

S. 7740

A. 10712

S E N A T E - A S S E M B L Y

June 15, 2012

IN SENATE -- Introduced by Sens. SALAND, RANZENHOFER, KLEIN -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of A. O'Donnell, Nolan) -- (at request of the Governor) -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to prohibiting bullying and cyberbullying in public schools

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

1 Section 1. Legislative findings and intent. In recent years, New York
2 state has taken steps to ensure that school pupils, teachers and other
3 personnel are provided with a safe and secure learning environment.
4 However, the legislature recognizes that egregious incidents of harass-
5 ment, bullying and discrimination, both in person and through the use of
6 technology, continue to disrupt the lives and education of students
7 across the state, and that bullying manifests in many forms, including
8 through the use of technology in what is often called cyberbullying. In
9 today's age of advanced technology, twenty-four hour connectivity and
10 social networking, students who are subjected to bullying, such as the
11 texting or posting of sexually derogatory comments via such social
12 networking sites or by other means, have no reprieve. Bullying that
13 begins in school follows students home every day, and has lasting
14 impacts on such students. Conversely, bullying through the use of tech-
15 nology can begin away from school property.

16 The legislature also recognizes that most cyberbullying originates
17 off-campus, but nonetheless affects the school environment and disrupts
18 the educational process, impeding the ability of students to learn and
19 too often causing devastating effects on students' health and well-be-
20 ing.

21 The legislature finds it is vital to protect all students from harass-
22 ment, bullying, cyberbullying and discrimination. In expanding the
23 provisions of the Dignity for All Students Act, the legislature intends

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

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1 to give school districts tools to address these harmful acts consistent
2 with the emerging research in the field. Bullying, harassment and
3 discrimination pose a serious threat to all students, including but not
4 limited to students targeted because of actual or perceived race, color,
5 weight, national origin, ethnic group, religion, religious practice,
6 disability, sexual orientation, gender or sex. It is imperative to
7 protect every student from such harm regardless of whether the student
8 is a member of a specific category.

9 S 2. Subdivision 7 of section 11 of the education law, as added by
10 chapter 482 of the laws of 2010, is amended and a new subdivision 8 is
11 added to read as follows:

12 7. "Harassment" AND "BULLYING" shall mean the creation of a hostile
13 environment by conduct or by [verbal] threats, intimidation or abuse,
14 INCLUDING CYBERBULLYING, that (A) has or would have the effect of unrea-
15 sonably and substantially interfering with a student's educational
16 performance, opportunities or benefits, or mental, emotional or physical
17 well-being; or [conduct, verbal threats, intimidation or abuse that] (B)
18 reasonably causes or would reasonably be expected to cause a student to
19 fear for his or her physical safety; [such conduct, verbal threats,
20 intimidation or abuse includes but is not limited to conduct, verbal
21 threats, intimidation] or [abuse] (C) REASONABLY CAUSES OR WOULD REASON-
22 ABLY BE EXPECTED TO CAUSE PHYSICAL INJURY OR EMOTIONAL HARM TO A
23 STUDENT; OR (D) OCCURS OFF SCHOOL PROPERTY AND CREATES OR WOULD FORESEE-
24 ABLY CREATE A RISK OF SUBSTANTIAL DISRUPTION WITHIN THE SCHOOL ENVIRON-
25 MENT, WHERE IT IS FORESEEABLE THAT THE CONDUCT, THREATS, INTIMIDATION OR
26 ABUSE MIGHT REACH SCHOOL PROPERTY. ACTS OF HARASSMENT AND BULLYING SHALL
27 INCLUDE, BUT NOT BE LIMITED TO, THOSE ACTS based on a person's actual or
28 perceived race, color, weight, national origin, ethnic group, religion,
29 religious practice, disability, sexual orientation, gender or sex. FOR
30 THE PURPOSES OF THIS DEFINITION THE TERM "THREATS, INTIMIDATION OR
31 ABUSE" SHALL INCLUDE VERBAL AND NON-VERBAL ACTIONS.

32 8. "CYBERBULLYING" SHALL MEAN HARASSMENT OR BULLYING AS DEFINED IN
33 SUBDIVISION SEVEN OF THIS SECTION, INCLUDING PARAGRAPHS (A), (B), (C)
34 AND (D) OF SUCH SUBDIVISION, WHERE SUCH HARASSMENT OR BULLYING OCCURS
35 THROUGH ANY FORM OF ELECTRONIC COMMUNICATION.

