ALBANY, NEW YORK

March 6, 1996

11:05 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Ask the members who are not in the chamber to come to the chamber. Ask the other members to find their seats, the staff to find their places and all the members, the people in the chamber to rise and join me in saying the Pledge of Allegiance to the Flag.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

We're very pleased to be joined today by the Reverend Dr. Harold Lewis, who is the rector of the St. Mark's Episcopal Church in Brooklyn, New York.

Reverend Lewis.

REVEREND HAROLD LEWIS: Good morning.

The words of a hymn composed by Gilbert Chesterton early in this century sounds as if the author was writing with today's political climate in mind. He says, "O God of earth and altar, bow down and hear our cry; our earthly rulers falter; our people drift and

die. The walls of gold entomb us; the swords of scorn divide; take not our thunder from us, but take away our pride. From all that terror teaches; from lies of tongue and pen; from all the easy speeches that comfort cruel men. From sale and profanation of honor and the sword, from sleep and from damnation, deliver us, good Lord."

As we fast approach the third millennium, we are ashamed that indices which determine the standard of living in our great nation whose walls are entombed with gold paint a dismal picture indeed.

The infant mortality rate in New York City rivals and even surpasses that of some Third World nations. Homelessness and joblessness and the pandemic of AIDS rear their ugly heads as more and more of our people drift and die, and as the momentum gathers in this presidential election year, the lies of tongue and pen are rife in a nation that once prided itself on being a melting pot, although a more politically correct metaphor today would be

"salad bowl." In a nation whose prosperity is directly attributable to the assiduous efforts of immigrants, in a nation whose creed was thought to be embodied in the words of Emma Lazarus' poem, "Give me your tired, your poor, your huddled masses yearning to breathe free," candidates in easy speeches that comfort cruel men nevertheless speak with xenophobic impunity about our brothers and sisters from Latin America, the Caribbean and elsewhere, who are part and parcel of the American mosaic.

In a nation in which Martin Luther King, Medgar Evers, Emmet Till and scores of others known and unknown became modern day martyrs in the cause of freedom, candidates, even as we celebrated Black History Month, could disparage African-Americans and treat them as if they were interlopers on the American landscape.

Our earthly rulers falter, indeed, but our hymn writer offers hope. He suggests a coalition of everyone committed to uplift, and empowerment of everyone concerned

about the common good.

He suggests that if we but allow God to take away our pride, we can, indeed, be awakened from the sleep of indifference and apathy and deliver it from a damnation we will suffer "from the sale and profanation" of our honor.

He suggests that we can best assault the ills that beset us if legislative bodies such as yours, religious institutions and others who are agents of change in our society will join hands in a common purpose. He writes, "Tie in a living tether, the prince and priest enthrall; bind all our lives together; smite us and save us all. In iron exaltation, aflame with faith and free; lift up a living nation, a single sword to Thee." Amen.

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 5th. The Senate met pursuant to adjournment, Senator Kuhl in the Chair upon designation of the Temporary President. The

Journal of Monday, March 4th, was read and approved. On motion, the Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

The Chair recognizes Senator Holland.

SENATOR HOLLAND: Mr. President, on behalf of Senator Libous, please place a sponsor's star on Calendar Number 348 and 364.

ACTING PRESIDENT KUHL: At the request of the sponsor, Calendars number 348 and 364 are starred.

Senator Holland.

SENATOR HOLLAND: Also, on behalf

of Senator Marchi, on page 12, I offer the following amendments to Calendar Number 277, Senate Print Number 546-A and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 277 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Skelos, we have two substitutions we can do at this time.

SENATOR SKELOS: Take the substitutions.

ACTING PRESIDENT KUHL: The Secretary will read the substitutions.

THE SECRETARY: On page 18, Senator Johnson moves to discharge from the Committee on Health, Assembly Bill Number 8603 and substitute it for the identical Calendar Number 351.

On page 19, Senator Spano moves to discharge from the Committee on Labor, Assembly Bill Number 7679 and substitute it for the identical Third Reading Calendar 358.

