

3110

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 23, 2013

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Introduced by M. of A. ORTIZ -- Multi-Sponsored by -- M. of A. CUSICK,  
GALEF, HIKIND, MAGEE, PERRY, RIVERA, ROBINSON, WEISENBERG -- read once  
and referred to the Committee on Education

AN ACT to amend the education law, in relation to establishing liability  
protection for public school educators

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

1     Section 1. This act shall be known and may be cited as the "education  
2     quality and teacher and principal protection act".

3     S 2. The education law is amended by adding a new article 62 to read  
4     as follows:

5                                   ARTICLE 62

6                   EDUCATION QUALITY AND TEACHER AND PRINCIPAL  
7                   PROTECTION ACT

8     SECTION 3070. LEGISLATIVE FINDINGS.

9             3071. DEFINITIONS.

10            3072. LIABILITY.

11            3073. PUNITIVE AND EXEMPLARY DAMAGES.

12            3074. FALSE REPORTS.

13            3075. FRIVOLOUS ACTIONS; ATTORNEY'S FEES; COST.

14            3076. CONTINGENCY FEES; PENALTY.

15            3077. INSURANCE.

16     S 3070. LEGISLATIVE FINDINGS. THE LEGISLATURE FINDS THAT ENSURING THE  
17     QUALITY OF PRIMARY AND SECONDARY PUBLIC EDUCATION IS A COMPELLING STATE  
18     INTEREST. THE EDUCATIONAL ENVIRONMENT OF STUDENTS IS OFTEN NOT CONDUCTIVE  
19     TO LEARNING. VIOLENCE IS SOMETIMES A THREAT, WHILE OTHER TIMES EDUCATORS  
20     MAY LACK THE AUTHORITY TO MAINTAIN SAFETY AND DISCIPLINE IN THE PUBLIC  
21     SCHOOLS. THE FILING OF MERITLESS LAWSUITS AGAINST SCHOOL DISTRICTS,  
22     TEACHERS, ADMINISTRATORS, AND OTHER SCHOOL EMPLOYEES INTERFERES WITH  
23     ATTEMPTS TO ENSURE THE QUALITY OF PUBLIC EDUCATION, PARTICULARLY WHERE  
24     SUCH LAWSUITS ARISE OUT OF THE GOOD FAITH EFFORTS OF EDUCATORS TO MAIN-

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

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1 TAIN CLASSROOM DISCIPLINE OR ADDRESS THREATS TO STUDENT SAFETY. MERIT-  
2 LESS LITIGATION ALSO DIVERTS FINANCIAL AND PERSONNEL RESOURCES TO LITI-  
3 GATION DEFENSE ACTIVITIES AND REDUCES THE AVAILABILITY OF SUCH RESOURCES  
4 FOR EDUCATIONAL OPPORTUNITIES FOR STUDENTS. THE LEGISLATURE FURTHER  
5 FINDS THAT LEGISLATION TO DETER MERITLESS LAWSUITS AND SANCTION DELIB-  
6 ERATELY FALSE REPORTS AGAINST EDUCATORS IS A RATIONAL AND APPROPRIATE  
7 METHOD TO ADDRESS THIS COMPELLING PUBLIC INTEREST.

8 S 3071. DEFINITIONS. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT  
9 OTHERWISE REQUIRES, THE FOLLOWING TERMS SHALL MEAN:

10 1. "EDUCATIONAL ENTITY" MEANS THE DEPARTMENT OF EDUCATION OR ANY OTHER  
11 BODY, BOARD OR AGENCY THAT GOVERNS ONE OR MORE PUBLIC PRIMARY OR SECOND-  
12 ARY SCHOOLS.

13 2. "EMPLOYEE" MEANS ANY INDIVIDUAL ELECTED OR APPOINTED TO AN EDUCA-  
14 TIONAL ENTITY OR WHO PROVIDES STUDENT-RELATED SERVICES TO THAT EDUCA-  
15 TIONAL ENTITY ON A CONTRACTUAL BASIS. THE TERM EMPLOYEE SHALL ALSO  
16 INCLUDE AN AUTHORIZED VOLUNTEER WHO PROVIDES STUDENT-RELATED SERVICES TO  
17 THE EDUCATIONAL ENTITY.