36 S 3. Subdivision 1 of section 12 of the education law, as added by
37 chapter 482 of the laws of 2010, is amended to read as follows:

38 1. No student shall be subjected to harassment OR BULLYING by employ-
39 ees or students on school property or at a school function; nor shall
40 any student be subjected to discrimination based on a person's actual or
41 perceived race, color, weight, national origin, ethnic group, religion,
42 religious practice, disability, sexual orientation, gender, or sex by
43 school employees or students on school property or at a school function.
44 Nothing in this subdivision shall be construed to prohibit a denial of
45 admission into, or exclusion from, a course of instruction based on a
46 person's gender that would be permissible under section thirty-two
47 hundred one-a or paragraph (a) of subdivision two of section twenty-
48 eight hundred fifty-four of this chapter and title IX of the Education
49 Amendments of 1972 (20 U.S.C. section 1681, et. seq.), or to prohibit,
50 as discrimination based on disability, actions that would be permissible
51 under section 504 of the Rehabilitation Act of 1973.

52 S 4. Section 13 of the education law, as added by chapter 482 of the
53 laws of 2010, is amended to read as follows:

54 S 13. Policies and guidelines. The board of education and the trustees
55 or sole trustee of every school district shall create policies, PROCE-
56 DURES and guidelines that shall include, but not be limited to:

1 1. Policies AND PROCEDURES intended to create a school environment
2 that is free from [discrimination or] harassment[;], BULLYING AND
3 DISCRIMINATION, THAT INCLUDE BUT ARE NOT LIMITED TO PROVISIONS WHICH:
4 A. IDENTIFY THE PRINCIPAL, SUPERINTENDENT OR THE PRINCIPAL'S OR SUPER-
5 INTENDENT'S DESIGNEE AS THE SCHOOL EMPLOYEE CHARGED WITH RECEIVING
6 REPORTS OF HARASSMENT, BULLYING AND DISCRIMINATION;
7 B. ENABLE STUDENTS AND PARENTS TO MAKE AN ORAL OR WRITTEN REPORT OF
8 HARASSMENT, BULLYING OR DISCRIMINATION TO TEACHERS, ADMINISTRATORS AND
9 OTHER SCHOOL PERSONNEL THAT THE SCHOOL DISTRICT DEEMS APPROPRIATE;
10 C. REQUIRE SCHOOL EMPLOYEES WHO WITNESS HARASSMENT, BULLYING OR
11 DISCRIMINATION, OR RECEIVE AN ORAL OR WRITTEN REPORT OF HARASSMENT,
12 BULLYING OR DISCRIMINATION, TO PROMPTLY ORALLY NOTIFY THE PRINCIPAL,
13 SUPERINTENDENT OR THE PRINCIPAL'S OR SUPERINTENDENT'S DESIGNEE NOT LATER
14 THAN ONE SCHOOL DAY AFTER SUCH SCHOOL EMPLOYEE WITNESSES OR RECEIVES A
15 REPORT OF HARASSMENT, BULLYING OR DISCRIMINATION, AND TO FILE A WRITTEN
16 REPORT WITH THE PRINCIPAL, SUPERINTENDENT OR THE PRINCIPAL OR SUPER-
17 INTENDENT'S DESIGNEE NOT LATER THAN TWO SCHOOL DAYS AFTER MAKING SUCH
18 ORAL REPORT;
19 D. REQUIRE THE PRINCIPAL, SUPERINTENDENT OR THE PRINCIPAL'S OR SUPER-
20 INTENDENT'S DESIGNEE TO LEAD OR SUPERVISE THE THOROUGH INVESTIGATION OF
21 ALL REPORTS OF HARASSMENT, BULLYING AND DISCRIMINATION, AND TO ENSURE
22 THAT SUCH INVESTIGATION IS COMPLETED PROMPTLY AFTER RECEIPT OF ANY WRIT-
23 TEN REPORTS MADE UNDER THIS SECTION;
24 E. REQUIRE THE SCHOOL, WHEN AN INVESTIGATION REVEALS ANY SUCH VERIFIED
25 HARASSMENT, BULLYING OR DISCRIMINATION, TO TAKE PROMPT ACTIONS REASON-
26 ABLY CALCULATED TO END THE HARASSMENT, BULLYING OR DISCRIMINATION, ELIM-
27 INATE ANY HOSTILE ENVIRONMENT, CREATE A MORE POSITIVE SCHOOL CULTURE AND
28 CLIMATE, PREVENT RECURRENCE OF THE BEHAVIOR, AND ENSURE THE SAFETY OF
29 THE STUDENT OR STUDENTS AGAINST WHOM SUCH HARASSMENT, BULLYING OR
30 DISCRIMINATION WAS DIRECTED. SUCH ACTIONS SHALL BE CONSISTENT WITH THE
31 GUIDELINES CREATED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION;
32 F. PROHIBIT RETALIATION AGAINST ANY INDIVIDUAL WHO, IN GOOD FAITH,
33 REPORTS, OR ASSISTS IN THE INVESTIGATION OF, HARASSMENT, BULLYING OR
34 DISCRIMINATION;
35 G. INCLUDE A SCHOOL STRATEGY TO PREVENT HARASSMENT, BULLYING AND
36 DISCRIMINATION;
37 H. REQUIRE THE PRINCIPAL TO MAKE A REGULAR REPORT ON DATA AND TRENDS
38 RELATED TO HARASSMENT, BULLYING AND DISCRIMINATION TO THE SUPERINTEN-
39 DENT;
40 I. REQUIRE THE PRINCIPAL, SUPERINTENDENT OR THE PRINCIPAL'S OR SUPER-
41 INTENDENT'S DESIGNEE, TO NOTIFY PROMPTLY THE APPROPRIATE LOCAL LAW
42 ENFORCEMENT AGENCY WHEN SUCH PRINCIPAL, SUPERINTENDENT OR THE PRINCI-
43 PAL'S OR SUPERINTENDENT'S DESIGNEE, BELIEVES THAT ANY HARASSMENT, BULLY-
44 ING OR DISCRIMINATION CONSTITUTES CRIMINAL CONDUCT;
45 J. INCLUDE APPROPRIATE REFERENCES TO THE PROVISIONS OF THE SCHOOL
46 DISTRICT'S CODE OF CONDUCT ADOPTED PURSUANT TO SECTION TWENTY-EIGHT
47 HUNDRED ONE OF THIS CHAPTER THAT ARE RELEVANT TO HARASSMENT, BULLYING
48 AND DISCRIMINATION;
49 K. REQUIRE EACH SCHOOL, AT LEAST ONCE DURING EACH SCHOOL YEAR, TO
50 PROVIDE ALL SCHOOL EMPLOYEES, STUDENTS AND PARENTS WITH A WRITTEN OR
51 ELECTRONIC COPY OF THE SCHOOL DISTRICT'S POLICIES CREATED PURSUANT TO
52 THIS SECTION, OR A PLAIN-LANGUAGE SUMMARY THEREOF, INCLUDING NOTIFICA-
53 TION OF THE PROCESS BY WHICH STUDENTS, PARENTS AND SCHOOL EMPLOYEES MAY
54 REPORT HARASSMENT, BULLYING AND DISCRIMINATION. THIS SUBDIVISION SHALL
55 NOT BE CONSTRUED TO REQUIRE ADDITIONAL DISTRIBUTION OF SUCH POLICIES AND

