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

2705

2013-2014 Regular Sessions

I N A S S E M B L Y

January 17, 2013

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

AN ACT to amend the education law, in relation to prohibiting bullying on school property; and to amend the penal law, in relation to establishing the crime of aggravated harassment of teachers and school personnel

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

Section 1. Short title. This act shall be known and may be cited as "schools as safe harbors act".

S 2. Legislative intent. In recent years, the state legislature has taken several steps to ensure that school pupils, teachers and other personnel are provided with a safe and secure learning environment on all school property. Through the enactment of provisions requiring the fingerprinting of a school district's prospective employees and the enactment of the Safe Schools Against Violence in Education Act, the legislature has ensured the increased safety of our schools. However, to address concerns that harassment of pupils and school personnel through acts of bullying can be both disruptive to the learning process and harmful, mentally and/or physically, to intended victims, the legislature finds that enactment of this legislation to prohibit bullying on school property is necessary and appropriate to further ensure that New York state's public schools be made as safe as possible.

S 3. Section 801-a of the education law, as amended by chapter 102 of the laws of 2012, 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

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

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for others, with an emphasis on discouraging acts of harassment, ACTS OF bullying, AS DEFINED IN SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER, AGAINST FELLOW STUDENTS, 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 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 4. Subdivision 2 of section 2801 of the education law is amended by adding a new paragraph a-1 to read as follows:

A-1. PROVISIONS PROHIBITING BULLYING ON SCHOOL PROPERTY, INCLUDING A SCHOOL FUNCTION, PURSUANT TO SECTION TWENTY-EIGHT HUNDRED THREE OF THIS ARTICLE;

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

F-1. WHEN ANY SCHOOL EMPLOYEE HAVING REASONABLE CAUSE TO SUSPECT THAT A STUDENT HAS COMMITTED AN ACT OF BULLYING, AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS ARTICLE, THE SCHOOL EMPLOYEE SHALL REPORT SUCH INCIDENT TO THE PRINCIPAL, OR DESIGNEE THEREOF, WHO IN TURN SHALL REPORT SUCH INCIDENT TO THE SUPERINTENDENT, UPON A DETERMINATION BY THE PRINCIPAL, OR DESIGNEE THEREOF, THAT THERE IS A REASONABLE SUSPICION THAT THE ACT OCCURRED. FAILURE OF AN EMPLOYEE TO MAKE A REPORT PURSUANT TO THIS PARAGRAPH MAY NOT BE THE BASIS FOR ANY DISCIPLINARY ACTION OR PROFESSIONAL MISCONDUCT CHARGE AGAINST THE EMPLOYEE;

S 6. The education law is amended by adding a new section 2803 to read as follows:

S 2803. BULLYING PROHIBITED. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "PUBLIC SCHOOL" MEANS:

(I) A PUBLIC ELEMENTARY OR SECONDARY SCHOOL, KINDERGARTEN OR PRE-KINDERGARTEN PROGRAM, ADULT OR CONTINUING EDUCATION PROGRAM OR OTHER EDUCATIONAL PROGRAM OPERATED BY A SCHOOL DISTRICT, CHARTER SCHOOL, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTENSION BOARDS; AND

(II) A SCHOOL OR EDUCATIONAL PROGRAM THAT SERVES STUDENTS IN ANY OF GRADES KINDERGARTEN THROUGH TWELVE AND IS OPERATED BY THE DEPARTMENT, OR IS OPERATED OR SUPERVISED BY ANOTHER STATE AGENCY OR A POLITICAL SUBDIVISION AND IS SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED TWELVE OF THIS CHAPTER.

B. "PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM" MEANS AN APPROVED PROVIDER OF SPECIAL EDUCATION PROGRAMS AND SERVICES UNDER SECTION FORTY-FOUR HUNDRED TEN OF THIS CHAPTER, AN APPROVED PRIVATE RESIDENTIAL OR NON-RESIDENTIAL SCHOOL FOR THE PROVISION OF SPECIAL SERVICES OR PROGRAMS PURSUANT TO SUBDIVISION TWO OF SECTION FORTY-FOUR HUNDRED ONE OF THIS CHAPTER, A STATE-SUPPORTED SCHOOL SUBJECT TO THE PROVISIONS OF ARTICLE EIGHTY-FIVE OF THIS CHAPTER OR ANY OTHER AGENCY OR ENTITY THAT PROVIDES SPECIAL EDUCATION PROGRAMS OR SERVICES PURSUANT TO THE PROVISIONS OF ARTICLE EIGHTY-ONE OR EIGHTY-NINE OF THIS CHAPTER.

C. "SCHOOL PROPERTY" MEANS IN OR WITHIN ANY BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD, PLAYGROUND, PARKING LOT OR LAND CONTAINED WITHIN THE REAL PROPERTY BOUNDARY LINE OF A PUBLIC SCHOOL OR A PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM; OR IN OR ON A SCHOOL BUS, AS DEFINED IN SECTION ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW; AND A "SCHOOL FUNCTION" MEANS A SCHOOL SPONSORED EXTRA-CURRICULAR EVENT OR ACTIVITY.