ACTING PRESIDENT KUHL: Without objection, the substitutions are ordered.

Senator Skelos, that brings us to the calendar.

SENATOR SKELOS: Would you please have the non-controversial calendar read.

ACTING PRESIDENT KUHL: The Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number 123, by Senator Volker, Senate Print 2228-B, an act to amend the Civil Practice Law and Rules, in relation to the admissibility into evidence of any writing, entry, print or representation recorded by any process.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk. The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 36.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 226, by Senator Leibell, Senate Print 5928-A, an act to amend the Real Property Tax Law, in relation to local tax exemption for certain non-profit housing accommodations.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 268, by Senator Levy, Senate Print 328-B, an act to amend the Public Authorities Law and the Railroad Law, in relation to operating a self

propelled rail passenger car or locomotive while under the influence of alcohol or drugs.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 284, by Senator Lack, Senate Print 4615, an act to amend the Surrogate's Court Procedure Act, in relation to the requirement of filing a bond before preliminary letters testamentary are issued.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 303, by Senator Levy, Senate Print 2883, an act to amend the Vehicle and Traffic Law, in relation to increasing penalties for leaving the scene of an accident without reporting.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

307, by Senator Levy, Senate Print 5976-A, an act to amend the Transportation Law, in relation to establishing a demonstration program to impose fines for failing to obey work zone speed limits.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect in 30 days, after which it shall have become law.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 309, by Senator Present, Senate Print 1929, an act to amend the State Administrative Procedure Act, in relation to adjudicatory proceedings.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 6. This

act shall take effect on the 180th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 310, by Senator Present, Senate Print 1930, an act to amend the State Administrative Procedure Act and the Executive Law, in relation to compliance requirements.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect on the first day of October.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 316, by Senator Sears, Senate Print 1321, an act to amend the Penal Law, in relation to unauthorized use of an emergency vehicle.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 327, by Senator Volker, Senate Print 3494, an act to amend the Criminal Procedure Law, the Family Court Act and the Penal Law, in relation to crimes involving firearms committed on school grounds.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 11. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 360, by Senator Cook, Senate Print 762-B -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 365, by the Senate Committee on Rules, Senate Print 5157, an act to amend the Education Law, in relation to prompt initiation of disciplinary action.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

366, by the Senate Committee on Rules, Senate Print 5160, an act to amend the Education Law, in relation to the protection -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 368, by Senator Levy, Senate Print 1410, an act to amend the Penal Law, in relation to the offense of assault in the second degree in certain instances.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 369, by the Senate Committee on Rules, Senate Print 5162, an act to amend the Penal Law, in relation to harassment of teachers and school personnel.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Skelos, that completes the non-controversial calendar.

SENATOR SKELOS: Mr. President, would you please take up the controversial calendar.

ACTING PRESIDENT KUHL: The Secretary will call the controversial calendar, beginning with Calendar Number 360.

THE SECRETARY: Calendar Number 360, by Senator Cook, Senate Print 762-B, an act to amend the Education Law and the Family Court Act, in relation to reducing school violence and to enact the School Safety and Educational Enhancement Act.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Cook, an explanation of Calendar Number 360 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR COOK: Mr. President, the issue of school violence is many-faceted, and

there are several bills on this calendar which try to deal with that issue in various ways.

The problem is very complicated, and this particular bill tries to deal with it comprehensively. The first, of course, is to protect people from actual physical danger. Attacks by students upon other students and upon teachers, unfortunately, is something we're seeing more of. I think Senator Volker's bills really deal with that -- that particular problem in more depth than this particular bill, but it is a concern that we have and that this bill does address.

The second concern, of course, is the -- we're all concerned about trying to improve the standards of performance of students in the school, and one of the reasons why it's so difficult to improve educational performance is -

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, why do you rise?

