

3167

2013-2014 Regular Sessions

I N A S S E M B L Y

January 23, 2013

Introduced by M. of A. ROSENTHAL, CORWIN -- Multi-Sponsored by -- M. of
A. RABBITT -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to prohibiting bullying
on school property

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

1 Section 1. Legislative intent. In recent years, New York has taken
2 steps to ensure that school pupils, teachers and other personnel are
3 provided with a safe and secure learning environment. However, egre-
4 gious incidents of bullying, both in person and through the use of tech-
5 nology, continue to plague all of our students. The legislature recog-
6 nizes that bullying manifests in many forms and for innumerable reasons.
7 The legislature finds it is vital to protect all students from acts of
8 bullying, therefore, this legislation expands upon the provisions of
9 chapter 482 of the laws of 2010.
10 While the physical wounds may heal, the effects of bullying can last a
11 lifetime. Therefore, the legislature finds that prohibiting bullying is
12 an appropriate means to enhance the safety of students in New York
13 state's public schools. Furthermore, in today's age of advanced technol-
14 ogy, twenty-four hour connectivity and social networking, students who
15 are subjected to acts of bullying have no reprieve. Taunts and acts of
16 bullying that begin in school follow students home every day, and have
17 lasting impacts on such students. Conversely, bullying through the use
18 of technology can begin away from school property, yet have devastating
19 effects on the student's ability to learn in a safe environment at
20 school. While bullying through the use of technology may occur away from
21 school property, it can create a hostile environment for the student at
22 school and it can materially and substantially disrupt the educational
23 process. Therefore, to further ensure the safety of students and school
24 employees, it is the intent of the legislature to provide schools with

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

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1 the tools to identify, prevent, and prohibit bullying against all
2 students, both conventional and cyber-bullying.

3 S 2. Short title. This act shall be known and may be cited as the "Law
4 to Encourage the Acceptance of All Differences (LEAD)".

5 S 3. Section 801-a of the education law, as amended by chapter 102 of
6 the laws of 2012, is amended to read as follows:

7 S 801-a. Instruction in civility, citizenship and character education.
8 The regents shall ensure that the course of instruction in grades
9 kindergarten through twelve includes a component on civility, citizen-
10 ship and character education. Such component shall instruct students on
11 the principles of honesty, tolerance, personal responsibility, respect
12 for others, with an emphasis on discouraging acts of [harassment,]
13 bullying AS DEFINED IN SECTION ELEVEN OF THIS CHAPTER, discrimination,
14 observance of laws and rules, courtesy, dignity and other traits which
15 will enhance the quality of their experiences in, and contributions to,
16 the community. Such component shall include instruction of safe, respon-
17 sible use of the internet and electronic communications. The regents
18 shall determine how to incorporate such component in existing curricula
19 and the commissioner shall promulgate any regulations needed to carry
20 out such determination of the regents. For the purposes of this section,
21 "tolerance," "respect for others" and "dignity" shall include awareness
22 and sensitivity [to harassment, bullying, discrimination and civility in
23 the relations of] TOWARD ALL STUDENTS, INCLUDING BUT NOT LIMITED TO,
24 people of different races, weights, national origins, ethnic groups,
25 religions, religious practices, mental or physical abilities, sexual
26 orientations, genders, and sexes.

27 S 4. Paragraph d of subdivision 2 of section 2801 of the education
28 law, as added by chapter 181 of the laws of 2000, is amended to read as
29 follows:

30 d. disciplinary measures to be taken in incidents involving the
31 possession or use of illegal substances or weapons, the use of physical
32 force, BULLYING, vandalism, violation of another student's civil rights
33 and threats of violence;

34 S 5. Subdivision 2 of section 2801 of the education law is amended by
35 adding a new paragraph f-1 to read as follows:

36 F-1. PROCEDURES BY WHICH ANY SCHOOL EMPLOYEE, HAVING REASONABLE CAUSE
37 TO SUSPECT THAT A STUDENT HAS BEEN THE VICTIM OF BULLYING OR HAS COMMIT-
38 TED AN ACT OF BULLYING AS DEFINED IN SECTION ELEVEN OF THIS CHAPTER,
39 SHALL BE REQUIRED TO REPORT SUCH INCIDENT TO THE PRINCIPAL OR DESIGNEE
40 THEREOF. IF THE PRINCIPAL OR HIS OR HER DESIGNEE DETERMINES THAT THERE
41 IS A REASONABLE CAUSE TO BELIEVE THAT THE INCIDENT OCCURRED, HE OR SHE
42 SHALL REPORT SUCH INCIDENT TO THE SUPERINTENDENT. ANY EMPLOYEE WHO
43 REASONABLY AND IN GOOD FAITH MAKES A REPORT OF AN ACT OF BULLYING TO THE
44 PRINCIPAL OR DESIGNEE THEREOF SHALL HAVE IMMUNITY FROM CIVIL LIABILITY
45 WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS;

46 S 6. Section 11 of the education law, as added by chapter 482 of the
47 laws of 2010, subdivision 7 as amended and subdivision 8 as added by
48 chapter 102 of the laws of 2012, is amended to read as follows:

49 S 11. Definitions. For the purposes of this article, the following
50 terms shall have the following meanings:

51 1. "School property" shall [mean in or within any building, structure,
52 athletic playing field, playground, parking lot, or land contained with-
53 in the real property boundary line of a public elementary or secondary
54 school; or in or on a school bus, as defined in section one hundred
55 forty-two of the vehicle and traffic law.

1 2. "School function" shall mean a school-sponsored extra-curricular
2 event or activity] HAVE THE SAME MEANING AS SET FORTH IN SECTION TWEN-
3 TY-EIGHT HUNDRED ONE OF THIS CHAPTER.

4 [3.] 2. "Disability" shall mean disability as defined in subdivision
5 twenty-one of section two hundred ninety-two of the executive law.

6 [4. "Employee" shall mean employee as defined in subdivision three of
7 section eleven hundred twenty-five of this title.

8 5.] 3. "Sexual orientation" shall mean actual or perceived heterosexu-
9 ality, homosexuality or bisexuality.

10 [6.] 4. "Gender" shall mean actual or perceived sex and shall include
11 a person's gender identity or expression.

12 [7. "Harassment" and "bullying" shall mean the creation] 5. "CREATION
13 of a hostile environment [by]" SHALL MEAN ENGAGING IN conduct or [by]
14 threats, intimidation or abuse, including cyberbullying, that (a) has or
15 would have the effect of unreasonably and substantially interfering with
16 a student's educational performance, opportunities or benefits, or
17 mental, emotional or physical well-being; or (b) reasonably causes or
18 would reasonably be expected to cause a student to fear for his or her
19 physical safety; or (c) reasonably causes or would reasonably be
20 expected to cause physical injury or emotional harm to a student; or (d)
21 occurs off school property and creates or would foreseeably create a
22 risk of substantial disruption within the school environment, where it
23 is foreseeable that the conduct, threats, intimidation or abuse might
24 reach school property. [Acts of harassment and bullying shall include,
25 but not be limited to, those acts based on a person's actual or
26 perceived race, color, weight, national origin, ethnic group, religion,
27 religious practice, disability, sexual orientation, gender or sex.] For
28 the purposes of this definition the term "threats, intimidation or
29 abuse" shall include verbal and non-verbal actions.

30 6. "BULLYING" SHALL MEAN THE SEVERE OR REPEATED USE BY ONE OR MORE
31 STUDENTS OR SCHOOL EMPLOYEES OF A WRITTEN, VERBAL OR ELECTRONIC
32 EXPRESSION, OR A PHYSICAL ACT OR GESTURE, OR ANY COMBINATION THEREOF,
33 DIRECTED AT A STUDENT THAT HAS THE EFFECT OF CREATING A HOSTILE ENVIRON-
34 MENT. ACTS OF BULLYING SHALL INCLUDE, BUT NOT BE LIMITED TO, THOSE ACTS
35 WHICH ARE MOTIVATED BY A STUDENT'S ACTUAL OR PERCEIVED RACE, COLOR,
36 WEIGHT, NATIONAL ORIGIN, ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE,
37 DISABILITY, SEXUAL ORIENTATION, GENDER, OR SEX.