1 GUIDELINES IF THEY ARE OTHERWISE DISTRIBUTED TO SCHOOL EMPLOYEES,
2 STUDENTS AND PARENTS;

3 L. MAINTAIN CURRENT VERSIONS OF THE SCHOOL DISTRICT'S POLICIES CREATED
4 PURSUANT TO THIS SECTION ON THE SCHOOL DISTRICT'S INTERNET WEBSITE, IF
5 ONE EXISTS;

6 2. Guidelines to be used in school training programs to discourage the
7 development of [discrimination or] harassment, BULLYING AND DISCRIMI-
8 NATION, AND TO MAKE SCHOOL EMPLOYEES AWARE OF THE EFFECTS OF HARASSMENT,
9 BULLYING, CYBERBULLYING AND DISCRIMINATION ON STUDENTS and that are
10 designed:

11 a. to raise the awareness and sensitivity of school employees to
12 potential [discrimination or] harassment, BULLYING AND DISCRIMINATION,
13 and

14 b. to enable employees to prevent and respond to [discrimination or]
15 harassment, BULLYING AND DISCRIMINATION; and

16 3. Guidelines relating to the development of nondiscriminatory
17 instructional and counseling methods, and requiring that at least one
18 staff member at every school be thoroughly trained to handle human
19 relations in the areas of race, color, weight, national origin, ethnic
20 group, religion, religious practice, disability, sexual orientation,
21 gender, and sex[.]; AND