SENATOR GOLD: I don't want to be

impolite, Senator Cook, but, Senator Cook, in talking to a number of people over here, this bill and apparently some of the others went directly to third, and today's the first time on it. These are serious measures, particularly when they come from you because you're serious about the subject, and the question is whether or not, in all fairness to the issue, it might not be better to lay these bills over a day or at least perhaps give us some time to conference them. I mean, it's a serious matter.

SENATOR COOK: Mr. President.

ACTING PRESIDENT KUHL: Senator Cook.

SENATOR COOK: Mr. President, this bill -- these bills, even though they've only been on the calendar for one day, are hardly new to anyone. They've been in print for over a year. They've been on the agenda of the Education Committee, so that there certainly was fair warning that they were going to be reported out.

We're considering the issue as to

whether we need to move with them. I think the Majority Leader's concern is that we try to deal with some of the larger, more time-consuming issues early in the session so that we don't get the kind of logjam that sometimes occurs at a later point, and why we're waiting for a judgment on his part is I don't know what he may have on the agenda to do next week, and I don't want to put a bill which I assume is going to take some time onto a calendar that may have other bills that are going to be lengthy as well.

So if we can stand at ease for just a moment, we'll try to get a reading as to what his plans are next week. If they don't - if we aren't going to create a logjam, then I don't have a particular problem with it.

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I'm -- I understand the concern that the Majority has for bills moving through here in a reasonable period of time and I do understand

that these bills were in print, but we have about 1500 bills that we haven't acted on that were in print and these bills went directly to third reading by unanimous consent yesterday, so we're trying to show our cooperation.

All we are saying is that if there is a desire not to put these bill over for a day, until next Monday, then why don't we just have a brief recess so we can conference the bills? There are some serious issues, as Senator Gold pointed out, that are being resolved in this bill, such as the suspension of students, how do the students get back into school, what are the costs, but I don't want to ask any questions that the answers may actually exist just through further perusal of the bill.

So I would just -- in recognition of what Senator Cook says, I would just appeal again that we at least be given the time to conference these bills, and I would suggest that if the time to make this decision is any longer, that would exceed the time it would have taken to have conferenced the bill.

SENATOR COOK: Mr. President.

ACTING PRESIDENT KUHL: Senator Cook.

SENATOR COOK: Mr. President, if Senator Paterson, Senator Connor, some of them would like to request of the Majority Leader an opportunity for the Minority to have a conference, I think that would be appropriate for them to make that request directly to the leader.

Frankly, as I indicated, this - at least the bill that's particularly in front of us right now has been around for three years, so it's not a brand new issue. It also is something that all of us ought to be pretty cognizant of because it's a problem that is endemic at the present time to almost every place in our educational system.

So I'm not sure that the issues we're going to discuss are brand new to anybody, even though the specific order in which they may appear in this particular bill might be -- might be novel to some folks who haven't done their

homework, but if -- I think that in the absence of the Minority requesting a -- an opportunity for a conference, if that's what they're doing, that we need to proceed with the bills because, as I understand, we do have some pressing business for next week and that we need to proceed with the bills that are on the calendar.

ACTING PRESIDENT KUHL: Senator Cook, had you finished your explanation to the request from Senator Paterson? I assume you had.

Senator Paterson, you have the floor.

SENATOR PATERSON: Well, Mr. President, I really tried to be nice, but I'm going to yield to Senator Gold.

SENATOR GOLD: That'll teach you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: First of all, I thought -- maybe I'm wrong, but I thought Senator Cook indicated we were just going to be in recess for a moment until some decision was

made. Has a decision been made? Oh, it's been made.

Well, Senator Cook, what I don't understand, to tell you the truth, is yesterday there was a bill out, I think by Senator LaValle, and I was going to vote no and I didn't. I figured, What the heck, but that bill said we should put off the decision on Regents until later in the year because in the beginning of the year, we're so overwhelmed with the budget that we can't handle other things.

Well, I think that's the wrong philosophy. I think we ought to be handling things, but I think it's interesting that your comment is a direct contradiction to the bill we had yesterday, because you're saying, "Well, we've got to handle things," and it seems to me it would have been more sensible to handle a Regents, which is real, than bills which may not have support in both houses, but just so I understand, Mr. President, we are moving forward with the bills, Senator Cook?

