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

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2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. MONTGOMERY, ADDABBO, PARKER, PERKINS -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to harassment of students

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

Section 1. 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] REPORTING discrimination or harassment. A. THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS PROVIDING FOR A PROCESS BY WHICH ANY EMPLOYEE, PARENT, OR STUDENT, HAVING REASONABLE CAUSE TO SUSPECT AN INCIDENT OF DISCRIMINATION OR HARASSMENT AS DEFINED IN THIS ARTICLE, CAN REPORT SUCH INCIDENTS TO APPROPRIATE SCHOOL OFFICIALS, AND ALSO PROVIDE GUIDELINES FOR ACTIONS WHICH SHALL BE TAKEN BY SCHOOL OFFICIALS PURSUANT TO SUCH REPORTS. SUCH ACTIONS MAY INCLUDE RECOMMENDED COUNSELING, SCHOOL DISCIPLINE, SUSPENSION OR EXPULSION OR REPORTS TO LAW ENFORCEMENT. SUCH REPORT SHALL BE INVESTIGATED IMMEDIATELY, AND IT SHALL BE THE RESPONSIBILITY OF ANY SCHOOL OFFICIAL TO REPORT AND INVESTIGATE SUCH INCIDENTS AND RESPOND APPROPRIATELY ACCORDING TO SUCH RULES AND REGULATIONS. SUCH REPORTS SHALL BE MADE AVAILABLE BY THE SCHOOL UPON REQUEST.

B. Any person having reasonable cause to suspect that a student has been subjected to discrimination or harassment 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 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

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

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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 2. Section 10 of the education law, as added by chapter 482 of the laws of 2010, is amended to read as follows:

S 10. Legislative intent. The legislature finds that students' ability to learn and to meet high academic standards, and a school's ability to educate its students, are compromised by incidents of discrimination or harassment including bullying, taunting or intimidation. It is hereby declared to be the policy of the state to afford all students in public schools an environment free of discrimination and harassment. The purpose of this article is to foster civility in public schools and to prevent and prohibit conduct which is inconsistent with a school's educational mission. PUBLIC SCHOOLS SHALL HAVE THE RESPONSIBILITY TO FOSTER A LEARNING ENVIRONMENT FREE FROM INCIDENTS OF DISCRIMINATION OR HARASSMENT INCLUDING BULLYING, TAUNTING OR INTIMIDATION AS DEFINED IN THIS ARTICLE.

S 3. Subdivision 7 of section 11 of the education law, as added by chapter 482 of the laws of 2010, is amended to read as follows:

7. "Harassment" shall mean the INTENTIONAL creation of a hostile environment [by conduct or] by MEANS OF ELECTRONIC, WRITTEN, verbal [threats] COMMUNICATION OR PHYSICAL CONDUCT, intimidation or abuse that 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 ELECTRONIC, WRITTEN, VERBAL COMMUNICATION OR PHYSICAL conduct, [verbal threats,] intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; such ELECTRONIC, WRITTEN OR VERBAL COMMUNICATION OR PHYSICAL conduct, [verbal threats,] intimidation or abuse includes but is not limited to [conduct, verbal] threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

S 4. Section 16 of the education law, as amended by chapter 102 of the laws of 2012, is amended to read as follows:

S 16. [Protection of people who report] REPORTING harassment, bullying or discrimination. A. THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS PROVIDING FOR A PROCESS BY WHICH ANY EMPLOYEE, PARENT, OR STUDENT, HAVING REASONABLE CAUSE TO SUSPECT AN INCIDENT OF DISCRIMINATION OR HARASSMENT AS DEFINED IN THIS ARTICLE, CAN REPORT SUCH INCIDENTS TO APPROPRIATE SCHOOL OFFICIALS, AND ALSO PROVIDE GUIDELINES FOR ACTIONS WHICH SHALL BE TAKEN BY SCHOOL OFFICIALS PURSUANT TO SUCH REPORTS. SUCH ACTIONS MAY INCLUDE RECOMMENDED COUNSELING, SCHOOL DISCIPLINE, SUSPENSION OR EXPULSION OR REPORTS TO LAW ENFORCEMENT. SUCH REPORT SHALL BE INVESTIGATED IMMEDIATELY, AND IT SHALL BE THE RESPONSIBILITY OF ANY SCHOOL OFFICIAL TO REPORT AND INVESTIGATE SUCH INCIDENTS AND RESPOND APPROPRIATELY ACCORDING TO SUCH RULES AND REGULATIONS. SUCH REPORTS SHALL BE MADE AVAILABLE BY THE SCHOOL UPON REQUEST.

B. Any person having reasonable cause to suspect that a student has been subjected to harassment, bullying or discrimination, by an employee or student, on school grounds or at a school function, who, acting reasonably and in good faith, 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 5. Subdivision 7 of section 11 of the education law, as amended by chapter 102 of the laws of 2012, is amended to read as follows:

7. "Harassment" and "bullying" shall mean the INTENTIONAL creation of a hostile environment by [conduct or by threats] MEANS OF ELECTRONIC, WRITTEN, VERBAL COMMUNICATION OR PHYSICAL CONDUCT, 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 (b) ELECTRONIC, WRITTEN, VERBAL COMMUNICATION OR PHYSICAL CONDUCT, INTIMIDATION OR ABUSE THAT reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or (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,] ELECTRONIC, WRITTEN, VERBAL COMMUNICATION OR PHYSICAL CONDUCT OR 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.]

S 6. This act shall take effect immediately, provided that sections four and five of this act shall take effect on the same date and in the same manner as chapter 102 of the laws of 2012, takes effect.