

# STATE OF NEW YORK

5156

2017-2018 Regular Sessions

## IN ASSEMBLY

February 6, 2017

Introduced by M. of A. McDONOUGH -- read once and referred to the Committee on Education

AN ACT to amend the education law and the penal law, in relation to improving student safety at school functions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 2 of the education law is amended by adding two new subdivisions 20 and 21 to read as follows:

20. School property. The term "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 elementary or secondary school; or in or on a school bus, as defined in section one hundred forty-two of the vehicle and traffic law.

21. School function. The term "school function" means a school-sponsored extra-curricular event or activity, on or off school property.

§ 2. Paragraph a of subdivision 2-a of section 3214 of the education law, as added by chapter 181 of the laws of 2000, is amended to read as follows:

a. Violent pupil. For the purposes of this section, a violent pupil is an elementary or secondary student under twenty-one years of age who:

(1) commits an act of violence upon a teacher, administrator or other school employee;

(2) commits, while on school district property or at a school function, an act of violence upon another student or any other person lawfully upon said property;

(3) possesses, while on school district property or at a school function, a gun, knife, explosive or incendiary bomb, or other dangerous instrument capable of causing physical injury or death;

(4) displays, while on school district property or at a school function, what appears to be a gun, knife, explosive or incendiary bomb or other dangerous instrument capable of causing death or physical injury;

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

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(5) threatens, while on school district property or at a school function, to use any instrument that appears capable of causing physical injury or death;

(6) knowingly and intentionally damages or destroys the personal property of a teacher, administrator, other school district employee or any person lawfully upon school district property or at a school function; or

(7) knowingly and intentionally damages or destroys school district property.

§ 3. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of the education law, as amended by chapter 430 of the laws of 2006, is amended to read as follows:

(1) No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his or her behalf. Where the pupil is a student with a disability or a student presumed to have a disability, the provisions of paragraph g of this subdivision shall also apply. Where a pupil has been suspended in accordance with this subparagraph by a superintendent of schools, district superintendent of schools, or community superintendent, the superintendent shall personally hear and determine the proceeding or may, in his or her discretion, designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him or her. A record of the hearing shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and recommendations as to the appropriate measure of discipline to the superintendent. The report of the hearing officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools. Where the basis for the suspension is, in whole or in part, the possession on school grounds ~~[or]~~, school property or at a school function by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

§ 4. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of the education law, as amended by chapter 380 of the laws of 2001, is amended to read as follows:

(1) No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his behalf. Where a pupil has been suspended in accordance with this subdivision by a superintendent

1 of schools, district superintendent of schools, or community superinten-  
2 dent, the superintendent shall personally hear and determine the  
3 proceeding or may, in his discretion, designate a hearing officer to  
4 conduct the hearing. The hearing officer shall be authorized to adminis-  
5 ter oaths and to issue subpoenas in conjunction with the proceeding  
6 before him. A record of the hearing shall be maintained, but no steno-  
7 graphic transcript shall be required and a tape recording shall be  
8 deemed a satisfactory record. The hearing officer shall make findings of  
9 fact and recommendations as to the appropriate measure of discipline to  
10 the superintendent. The report of the hearing officer shall be advisory  
11 only, and the superintendent may accept all or any part thereof. An  
12 appeal will lie from the decision of the superintendent to the board of  
13 education who shall make its decision solely upon the record before it.  
14 The board may adopt in whole or in part the decision of the superinten-  
15 dent of schools. Where the basis for the suspension is, in whole or in  
16 part, the possession on school grounds ~~[or]~~, school property or at a  
17 school function by the student of any firearm, rifle, shotgun, dagger,  
18 dangerous knife, dirk, razor, stiletto or any of the weapons, instru-  
19 ments or appliances specified in subdivision one of section 265.01 of  
20 the penal law, the hearing officer or superintendent shall not be barred  
21 from considering the admissibility of such weapon, instrument or appli-  
22 ance as evidence, notwithstanding a determination by a court in a crimi-  
23 nal or juvenile delinquency proceeding that the recovery of such weapon,  
24 instrument or appliance was the result of an unlawful search or seizure.

25 § 5. Section 3028-c of the education law, as added by chapter 181 of  
26 the laws of 2000, is amended to read as follows:

27 § 3028-c. Protection of school employees who report acts of violence  
28 and weapons possession. Any school employee having reasonable cause to  
29 suspect that a person has committed an act of violence while in or on  
30 school property or at a school function, or having reasonable cause to  
31 suspect that a person has committed an act of violence upon a student,  
32 school employee or volunteer either upon school grounds, at a school  
33 function or elsewhere, or having reasonable cause to suspect that a  
34 person has brought a gun, knife, bomb or other instrument capable of  
35 that appears capable of causing death or physical injury upon school  
36 grounds or at a school function who in good faith reports such informa-  
37 tion to school officials, to the commissioner, or to law enforcement  
38 authorities, shall have immunity from any civil liability that may arise  
39 from the making of such report, and no school district or school  
40 district employee shall take, request or cause a retaliatory action  
41 against any such employee who makes such report.

42 § 6. Subdivision 10 of section 120.05 of the penal law, as amended by  
43 chapter 268 of the laws of 2016, is amended to read as follows:

44 10. Acting at a place the person knows, or reasonably should know, is  
45 on school grounds or at a school function and with intent to cause phys-  
46 ical injury, he or she:

47 (a) causes such injury to an employee of a school or public school  
48 district; or

49 (b) not being a student of such school or public school district,  
50 causes physical injury to another, and such other person is a student of  
51 such school who is attending or present for educational purposes. For  
52 purposes of this subdivision the term "school grounds" shall have the  
53 meaning set forth in subdivision fourteen of section 220.00 of this  
54 ~~[chapter]~~ part and the term "school function" shall have the meaning set  
55 forth in subdivision twenty-one of section two of the education law; or

1     § 7. This act shall take effect on the first of November next succeed-  
2     ing the date on which it shall have become a law; provided that the  
3     amendments to subparagraph 1 of paragraph c of subdivision 3 of section  
4     3214 of the education law made by section three of this act shall be  
5     subject to the expiration and reversion of such subparagraph pursuant to  
6     section 8 of chapter 430 of the laws of 2006, as amended, when upon such  
7     date the provisions of section four of this act shall take effect.  
8     Provided further, however that effective immediately, the addition,  
9     amendment and/or repeal of any rule or regulation necessary for the  
10    implementation of this act on its effective date are authorized and  
11    directed to be made and completed on or before such effective date.