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

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:

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

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

The legislature finds it is vital to protect all students from harassment, bullying, cyberbullying and discrimination. In expanding the 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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to give school districts tools to address these harmful acts consistent with the emerging research in the field. Bullying, harassment and discrimination pose a serious threat to all students, including but not limited to students targeted because of actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. It is imperative to protect every student from such harm regardless of whether the student is a member of a specific category.

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

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

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

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

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

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

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

1. Policies AND PROCEDURES intended to create a school environment that is free from [discrimination or] harassment[;], BULLYING AND DISCRIMINATION, THAT INCLUDE BUT ARE NOT LIMITED TO PROVISIONS WHICH:

A. IDENTIFY THE PRINCIPAL, SUPERINTENDENT OR THE PRINCIPAL'S OR SUPERINTENDENT'S DESIGNEE AS THE SCHOOL EMPLOYEE CHARGED WITH RECEIVING REPORTS OF HARASSMENT, BULLYING AND DISCRIMINATION;

B. ENABLE STUDENTS AND PARENTS TO MAKE AN ORAL OR WRITTEN REPORT OF HARASSMENT, BULLYING OR DISCRIMINATION TO TEACHERS, ADMINISTRATORS AND OTHER SCHOOL PERSONNEL THAT THE SCHOOL DISTRICT DEEMS APPROPRIATE;

C. REQUIRE SCHOOL EMPLOYEES WHO WITNESS HARASSMENT, BULLYING OR DISCRIMINATION, OR RECEIVE AN ORAL OR WRITTEN REPORT OF HARASSMENT, BULLYING OR DISCRIMINATION, TO PROMPTLY ORALLY NOTIFY THE PRINCIPAL, SUPERINTENDENT OR THE PRINCIPAL'S OR SUPERINTENDENT'S DESIGNEE NOT LATER THAN ONE SCHOOL DAY AFTER SUCH SCHOOL EMPLOYEE WITNESSES OR RECEIVES A REPORT OF HARASSMENT, BULLYING OR DISCRIMINATION, AND TO FILE A WRITTEN REPORT WITH THE PRINCIPAL, SUPERINTENDENT OR THE PRINCIPAL OR SUPERINTENDENT'S DESIGNEE NOT LATER THAN TWO SCHOOL DAYS AFTER MAKING SUCH ORAL REPORT;

D. REQUIRE THE PRINCIPAL, SUPERINTENDENT OR THE PRINCIPAL'S OR SUPERINTENDENT'S DESIGNEE TO LEAD OR SUPERVISE THE THOROUGH INVESTIGATION OF ALL REPORTS OF HARASSMENT, BULLYING AND DISCRIMINATION, AND TO ENSURE THAT SUCH INVESTIGATION IS COMPLETED PROMPTLY AFTER RECEIPT OF ANY WRITTEN REPORTS MADE UNDER THIS SECTION;

E. REQUIRE THE SCHOOL, WHEN AN INVESTIGATION REVEALS ANY SUCH VERIFIED HARASSMENT, BULLYING OR DISCRIMINATION, TO TAKE PROMPT ACTIONS REASONABLY CALCULATED TO END THE HARASSMENT, BULLYING OR DISCRIMINATION, ELIMINATE ANY HOSTILE ENVIRONMENT, CREATE A MORE POSITIVE SCHOOL CULTURE AND CLIMATE, PREVENT RECURRENCE OF THE BEHAVIOR, AND ENSURE THE SAFETY OF THE STUDENT OR STUDENTS AGAINST WHOM SUCH HARASSMENT, BULLYING OR DISCRIMINATION WAS DIRECTED. SUCH ACTIONS SHALL BE CONSISTENT WITH THE GUIDELINES CREATED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION;

F. PROHIBIT RETALIATION AGAINST ANY INDIVIDUAL WHO, IN GOOD FAITH, REPORTS, OR ASSISTS IN THE INVESTIGATION OF, HARASSMENT, BULLYING OR DISCRIMINATION;

G. INCLUDE A SCHOOL STRATEGY TO PREVENT HARASSMENT, BULLYING AND DISCRIMINATION;

H. REQUIRE THE PRINCIPAL TO MAKE A REGULAR REPORT ON DATA AND TRENDS RELATED TO HARASSMENT, BULLYING AND DISCRIMINATION TO THE SUPERINTENDENT;

I. REQUIRE THE PRINCIPAL, SUPERINTENDENT OR THE PRINCIPAL'S OR SUPERINTENDENT'S DESIGNEE, TO NOTIFY PROMPTLY THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY WHEN SUCH PRINCIPAL, SUPERINTENDENT OR THE PRINCIPAL'S OR SUPERINTENDENT'S DESIGNEE, BELIEVES THAT ANY HARASSMENT, BULLYING OR DISCRIMINATION CONSTITUTES CRIMINAL CONDUCT;

J. INCLUDE APPROPRIATE REFERENCES TO THE PROVISIONS OF THE SCHOOL DISTRICT'S CODE OF CONDUCT ADOPTED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER THAT ARE RELEVANT TO HARASSMENT, BULLYING AND DISCRIMINATION;

K. REQUIRE EACH SCHOOL, AT LEAST ONCE DURING EACH SCHOOL YEAR, TO PROVIDE ALL SCHOOL EMPLOYEES, STUDENTS AND PARENTS WITH A WRITTEN OR ELECTRONIC COPY OF THE SCHOOL DISTRICT'S POLICIES CREATED PURSUANT TO THIS SECTION, OR A PLAIN-LANGUAGE SUMMARY THEREOF, INCLUDING NOTIFICATION OF THE PROCESS BY WHICH STUDENTS, PARENTS AND SCHOOL EMPLOYEES MAY REPORT HARASSMENT, BULLYING AND DISCRIMINATION. THIS SUBDIVISION SHALL NOT BE CONSTRUED TO REQUIRE ADDITIONAL DISTRIBUTION OF SUCH POLICIES AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

kindergarten through twelve includes a component on civility, citizenship and character education. Such component shall instruct students on the principles of honesty, tolerance, personal responsibility, respect for others, WITH AN EMPHASIS ON DISCOURAGING ACTS OF HARASSMENT, BULLYING, DISCRIMINATION, observance of laws and rules, courtesy, dignity and other traits which will enhance the quality of their experiences in, and contributions to, the community. SUCH COMPONENT SHALL INCLUDE INSTRUCTION OF SAFE, RESPONSIBLE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. The regents shall determine how to incorporate such component in existing curricula and the commissioner shall promulgate any regulations needed to carry out such determination of the regents. For the purposes of this section, "tolerance," "respect for others" and "dignity" shall include awareness and sensitivity to [discrimination or] harassment, BULLYING, DISCRIMINATION and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

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