRARY, ALL COLLECTIVE BARGAINING AGREEMENTS APPLICABLE TO
42 TEACHERS OR BUILDING PRINCIPALS ENTERED INTO AFTER JULY FIRST, TWO THOU-
43 SAND TWELVE SHALL BE CONSISTENT WITH REQUIREMENTS OF THIS PARAGRAPH, AND
44 ANY PROVISION TO THE CONTRARY SHALL BE NULL AND VOID AS AGAINST PUBLIC
45 POLICY.

46 A-1. IN ALL OTHER CASES, THE hearing officer shall render a written
47 decision within thirty days of the last day of the final hearing, or in
48 the case of an expedited hearing within ten days of such expedited hear-
49 ing, and shall forward a copy thereof to the commissioner who shall
50 immediately forward copies of the decision to the employee and to the
51 clerk or secretary of the employing board. The written decision shall
52 include the hearing officer's findings of fact on each charge, AND his
53 or her conclusions with regard to each charge based on said findings and
54 shall state what penalty or other action, if any, shall be taken by the
55 employing board. At the request of the employee, in determining what, if
56 any, penalty or other action shall be imposed, the hearing officer shall

1 consider the extent to which the employing board made efforts towards
2 correcting the behavior of the employee which resulted in charges being
3 brought under this section through means including but not limited to:
4 remediation, peer intervention or an employee assistance plan. In those
5 cases where a penalty is imposed, such penalty may be a written reprimand,
6 a fine, suspension for a fixed time without pay, or dismissal. In
7 addition to or in lieu of the aforementioned penalties, the hearing
8 officer, where he or she deems appropriate, may impose upon the employee
9 remedial action including but not limited to leaves of absence with or
10 without pay, continuing education and/or study, a requirement that the
11 employee seek counseling or medical treatment or that the employee
12 engage in any other remedial or combination of remedial actions.

13 [b.] Within fifteen days of receipt of the hearing officer's decision
14 the employing board shall implement the decision.

15 B. If the employee is acquitted he or she shall be restored to his or
16 her position with full pay for any period of suspension without pay and
17 the charges expunged from the employment record. If an employee who was
18 convicted of a felony crime specified in paragraph b of subdivision two
19 of this section, has said conviction reversed, the employee, upon appli-
20 cation, shall be entitled to have his or her pay and other emoluments
21 restored, for the period from the date of his or her suspension to the
22 date of the decision.

23 c. The hearing officer shall indicate in the decision OF ANY CASE
24 SUBJECT TO PARAGRAPH A-1 OF THIS SUBDIVISION whether any of the charges
25 brought by the employing board were frivolous as defined in section
26 eighty-three hundred three-a of the civil practice law and rules. If the
27 hearing officer finds that all of the charges brought against the
28 employee were frivolous, the hearing officer shall order the employing
29 board to reimburse the department the reasonable costs said department
30 incurred as a result of the proceeding and to reimburse the employee the
31 reasonable costs, including but not limited to reasonable attorneys'
32 fees, the employee incurred in defending the charges. If the hearing
33 officer finds that some but not all of the charges brought against the
34 employee were frivolous, the hearing officer shall order the employing
35 board to reimburse the department a portion, in the discretion of the
36 hearing officer, of the reasonable costs said department incurred as a
37 result of the proceeding and to reimburse the employee a portion, in the
38 discretion of the hearing officer, of the reasonable costs, including
39 but not limited to reasonable attorneys' fees, the employee incurred in
40 defending the charges.

41 5. Appeal. a. Not later than ten days after receipt of the hearing
42 officer's decision PURSUANT TO PARAGRAPH A-1 OF SUBDIVISION FOUR OF THIS
43 SECTION, the employee or the employing board may make an application to
44 the New York state supreme court to vacate or modify the decision of the
45 hearing officer pursuant to section seventy-five hundred eleven of the
46 civil practice law and rules. The court's review shall be limited to the
47 grounds set forth in such section. The hearing panel's determination
48 shall be deemed to be final for the purpose of such proceeding.

49 b. In no case shall the filing or the pendency of an appeal delay the
50 implementation of the decision of the hearing officer.