22 4. GUIDELINES RELATING TO THE DEVELOPMENT OF MEASURED, BALANCED AND
23 AGE-APPROPRIATE RESPONSES TO INSTANCES OF HARASSMENT, BULLYING OR
24 DISCRIMINATION BY STUDENTS, WITH REMEDIES AND PROCEDURES FOLLOWING A
25 PROGRESSIVE MODEL THAT MAKE APPROPRIATE USE OF INTERVENTION, DISCIPLINE
26 AND EDUCATION, VARY IN METHOD ACCORDING TO THE NATURE OF THE BEHAVIOR,
27 THE DEVELOPMENTAL AGE OF THE STUDENT AND THE STUDENT'S HISTORY OF PROB-
28 LEM BEHAVIORS, AND ARE CONSISTENT WITH THE DISTRICT'S CODE OF CONDUCT;
29 AND

30 5. TRAINING REQUIRED BY THIS SECTION SHALL ADDRESS THE SOCIAL PATTERNS
31 OF HARASSMENT, BULLYING AND DISCRIMINATION, AS DEFINED IN SECTION ELEVEN
32 OF THIS ARTICLE, INCLUDING BUT NOT LIMITED TO THOSE ACTS BASED ON A
33 PERSON'S ACTUAL OR PERCEIVED RACE, COLOR, WEIGHT, NATIONAL ORIGIN,
34 ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIEN-
35 TATION, GENDER OR SEX, THE IDENTIFICATION AND MITIGATION OF HARASSMENT,
36 BULLYING AND DISCRIMINATION, AND STRATEGIES FOR EFFECTIVELY ADDRESSING
37 PROBLEMS OF EXCLUSION, BIAS AND AGGRESSION IN EDUCATIONAL SETTINGS.

38 S 5. Section 14 of the education law, as added by chapter 482 of the
39 laws of 2010, is amended to read as follows:

40 S 14. Commissioner's responsibilities. The commissioner shall:

41 1. Provide direction, which may include development of model policies
42 and, to the extent possible, direct services, to school districts
43 related to preventing [discrimination and] harassment, BULLYING AND
44 DISCRIMINATION and to fostering an environment in every school where all
45 children can learn free of manifestations of bias;

46 2. Provide grants, from funds appropriated for such purpose, to local
47 school districts to assist them in implementing the guidelines set forth
48 in this section; [and]

49 3. Promulgate regulations to assist school districts in implementing
50 this article including, but not limited to, regulations to assist school
51 districts in developing measured, balanced, and age-appropriate
52 responses to violations of this policy, with remedies and procedures
53 [focusing on] FOLLOWING A PROGRESSIVE MODEL THAT MAKE APPROPRIATE USE OF
54 intervention, DISCIPLINE and education[.] AND PROVIDE GUIDANCE RELATED
55 TO THE APPLICATION OF REGULATIONS; AND

1 4. PROVIDE GUIDANCE AND EDUCATIONAL MATERIALS TO SCHOOL DISTRICTS
2 RELATED TO BEST PRACTICES IN ADDRESSING CYBERBULLYING AND HELPING FAMI-
3 LIES AND COMMUNITIES WORK COOPERATIVELY WITH SCHOOLS IN ADDRESSING
4 CYBERBULLYING, WHETHER ON OR OFF SCHOOL PROPERTY OR AT OR AWAY FROM A
5 SCHOOL FUNCTION.

6 5. THE COMMISSIONER SHALL PRESCRIBE REGULATIONS THAT SCHOOL PROFES-
7 SIONALS APPLYING ON OR AFTER JULY FIRST, TWO THOUSAND THIRTEEN FOR A
8 CERTIFICATE OR LICENSE, INCLUDING BUT NOT LIMITED TO A CERTIFICATE OR
9 LICENSE VALID FOR SERVICE AS A CLASSROOM TEACHER, SCHOOL COUNSELOR,
10 SCHOOL PSYCHOLOGIST, SCHOOL SOCIAL WORKER, SCHOOL ADMINISTRATOR OR
11 SUPERVISOR OR SUPERINTENDENT OF SCHOOLS SHALL, IN ADDITION TO ALL OTHER
12 CERTIFICATION OR LICENSING REQUIREMENTS, HAVE COMPLETED TRAINING ON THE
13 SOCIAL PATTERNS OF HARASSMENT, BULLYING AND DISCRIMINATION, AS DEFINED
14 IN SECTION ELEVEN OF THIS ARTICLE, INCLUDING BUT NOT LIMITED TO THOSE
15 ACTS BASED ON A PERSON'S ACTUAL OR PERCEIVED RACE, COLOR, WEIGHT,
16 NATIONAL ORIGIN, ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY,
17 SEXUAL ORIENTATION, GENDER OR SEX, THE IDENTIFICATION AND MITIGATION OF
18 HARASSMENT, BULLYING AND DISCRIMINATION, AND STRATEGIES FOR EFFECTIVELY
19 ADDRESSING PROBLEMS OF EXCLUSION, BIAS AND AGGRESSION IN EDUCATIONAL
20 SETTINGS.