D. "BULLYING" MEANS THREATENING, STALKING OR SEEKING TO COERCE OR COMPEL A PERSON TO DO SOMETHING; ENGAGING IN VERBAL OR PHYSICAL CONDUCT THAT THREATENS ANOTHER WITH HARM, INCLUDING INTIMIDATION THROUGH THE USE OF EPITHETS OR SLURS INVOLVING RACE, ETHNICITY, NATIONAL ORIGIN, RELIGION, RELIGIOUS PRACTICES, GENDER, SEXUAL ORIENTATION, OR DISABILITY.

2. NO STUDENT SHALL BE SUBJECT TO BULLYING BY ANY STUDENT OF A PUBLIC SCHOOL OR PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM.

3. A. ANY PERSON FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION IN A PUBLIC SCHOOL OR ON SCHOOL PROPERTY SHALL BE SUBJECT TO DISCIPLINARY ACTION IN ACCORDANCE WITH THE DISTRICT'S CODE OF CONDUCT ADOPTED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE AND THE DISCIPLINE PROCEDURES APPLICABLE TO STUDENTS OR EMPLOYEES OF THE PUBLIC SCHOOL. ANY PERSON FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION IN A PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM SHALL BE SUBJECT TO DISCIPLINE UNDER THE POLICIES AND PROCEDURES OF SUCH PROGRAM GOVERNING STUDENT CONDUCT OR EMPLOYEE DISCIPLINE.

B. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CREATE A PRIVATE CAUSE OF ACTION.

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

5. A PLAIN-LANGUAGE, AGE-APPROPRIATE DESCRIPTION OF THE POLICIES OUTLINED IN SUBDIVISION TWO OF THIS SECTION SHALL BE DISTRIBUTED TO EMPLOYEES, STUDENTS AND PARENTS OF EACH PUBLIC SCHOOL OR PUBLICLY-FUNDED SPECIAL EDUCATION PROGRAM ON AT LEAST AN ANNUAL BASIS. IN THE CASE OF PUBLIC SCHOOLS, SUCH REQUIREMENT SHALL BE MET BY INCLUDING SUCH DESCRIPTION IN THE SUMMARY OF THE CODE OF CONDUCT PROVIDED TO EACH STUDENT AND MAILED TO PARENTS PURSUANT TO SUBDIVISION FOUR OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE.

6. THE PROVISIONS OF THIS SECTION SHALL BE SEVERABLE, AND IF ANY COURT OF COMPETENT JURISDICTION DECLARES ANY PHRASE, CLAUSE, SENTENCE OR PROVISION OF THIS ARTICLE TO BE INVALID, OR ITS APPLICABILITY TO ANY GOVERNMENT AGENCY, PERSON OR CIRCUMSTANCE, IS DECLARED INVALID, THE REMAINDER OF THIS ARTICLE AND ITS RELEVANT APPLICABILITY SHALL NOT BE AFFECTED.

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

S 3028-c. Protection of school employees who report acts of BULLYING OR violence and weapons possession. Any school employee having reasonable cause to suspect that a person has committed an act of BULLYING AS SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER OR violence while in or on school property, or having reasonable cause to suspect that a person has committed an act of BULLYING AS SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER OR violence upon a student, school employee or volunteer either upon school grounds or elsewhere, or having reasonable cause to suspect that a person has brought a gun, knife, bomb or other instrument capable of or

that appears capable of causing death or physical injury upon school grounds who in good faith reports such information to school officials, to the commissioner, or to law enforcement authorities, shall have immunity from any civil liability that may arise from the making of such report, and no school district or school district employee shall take, request or cause a retaliatory action against any such employee who makes such report.

S 8. The penal law is amended by adding a new section 240.33 to read as follows:

S 240.33 AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL PERSONNEL.

A PERSON IS GUILTY OF AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL PERSONNEL WHEN, WITH INTENT TO HARASS, ANNOY OR ALARM A PERSON WHOM HE OR SHE KNOWS OR REASONABLY SHOULD KNOW TO BE A TEACHER, ADMINISTRATOR OR OTHER STAFF MEMBER OF A PUBLIC OR PRIVATE ELEMENTARY, INTERMEDIATE, JUNIOR HIGH, VOCATIONAL OR HIGH SCHOOL, ENGAGED IN THE COURSE OF HIS OR HER EMPLOYMENT, HE OR SHE STRIKES, SHOVES OR KICKS SUCH TEACHER, ADMINISTRATOR OR OTHER STAFF MEMBER, AND WHEN SUCH CONDUCT TAKES PLACE ON SCHOOL PROPERTY AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THE EDUCATION LAW WHERE SUCH TEACHER, ADMINISTRATOR OR OTHER STAFF MEMBER IS EMPLOYED OR ASSIGNED ON THE DATE OF SUCH CONDUCT.

AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL PERSONNEL IS A CLASS B MISDEMEANOR.

S 9. This act shall take effect on the first of September next succeeding the date upon which it shall have become a law; provided, however, that if chapter 102 of the laws of 2012 shall not have taken effect on or before such date then section three of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2012 takes effect.