SENATOR COOK: Mr. President,

it's my request that we continue with the calendar as it's printed.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: It's a complicated bill, and I appreciate that Senator Cook wants to go forward with it, so he has that right, but I understand that Senator Mendez, who is the Chair of our conference, is calling an immediate conference of the Democrats, and since I feel very comfortable about what I want to ask about the bill, perhaps Senator Stachowski and I will remain out here and ask some basic questions on the bill and the rest of the members can yield to Senator Mendez' request and go immediately to the conference room.

SENATOR MENDEZ: Yes. There will be -- Mr. President, there will be an immediate conference of the Minority in Room -

ACTING PRESIDENT KUHL: Thank you for suffering the interruption, Senator Gold.

Senator Mendez has called an

immediate meeting of the Minority Conference in the Minority Conference Room, Room 313. Immediate meeting of the Minority Conference in the Minority Conference Room.

Senator Gold, you continue to have the floor -

SENATOR GOLD: Thank you.

ACTING PRESIDENT KUHL: -- on the debate.

SENATOR GOLD: Thank you very much, Mr. President, and I will assure the Chair that I will try to stick to the point.

This is Calendar Number 360, I believe. Is that correct, Mr. President?

ACTING PRESIDENT KUHL: That's correct -- that's correct, Senator Gold. We're on debate on Calendar Number 360.

SENATOR GOLD: Well, Mr. President, while I -- I must say that this bill, Calendar Number 360 which, as Senator Cook pointed out, was introduced on January 18th, 1995, requires I believe a very serious consideration because, to stay very germane to

this bill, when it's introduced by not only Senator Cook but by Senator Bruno who you may remember is the President Pro Tem, and Senator DeFrancisco who, with great distinction, sits in the chair once occupied by Senator Lombardi - it's interesting, Senator DeFrancisco. When somebody buys a house, they always refer to it as the -- for example, the Cook house, the people who once owned it. Now you own it. If your name is Smith, it never seems to become the Smith house until after you move out of it, and then somebody says, "Oh, they bought the Smith house."

But now I would recognize that Senator DeFrancisco has been around awhile, doing a wonderful job and I guess it's your seat at this point, but these very distinguished men are joined by our colleague from Brooklyn, Senator DiCarlo, and Senator Farley.

So, as you can see right away, we are developing some geographic support for the bill, and as if that wasn't enough, Senator Hannon, all the way from Long Island, has also

agreed to sponsor this bill along with Senator Hoblock, right from here in this very, very Capital District. So, as you can see, the sponsorship is such that I would have to take it seriously, but if I didn't respect all of the gentlemen I have already mentioned -- if I skip down one line, I see Senator Marchi, and when his name is on a bill, everybody listens.

So this bill which is before us, I gather, is very important because it amends Article 55 of the Education Law, which I think is important to do because this particular bill starts out by repealing the old 55, and if we repeal the old 55 Senator Cook, I assume, is suggesting that we ought to have a new 55. Well, that makes sense. That makes sense, and the name that we give this, Senator Bruno, is the code of conduct on school district property.

SENATOR BRUNO: Thank you, Senator.

SENATOR GOLD: That's a heck of a name, a heck of a name. Code of conduct on school district property, and it says "The Board

of Education, as defined in Section 2 of this chapter, of every school district within the state of New York" -- so it's not just one little old school district. We've got to deal with all the little old school districts who, by the way, are probably going to get messed up in the funding provided by Governor Pataki, unless we do something about it, and I hope we will do that. " *** shall adopt and amend a code of conduct for the maintenance of order on school grounds," and I guess they'll discuss it a little later.