18 S 3072. LIABILITY. 1. AN EDUCATIONAL ENTITY OR ITS EMPLOYEES SHALL NOT  
19 BE SUBJECT TO LIABILITY FOR TAKING ANY ACTION REGARDING THE SUPERVISION,  
20 GRADING, SUSPENSION, EXPULSION OR DISCIPLINE OF STUDENTS WHILE SUCH  
21 STUDENTS ARE ON THE PROPERTY OF THE EDUCATIONAL ENTITY OR ARE UNDER THE  
22 SUPERVISION OF THE EDUCATIONAL ENTITY OR ITS EMPLOYEES. HOWEVER, THIS  
23 IMMUNITY SHALL NOT APPLY IF SUCH ACTION VIOLATED AN EXPRESS STATUTE,  
24 RULE, REGULATION OR CLEARLY ARTICULATED POLICY OF THE STATE OR EDUCA-  
25 TIONAL ENTITY. THE BURDEN OF PROOF OF SUCH A VIOLATION SHALL REST WITH  
26 THE PARTY BRINGING THE ACTION AND MUST BE ESTABLISHED BY CLEAR AND  
27 CONVINCING EVIDENCE TO THE COURT AS PART OF A SUMMARY PROCEEDING.

28 2. AN EDUCATIONAL ENTITY AND ITS EMPLOYEES SHALL NOT BE SUBJECT TO  
29 LIABILITY FOR MAKING A REPORT CONSISTENT WITH FEDERAL LAW TO THE APPRO-  
30 PRIATE LAW ENFORCEMENT AUTHORITIES OR OFFICIALS OF AN EDUCATIONAL ENTITY  
31 IF THE INDIVIDUAL MAKING THE REPORT HAS REASONABLE GROUNDS TO SUSPECT  
32 THAT A STUDENT IS:

33 (A) UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE OR A CONTROLLED  
34 SUBSTANCE NOT LAWFULLY PRESCRIBED TO THAT INDIVIDUAL;

35 (B) IN POSSESSION OF A FIREARM, ALCOHOLIC BEVERAGE OR A CONTROLLED  
36 SUBSTANCE NOT LAWFULLY PRESCRIBED TO THAT INDIVIDUAL; OR

37 (C) INVOLVED IN THE ILLEGAL SOLICITATION, SALE OR DISTRIBUTION OF A  
38 FIREARM, ALCOHOLIC BEVERAGE OR CONTROLLED SUBSTANCE NOT LAWFULLY  
39 PRESCRIBED TO THAT INDIVIDUAL.

40 S 3073. PUNITIVE AND EXEMPLARY DAMAGES. 1. AN EDUCATIONAL ENTITY SHALL  
41 NOT BE LIABLE FOR PUNITIVE OR EXEMPLARY DAMAGES. AN EMPLOYEE SHALL NOT  
42 BE LIABLE FOR PUNITIVE OR EXEMPLARY DAMAGES FOR ACTS OR OMISSIONS WITHIN  
43 THE COURSE AND SCOPE OF EMPLOYMENT.

44 2. FOR THE PURPOSES OF THIS SECTION, AN EMPLOYEE WHO ACTS WITH SPECIF-  
45 IC INTENT TO CAUSE HARM SHALL NOT BE CONSIDERED AS ACTING WITHIN THE  
46 COURSE AND SCOPE OF EMPLOYMENT.

47 S 3074. FALSE REPORTS. 1. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTI-  
48 CLE, ANY PERSON EIGHTEEN YEARS OF AGE OR OLDER WHO ACTS WITH SPECIFIC  
49 INTENT IN MAKING A FALSE ACCUSATION OF CRIMINAL ACTIVITY AGAINST AN  
50 EMPLOYEE OF AN EDUCATIONAL ENTITY TO LAW ENFORCEMENT AUTHORITIES, SCHOOL  
51 DISTRICT OFFICIALS OR PERSONNEL, OR BOTH, SHALL BE SUBJECT TO A CIVIL  
52 FINE OF UP TO TWO THOUSAND DOLLARS.