38 [8.] 7. "Cyberbullying" shall mean [harassment or] bullying as defined
39 in subdivision [seven] SIX of this section[, including paragraphs (a),
40 (b), (c) and (d) of such subdivision,] where such [harassment or] bully-
41 ing occurs through any form of electronic communication.

42 S 7. Section 12 of the education law, as added by chapter 482 of the
43 laws of 2010, subdivision 1 as amended by chapter 102 of the laws of
44 2012, is amended to read as follows:

45 S 12. [Discrimination and harassment] BULLYING AND DISCRIMINATION
46 prohibited. 1. No student shall be subjected to [harassment or] bully-
47 ing by employees or students on school property [or at a school func-
48 tion; nor shall any].

49 A. NO STUDENT OR SCHOOL EMPLOYEE SHALL SUBJECT ANY STUDENT OF A PUBLIC
50 SCHOOL OR PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM TO BULLYING AS
51 DEFINED IN THIS ARTICLE.

52 B. ANY STUDENT OR SCHOOL EMPLOYEE FOUND TO BE IN VIOLATION OF SUBDIVI-
53 SION TWO OF THIS SECTION IN A PUBLIC SCHOOL OR ON SCHOOL PROPERTY SHALL
54 BE SUBJECT TO DISCIPLINARY ACTION IN ACCORDANCE WITH THE DISTRICT'S CODE
55 OF CONDUCT ADOPTED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED ONE OF THIS
56 ARTICLE AND THE APPLICABLE DISCIPLINE PROCEDURES. ANY STUDENT OR SCHOOL

1 EMPLOYEE FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION IN
2 A PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM SHALL BE SUBJECT TO DISCI-
3 PLINE UNDER THE POLICIES AND PROCEDURES OF SUCH PROGRAM GOVERNING
4 CONDUCT.

5 C. NOTHING IN THIS SECTION SHALL APPLY, OR BE CONSTRUED TO APPLY, TO
6 PRIVATE, RELIGIOUS OR DENOMINATIONAL EDUCATIONAL INSTITUTIONS. NOR SHALL
7 THIS SECTION PRECLUDE OR LIMIT, OR BE PERCEIVED TO PRECLUDE OR LIMIT,
8 ANY RIGHT OR CAUSE OF ACTION PROVIDED UNDER ANY LOCAL, STATE OR FEDERAL
9 ORDINANCE, LAW, RULE OR REGULATION.

10 2. NO student SHALL be subjected to discrimination based on a person's
11 actual or perceived race, color, weight, national origin, ethnic group,
12 religion, religious practice, disability, sexual orientation, gender, or
13 sex by school employees or students on school property or at a school
14 function. Nothing in this subdivision shall be construed to prohibit a
15 denial of admission into, or exclusion from, a course of instruction
16 based on a person's gender that would be permissible under section thir-
17 ty-two hundred one-a or paragraph (a) of subdivision two of section
18 twenty-eight hundred fifty-four of this chapter and title IX of the
19 Education Amendments of 1972 (20 U.S.C. section 1681, et. seq.), or to
20 prohibit, as discrimination based on disability, actions that would be
21 permissible under section 504 of the Rehabilitation Act of 1973.

22 [2. An age-appropriate version of the policy outlined in subdivision
23 one of this section, written in plain-language, shall be included in the
24 code of conduct adopted by boards of education and the trustees or sole
25 trustee pursuant to section twenty-eight hundred one of this chapter and
26 a summary of such policy shall be included in any summaries required by
27 such section twenty-eight hundred one.]