51 S 6. Section 3020-a of the education law is amended by adding a new
52 subdivision 6 to read as follows:

53 6. A. "INAPPROPRIATE SEXUAL CONDUCT" SHALL MEAN:

54 (I) ANY CONDUCT BETWEEN AN EMPLOYEE AND A STUDENT WHETHER VERBAL, IN
55 PERSON, IN WRITING OR BY ELECTRONIC MEANS, WHETHER IT OCCURS ON SCHOOL
56 GROUNDS, OR AT A SCHOOL FUNCTION AS DEFINED IN SECTION TWENTY-EIGHT

1 HUNDRED ONE OF THIS CHAPTER, OR NOT ON SCHOOL GROUNDS, OR NOT A SCHOOL
2 FUNCTION, THAT IS INTENDED TO INITIATE, CREATE, FOSTER OR ADVANCE AN
3 INTIMATE OR A SEXUAL RELATIONSHIP BY AN EMPLOYEE WITH A STUDENT, INCLUD-
4 ING BUT NOT LIMITED TO:

5 (1) ANY SEXUAL EXPRESSION, SEXUAL CONDUCT, CONTACT, TOUCHING, WITHOUT
6 A LEGITIMATE PEDAGOGICAL PURPOSE, INCLUDING BUT NOT LIMITED TO SEXUALLY
7 SUGGESTIVE COMMENTS AND DISCUSSIONS OF SEXUAL ACTS;

8 (2) EXPOSING A STUDENT TO REPRESENTATIONS, INCLUDING BUT NOT LIMITED
9 TO DRAWINGS OR PHOTOGRAPHS, OF A SEXUAL NATURE, WHETHER VERBAL, WRITTEN,
10 ELECTRONIC OR PHYSICAL, WITHOUT A LEGITIMATE PEDAGOGICAL PURPOSE;

11 (3) PROVIDING OF A GIFT TO A STUDENT;

12 (4) ANY ACTION THAT COULD REASONABLY BE INTERPRETED AS SOLICITING, OR
13 INTENDING TO FORM, AN INTIMATE OR SEXUAL RELATIONSHIP OR SEXUAL ACTIV-
14 ITY, INCLUDING BUT NOT LIMITED TO MEETINGS OF A NON-PEDAGOGICAL NATURE
15 WITHOUT SCHOOL ADMINISTRATION AND PARENTAL NOTIFICATION AND PERMISSION;

16 (II) SEXUAL INTERCOURSE. ANY ACT OF SEXUAL PENETRATION, HOWEVER
17 SLIGHT, OF A STUDENT'S ANAL, GENITAL, OR ORAL OPENING WITH ANY OBJECT OR
18 BODY PART;

19 (III) PUBLISHING, RECREATING OR REPRODUCING IMAGES OF A SEXUAL ACT
20 INVOLVING A STUDENT;

21 (IV) ANY ACT OF PUBLIC LEWDNESS, AS DEFINED IN SECTION 245.00 OF THE
22 PENAL LAW, OR EXPOSURE, AS DEFINED IN SECTION 245.01 OF THE PENAL LAW,
23 IN A PLACE WHERE A STUDENT COULD VIEW SUCH ACT OF PUBLIC LEWDNESS OR
24 EXPOSURE;

25 (V) EXPOSING A STUDENT TO PORNOGRAPHIC MATERIAL;

26 (VI) POSSESSION OR USE OF CHILD PORNOGRAPHY;

27 (VII) SERIOUS OR REPEATED VERBAL ABUSE OF A SEXUAL NATURE;

28 (VIII) INTENTIONAL OR REPEATED OBSERVING OR VIEWING OF THE SEXUAL OR
29 INTIMATE PARTS OF A STUDENT OR UNDER THE CLOTHING WORN BY A STUDENT, OR
30 ANY ACTION INVOLVING THE USE OF AN IMAGING DEVICE THAT WOULD CONSTITUTE
31 CRIMINAL CONDUCT AS DEFINED UNDER SECTIONS 250.40, 250.45 OR 250.50 OF
32 THE PENAL LAW;

33 (IX) INDUCING OR ATTEMPTING TO INDUCE INCAPACITATION OR IMPAIRMENT OF
34 A STUDENT FOR THE PURPOSE OF HAVING SEXUAL INTERCOURSE, SEXUAL CONTACT
35 OR FOR THE PURPOSE OF CREATING PORNOGRAPHIC IMAGES OR MATERIALS, REGARD-
36 LESS OF WHETHER SEXUAL ACTIVITY ACTUALLY TAKES PLACE;

37 (X) ANY ACTION THAT WOULD CONSTITUTE CRIMINAL CONDUCT UNDER ARTICLE
38 ONE HUNDRED THIRTY OF THE PENAL LAW AGAINST A STUDENT OR MINOR;

39 (XI) ANY OTHER ACTION OR CONDUCT DESIGNATED BY THE COMMISSIONER;

40 B. FOR THE PURPOSES OF THIS SUBDIVISION "STUDENT" SHALL MEAN A STUDENT
41 OR A MINOR WHO IS NOT A STUDENT;

42 C. "INAPPROPRIATE SEXUAL CONDUCT" SHALL NOT BE CONSTRUED TO INCLUDE
43 LEGITIMATE NONSEXUAL TOUCHING OR OTHER NONSEXUAL CONDUCT.

44 S 7. This act shall take effect immediately and shall apply with
45 respect to cases initiated by the filing of charges on or after such
46 date.