53 2. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, ANY PUBLIC SCHOOL  
54 STUDENT BETWEEN THE AGES OF SEVEN AND SEVENTEEN, INCLUSIVE, WHO ACTS  
55 WITH SPECIFIC INTENT IN MAKING A FALSE ACCUSATION OF CRIMINAL ACTIVITY  
56 AGAINST AN EMPLOYEE OF AN EDUCATIONAL ENTITY TO LAW ENFORCEMENT AUTHORI-

TIES, SCHOOL DISTRICT OFFICIALS OR PERSONNEL, OR BOTH, MAY, AT THE DISCRETION OF THE COURT, AND IN ACCORDANCE WITH THE PROVISIONS OF THE FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT, 20 U.S.C.A. SS 1400 ET SEQ., BE SUBJECT TO ANY OF THE FOLLOWING:

- (A) EXPULSION;
- (B) SUSPENSION FOR A PERIOD OF TIME TO BE DETERMINED BY THE COURT;
- (C) COMMUNITY SERVICE OF A TYPE AND FOR A PERIOD OF TIME TO BE DETERMINED BY THE COURT; OR
- (D) ANY OTHER SANCTION AS THE COURT IN ITS DISCRETION MAY DEEM APPROPRIATE.

3. THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO STATEMENTS REGARDING INDIVIDUALS ELECTED OR APPOINTED TO A SCHOOL BOARD.

4. THIS ARTICLE SHALL NOT BE DEEMED TO LIMIT THE CIVIL OR CRIMINAL LIABILITY OF THOSE PERSONS WHO MAKE FALSE STATEMENTS ALLEGING CRIMINAL ACTIVITY BY OTHERS.

S 3075. FRIVOLOUS ACTIONS; ATTORNEY'S FEES; COST. 1. IN ANY CIVIL ACTION OR PROCEEDING AGAINST AN EDUCATIONAL ENTITY OR ITS EMPLOYEE IN WHICH THE EDUCATIONAL ENTITY OR ITS EMPLOYEE PREVAIL, THE COURT SHALL AWARD COST AND REASONABLE ATTORNEY'S FEES TO THE PREVAILING DEFENDANT OR DEFENDANTS. THE COURT IN ITS DISCRETION MAY DETERMINE WHETHER SUCH FEES AND COSTS ARE TO BE BORNE BY THE PLAINTIFF'S ATTORNEY, THE PLAINTIFF, OR BOTH.

2. EXPERT WITNESS FEES MAY BE INCLUDED AS PART OF THE COSTS AWARDED UNDER THIS SECTION.

S 3076. CONTINGENCY FEES; PENALTY. 1. NO ATTORNEY SHALL CHARGE, DEMAND, RECEIVE OR COLLECT FOR SERVICES RENDERED, FEES IN EXCESS OF TWENTY-FIVE PERCENT OF ANY CIVIL JUDGEMENT RENDERED AGAINST AN EDUCATIONAL ENTITY OR ITS EMPLOYEES, OR ANY SETTLEMENT ENTERED INTO PURSUANT TO LAW.

2. ANY INTERESTED PERSON MAY FILE A CIVIL ACTION OR PETITION WITH THE APPROPRIATE COURT TO RESCIND ANY PROVISION OF THE ATTORNEY FEE CONTRACT INCONSISTENT WITH THIS SECTION AND TO COMPEL DISGORGEMENT OF ANY FEES PAID IN EXCESS OF THE AMOUNTS ALLOWED UNDER THIS SECTION. IN ADDITION, A COURT WITH JURISDICTION OVER THE MATTER SHALL IMPOSE A FINE AGAINST THE ATTORNEY THAT IS EQUAL TO OR LESS THAN THE AMOUNT OF MONEY SOUGHT BY THE ATTORNEY IN EXCESS OF THE AMOUNT PERMITTED BY THIS SECTION, BUT IN ANY EVENT NOT LESS THAN TWO THOUSAND DOLLARS.

S 3077. INSURANCE. UNLESS OTHERWISE PROVIDED BY LAW, THE EXISTENCE OF ANY POLICY OF INSURANCE INDEMNIFYING AN EDUCATIONAL ENTITY AGAINST LIABILITY FOR DAMAGES SHALL NOT BE CONSIDERED A WAIVER OF ANY DEFENSE OTHERWISE AVAILABLE TO THE EDUCATIONAL ENTITY OR ITS EMPLOYEES IN THE DEFENSE OF THE CLAIM.

S 3. This act shall take effect November 1, 2013.