28 S 8. Section 13 of the education law, as amended by chapter 102 of the
29 laws of 2012, is amended to read as follows:

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

33 1. Policies and procedures intended to create a school environment
34 that is free from [harassment,] bullying and discrimination, that
35 include but are not limited to provisions which:

36 a. identify the principal, superintendent or the principal's or super-
37 intendent's designee as the school employee charged with receiving
38 reports of [harassment,] bullying and discrimination;

39 b. enable students and parents to make an oral or written report of
40 [harassment,] bullying or discrimination to teachers, administrators and
41 other school personnel that the school district deems appropriate;

42 c. require school employees who witness [harassment,] bullying or
43 discrimination, or receive an oral or written report of [harassment,]
44 bullying or discrimination, to promptly orally notify the principal,
45 superintendent or the principal's or superintendent's designee not later
46 than one school day after such school employee witnesses or receives a
47 report of [harassment,] bullying or discrimination, and to file a writ-
48 ten report with the principal, superintendent or the principal or super-
49 intendent's designee not later than two school days after making such
50 oral report;

51 d. require the principal, superintendent or the principal's or super-
52 intendent's designee to lead or supervise the thorough investigation of
53 all reports of [harassment,] bullying and discrimination, and to ensure
54 that such investigation is completed promptly after receipt of any writ-
55 ten reports made under this section;

1 e. require the school, when an investigation reveals any such verified
2 [harassment,] bullying or discrimination, to take prompt actions reason-
3 ably calculated to end the [harassment,] bullying or discrimination,
4 eliminate any hostile environment, create a more positive school culture
5 and climate, prevent recurrence of the behavior, and ensure the safety
6 of the student or students against whom such [harassment,] bullying or
7 discrimination was directed. Such actions shall be consistent with the
8 guidelines created pursuant to subdivision four of this section;

9 f. prohibit retaliation against any individual who, in good faith,
10 reports, or assists in the investigation of, [harassment,] bullying or
11 discrimination;

12 g. include a school strategy to prevent [harassment,] bullying and
13 discrimination;

14 h. require the principal to make a regular report on data and trends
15 related to [harassment,] bullying and discrimination to the superinten-
16 dent;

17 i. require the principal, superintendent or the principal's or super-
18 intendent's designee, to notify promptly the appropriate local law
19 enforcement agency when such principal, superintendent or the princi-
20 pal's or superintendent's designee, believes that any [harassment,]
21 bullying or discrimination constitutes criminal conduct;

22 j. include appropriate references to the provisions of the school
23 district's code of conduct adopted pursuant to section twenty-eight
24 hundred one of this chapter that are relevant to [harassment,] bullying
25 and discrimination;

26 k. require each school, at least once during each school year, to
27 provide all school employees, students and parents with a written or
28 electronic copy of the school district's policies created pursuant to
29 this section, or a plain-language summary thereof, including notifica-
30 tion of the process by which students, parents and school employees may
31 report [harassment,] bullying and discrimination. This subdivision shall
32 not be construed to require additional distribution of such policies and
33 guidelines if they are otherwise distributed to school employees,
34 students and parents;

35 l. maintain current versions of the school district's policies created
36 pursuant to this section on the school district's internet website, if
37 one exists;

38 2. Guidelines to be used in school training programs to discourage the
39 development of [harassment,] bullying and discrimination, and to make
40 school employees aware of the effects of [harassment,] bullying, cyber-
41 bullying and discrimination on students and that are designed:

42 a. to raise the awareness and sensitivity of school employees to
43 potential [harassment,] bullying and discrimination, and

44 b. to enable employees to prevent and respond to [harassment,] bully-
45 ing and discrimination; and

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

52 4. Guidelines relating to the development of measured, balanced and
53 age-appropriate responses to instances of [harassment,] bullying or
54 discrimination by students, with remedies and procedures following a
55 progressive model that make appropriate use of intervention, discipline
56 and education, vary in method according to the nature of the behavior,

1 the developmental age of the student and the student's history of prob-
2 lem behaviors, and are consistent with the district's code of conduct;
3 and

4 5. Training required by this section shall address the social patterns
5 of [harassment,] bullying and discrimination, as defined in section
6 eleven of this article, including but not limited to those acts based on
7 a person's actual or perceived race, color, weight, national origin,
8 ethnic group, religion, religious practice, disability, sexual orien-
9 tation, gender or sex, the identification and mitigation of [harass-
10 ment,] bullying and discrimination, and strategies for effectively
11 addressing problems of exclusion, bias and aggression in educational
12 settings.