I don't know what the "school grounds" mean. In other words, is it just the ground level? Is it just the concrete? Is it the grass? Maybe it tells you in the bill. If you're on the first floor, are you still on the ground? I don't know. Suppose every school in -- some schools down in the city of New York have three or four floors. If you're on the fourth floor, are you on the grounds? I don't know. I hope it's going to tell me that because I like to keep my feet on the ground, that's for

sure.

It says, "but every school district, however created --" in other words, all of them, "shall adopt and amend a code of conduct for the maintenance of order on school grounds, including --" oh, you see, here we go again, "-- including school buses."

Now, I'm glad that Senator Cook put in language which says it specifically includes school buses because normally I wouldn't think that school buses are ground. You know, when you're walking on the ground, you don't necessarily think of a school bus, but this specifically tells you that school buses are included, and this code of conduct, even in Syracuse, "shall provide for the enforcement thereof which shall govern the conduct of students, teachers also."

So we're not only talking about students behaving themselves but teachers also. It says "and other personnel." Well, "personnel", I assume, means in the business sense, people who work there, but it says, "as

well as visitors and other licensees and invitees," and that's interesting. That's almost a law school course here, because I guess you can be a visitor and maybe not be an invitee, or maybe you're a visitor; you're not an invitee but you're a licensee, or maybe you're a visitor and you don't fit under those categories. I don't know. I guess it doesn't apply to trespasses because trespasses are handled in other sections.

"Such code of conduct shall include, at a minimum --" and if it says at "a minimum", I assume, you know, you can also have a maximum. You could have other things in there also, but it's got to specifically, as a minimum, say -- and it's got provisions regarding conduct. Well, that's what the whole darn thing says. It's a code of conduct, so I assume it's going to have provisions. It's in the book. That's what it says, it's in the book.

"Dress --" oh, we're going to have dress codes now. "Language deemed

appropriate and acceptable on school grounds, including school buses." Of course, this is going to be some code of conduct. I wonder if you can use different language on the bus than you can use in the classroom? That's going to be very interesting. I know when I was a kid, the language on a bus was not exactly everything you would say in the classroom, not if my mother was in the classroom, I'll tell you that. " *** and dress and language deemed inappropriate." In other words, they're going to tell you what's appropriate and they're going to tell you what's inappropriate, which I think is a riot because when you take a look at Webster's dictionary - I mean, I don't believe they're going to cover every word.

Are we going to have a code of conduct that tells you every word that's deemed appropriate or inappropriate? And then, you can have a word that may be appropriate, but if you put it together with a word that's inappropri ate, now you've got a phrase. Now the phrase may be inappropriate, although the word is

appropriate.

Boy! This code of conduct -- I think you're going to have to give a course to teach kids what's in the code of conduct. It may take two years in school to learn the code of conduct, and now we're going to have kids in school longer than we had them there before.

It's also going to have "standards and procedures to assure security and safety of students and school personnel." Well, that is a very, very good goal, and I don't think anybody in the state would disagree that youngsters going to school should be safe and that the teachers who give their heart and soul to their profession should not be safe.

"There should also be provisions for the removal from a classroom or from school property." See, now it doesn't say "including buses". Isn't this interesting? In the other two places it says "school property" and it said "including buses". So I guess when this says "provisions for removal", maybe they don't want people throwing people off the school buses.

Maybe that's what they figured there.

"For persons who violate the code, it should also include the stipulation that upon the filing, bringing or entering of a criminal complaint based upon an alleged criminal act of a student, the student shall immediately be removed from the classroom."

Now, I hope there's going to be some discussion as to what you do with that student and, to tell you the truth, I'm getting excited now. I can't wait to get to that answer.

"There will be disciplinary measures to be taken in incidents involving the possession or use of illegal substances or weapons, the use of physical force, vandalism, violation of another student's civil rights."

Of course, I think this is interesting.

"Disciplinary measures will be taken in incidents involving possession of illegal substances or weapons." Well, I would hope so. I don't know how a school district can make regulations that violate state laws, but I would certainly hope that there would be

significant steps taken if they found weapons in the possession of anyone in the school.