21 S 6. Section 15 of the education law, as added by chapter 482 of the
22 laws of 2010, is amended to read as follows:

23 S 15. Reporting by commissioner. The commissioner shall create a
24 procedure under which material incidents of [discrimination and] harass-
25 ment, BULLYING AND DISCRIMINATION on school grounds or at a school func-
26 tion are reported to the department at least on an annual basis. Such
27 procedure shall provide that such reports shall, wherever possible, also
28 delineate the specific nature of such incidents of [discrimination or]
29 harassment, BULLYING AND DISCRIMINATION, provided that the commissioner
30 may comply with the requirements of this section through use of the
31 existing uniform violent incident reporting system. In addition the
32 department may conduct research or undertake studies to determine
33 compliance throughout the state with the provisions of this article.

34 S 7. Section 16 of the education law, as added by chapter 482 of the
35 laws of 2010, is amended to read as follows:

36 S 16. Protection of people who report [discrimination or] harassment,
37 BULLYING OR DISCRIMINATION. Any person having reasonable cause to
38 suspect that a student has been subjected to [discrimination or] harass-
39 ment, BULLYING OR DISCRIMINATION, by an employee or student, on school
40 grounds or at a school function, who, acting reasonably and in good
41 faith, [either] reports such information to school officials, to the
42 commissioner[,] or to law enforcement authorities, ACTS IN COMPLIANCE
43 WITH PARAGRAPH E OR I OF SUBDIVISION ONE OF SECTION THIRTEEN OF THIS
44 ARTICLE, or otherwise initiates, testifies, participates or assists in
45 any formal or informal proceedings under this article, shall have immu-
46 nity from any civil liability that may arise from the making of such
47 report or from initiating, testifying, participating or assisting in
48 such formal or informal proceedings, and no school district or employee
49 shall take, request or cause a retaliatory action against any such
50 person who, acting reasonably and in good faith, either makes such a
51 report or initiates, testifies, participates or assists in such formal
52 or informal proceedings.

53 S 8. Section 801-a of the education law, as amended by chapter 482 of
54 the laws of 2010, is amended to read as follows:

55 S 801-a. Instruction in civility, citizenship and character education.
56 The regents shall ensure that the course of instruction in grades

1 kindergarten through twelve includes a component on civility, citizen-
2 ship and character education. Such component shall instruct students on
3 the principles of honesty, tolerance, personal responsibility, respect
4 for others, WITH AN EMPHASIS ON DISCOURAGING ACTS OF HARASSMENT, BULLY-
5 ING, DISCRIMINATION, observance of laws and rules, courtesy, dignity and
6 other traits which will enhance the quality of their experiences in, and
7 contributions to, the community. SUCH COMPONENT SHALL INCLUDE INSTRU-
8 TION OF SAFE, RESPONSIBLE USE OF THE INTERNET AND ELECTRONIC COMMUNI-
9 CATIONS. The regents shall determine how to incorporate such component
10 in existing curricula and the commissioner shall promulgate any regu-
11 lations needed to carry out such determination of the regents. For the
12 purposes of this section, "tolerance," "respect for others" and "digni-
13 ty" shall include awareness and sensitivity to [discrimination or]
14 harassment, BULLYING, DISCRIMINATION and civility in the relations of
15 people of different races, weights, national origins, ethnic groups,
16 religions, religious practices, mental or physical abilities, sexual
17 orientations, genders, and sexes.

18 S 9. This act shall take effect July 1, 2013; provided, however, that
19 if chapter 482 of the laws of 2010 shall not have taken effect on or
20 before such date then this act shall take effect on the same date and in
21 the same manner as such chapter of the laws of 2010 takes effect.