13 S 9. Section 14 of the education law, as amended by chapter 102 of the
14 laws of 2012, is amended to read as follows:

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

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

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

24 3. Promulgate regulations to assist school districts in implementing
25 this article including, but not limited to, regulations to assist school
26 districts in developing measured, balanced, and age-appropriate
27 responses to violations of this policy, with remedies and procedures
28 following a progressive model that make appropriate use of intervention,
29 discipline and education and provide guidance related to the application
30 of regulations; and

31 4. Provide guidance and educational materials to school districts
32 related to best practices in addressing cyberbullying and helping fami-
33 lies and communities work cooperatively with schools in addressing
34 cyberbullying, whether on or off school property or at or away from a
35 school function.

36 5. The commissioner shall prescribe regulations that school profes-
37 sionals applying on or after July first, two thousand thirteen for a
38 certificate or license, including but not limited to a certificate or
39 license valid for service as a classroom teacher, school counselor,
40 school psychologist, school social worker, school administrator or
41 supervisor or superintendent of schools shall, in addition to all other
42 certification or licensing requirements, have completed training on the
43 social patterns of [harassment,] bullying and discrimination, as defined
44 in section eleven of this article, including but not limited to those
45 acts based on a person's actual or perceived race, color, weight,
46 national origin, ethnic group, religion, religious practice, disability,
47 sexual orientation, gender or sex, the identification and mitigation of
48 [harassment,] bullying and discrimination, and strategies for effec-
49 tively addressing problems of exclusion, bias and aggression in educa-
50 tional settings.

51 S 10. Section 15 of the education law, as amended by chapter 102 of
52 the laws of 2012, is amended to read as follows:

53 S 15. Reporting by commissioner. The commissioner shall create a
54 procedure under which material incidents of [harassment,] bullying and
55 discrimination on school [grounds or at a school function] PROPERTY, AS
56 SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAP-

1 TER, are reported to the department at least on an annual basis. Such
2 procedure shall provide that such reports shall, wherever possible, also
3 delineate the specific nature of such incidents of [harassment,] bully-
4 ing and discrimination, provided that the commissioner may comply with
5 the requirements of this section through use of the existing uniform
6 violent incident reporting system. In addition the department may
7 conduct research or undertake studies to determine compliance throughout
8 the state with the provisions of this article.

9 S 11. Section 16 of the education law, as amended by chapter 102 of
10 the laws of 2012, is amended to read as follows:

11 S 16. Protection of people who report [harassment,] bullying or
12 discrimination. Any person having reasonable cause to suspect that a
13 student has been subjected to [harassment,] bullying or discrimination,
14 by an employee or student, on school [grounds or at a school function]
15 PROPERTY, AS SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF
16 THIS CHAPTER, who, acting reasonably and in good faith, reports such
17 information to school officials, to the commissioner or to law enforce-
18 ment authorities, acts in compliance with paragraph e or i of subdivi-
19 sion one of section thirteen of this article, or otherwise initiates,
20 testifies, participates or assists in any formal or informal proceedings
21 under this article, shall have immunity from any civil liability that
22 may arise from the making of such report or from initiating, testifying,
23 participating or assisting in such formal or informal proceedings, and
24 no school district or employee shall take, request or cause a retaliato-
25 ry action against any such person who, acting reasonably and in good
26 faith, either makes such a report or initiates, testifies, participates
27 or assists in such formal or informal proceedings.

28 S 12. This act shall take effect on the same date and in the same
29 manner as chapter 102 of the laws of 2012, takes effect.