As a matter of fact, I thought we were passing laws all the time to make it a crime, and I don't know of anything in the law that says that if a student brings a weapon into a school, they somehow have some kind of a privilege against being arrested, but it would seem to me, under existing law, that any school official has a right to do something; but, in all fairness -- Senator Gonzalez, I'll see you after conference -- I guess there should be some procedure.

It says, "Procedures for deten tion, suspension and expulsion of students." Well, now, see, this is interesting, because on page 1 it says that "the code of conduct should include these subject matters at a minimum" but, of course, it doesn't, so far at any rate, tell you what any of those subject matters should include.

So it's possible, so far, unless there's more on the bill -- and in all fairness,

I'm on page 2 and this bill has 14 pages -- I don't know whether we're going to give the school districts any further guidance as to what to do, or whether we're just telling them that they've got to have a code of conduct. I mean the code of conduct could say "If you find a kid with a weapon, you're supposed to turn around three times and immediately go to your classroom." I guess if that's in the code of conduct, you've complied, but it will be interesting to see if this bill becomes a law - yes, Governor. Hello. This bill has attracted so much attention we're getting calls from New York City on this bill, I want to tell you.

At any rate, you've got this thing -- I'm only up to, I guess -- what is this, (f), and they've got a (g) and they've got an (h) and an (i), and all of these things.

Then, if I skip through that, it says that the code of conduct -- I mean, how are you going to do this? How is it going to get put together? And it's going to get put together and developed by the board in

consultation with teachers, community members, including local law enforcement agencies - That seems sensible -- local human resources agencies, parents and students attending such district, students and any other representatives the board of education deems appropriate.

That makes me a little nervous because how do you know what any one district is going to deem appropriate?

Now, here's a good one, number 3 on page 2, "The Board of Education shall make copies of the code of conduct available." Well, it makes only sense that if you go to all the trouble to have a code, that you shouldn't keep it locked in a vault, and what was that movie where -- oh, yeah, "Animal House". They put him on secret probation. Remember that one?

SENATOR DeFRANCISCO: Double secret probation.

SENATOR GOLD: Double secret probation. That's one thing I like about DeFrancisco, he knows his movies.

But double secret probation, now

if we all knew that was not fair -- although many of us laughed anyway, but here they're going to make copies of the code of conduct and they're going to make it available to the students and their parents or guardians at the beginning of each school year. Of course, if it's as big as we think it is, they're going to need the school year to learn it, so I don't know what else to teach in that year.

" *** and make it available thereafter upon request", which is important, too, because youngsters sometimes lose it, and if they lose it, it's nice to know under this bill they can get another copy.

Then it discusses that "for the purposes of this subdivision, a school district shall mean --" and then it really goes ahead and defines "school districts", and I'm hoping to get to some meat, but at any rate, that takes care of the first two pages.

Then it says now, "The code of conduct" -- we are on page 3 -- "shall be reviewed at least every three years in a manner

consistent with subdivision (2) of this section. It also says, "The districts shall file a copy of the code with the Commissioner" -- I guess, the Commissioner of Education- "and all amendments to such code shall be filed."

Of course, what I'm curious about -- Senator Cook, would you yield to a question?

SENATOR COOK: Certainly, Senator.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR COOK: I would consider it a distinct honor to yield for a question to you.

SENATOR GOLD: Senator, the bill requires each district to prepare a code, and we've basically given them an outline of what they should do. Is there something in the bill that I haven't gotten to yet which says that if the Commissioner of Education doesn't like the code or if somebody doesn't like the code, they

can do anything about it?

SENATOR COOK: Yep.

SENATOR GOLD: Yeah. Thank you.

Would Senator Cook yield to a question?

ACTING PRESIDENT KUHL: Senator Cook, do you yield to another question?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR GOLD: I've always admired your economy of words. Senator Cook, can you just tell me -

SENATOR COOK: I admire yours too, Senator. I've never seen you say anything that was extraneous that really didn't fit into the necessity of carrying out the business of the -

SENATOR GOLD: I may need them to print up that quote from you.

Senator Cook, can you tell me the page and section number that -

SENATOR COOK: Well, I can tell

you what it is, that the department is able to withhold funding, which is basically the same power that they have with anything else that - where a district doesn't comply with the regulations of the commissioner.

SENATOR GOLD: If the Senator will yield to a question. What I'm getting at, Senator -

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR GOLD: Senator, what I'm getting at, supposing the school district does exactly what it's supposed to do, it prepares a code of conduct and it files it with the Commissioner and the Commissioner takes a look at it and he says, "Well, I don't like the code of conduct." It complies with each of the subdivisions and it deals with each of the categories, but either the remedies are too harsh or the remedies are non-remedies. Is

there any review power over the substance of the regulations by the commissioner?

SENATOR COOK: Mr. President, there is no review power per se over the -- over the regulations, except that, I presume, if somebody sent in a letter and said, "No student shall be disruptive in school," that the Commissioner might, in that case, deem that it wasn't really a serious code, but assuming that they basically do provide a code of conduct and provide the -- a description of what remedies that would be taken -- and that's really the importance of it, is the due process portion. In other words, to notify parents and students that there are certain requirements expected and if they don't perform as anticipated, that there will be some consequences.

SENATOR GOLD: Will the Senator yield to another question?

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield? The Senator continues to yield.

SENATOR GOLD: Senator, it says

that among the provisions -- and as a matter of fact, it's subdivision (a) on page 2, it says -

SENATOR COOK: I'm glad you started with subdivision (a), Senator. I would hate to think you missed anything.

SENATOR GOLD: Oh, all right. Thank you, Senator.

It says, " *** regarding conduct, dress***" Now, on the word "dress", is it permissible under this bill for a particular school district to not only set a dress code but perhaps set a uniform requirement?

SENATOR COOK: Senator, it would be conceivably possible for them to do that, yes.

SENATOR GOLD: If the Senator will continue to yield.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR GOLD: Senator, is there

any provision in the bill so that if a particular school district determined that it wanted a uniform as the dress code and the student could not afford to purchase the uniform, is there a provision in here, monetary availability for such a student?

SENATOR COOK: Mr. President, I believe that under the constitutional provision that a school district may not require the payment of any fee or expense as a condition for attending public school, that if there were such a requirement that -- and a school and student were able to demonstrate that they weren't able to pay for it, that it would be either incumbent upon the district to grant a waiver or to provide the uniform. That would be my interpretation.

SENATOR GOLD: If the Senator will continue to yield.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield? The Senator continues to yield.

SENATOR GOLD: Senator, you know,

with all due respect to the Commissioner of Education, commissioners come and go and legislators come and go eventually too, and I might have a great respect for your common sense in a situation, but under the provisions of this bill which you are candid enough and forthright enough to indicate could have a school district mandate uniforms for children if you have a child who will not buy the uniform, is there anything in the bill that sets up any kind of a process, or is it just left to common sense, which I would trust you with, but not necessarily others.

SENATOR COOK: Mr. President, as we've indicated, the code of conduct has the ability -- the bill provides that the code of conduct can have whatever provision the local district determines. So if the local district decides that there's some penalty involved, they can do so. Now, I would think it would be very hard in due process to sustain a suspension from school for somebody for failure to wear a uniform, but I would note that I believe

President Clinton, as recently as a week or so ago, indicated that he thought that school uniforms might be a good idea. Now, I don't know that I would necessarily subscribe to that point of view, but it is a possibility. I know that there have been some experiments, for example, and I believe there was a school in Chicago in which they're providing lab coats of a sort for every student to wear to basically cover up their clothing, the point being that there's a perception on the part of some educators that the competition among students to wear certain types of clothing is, in fact - does, in fact, incite a particular behavior on the part of students that causes disruption in the school and that that is, in fact, an option that is being talked about. I won't say it's being seriously talked about, although perhaps it wouldn't be a bad idea if some school district somewhere decided to try to do that. It is certainly within the realm of possibility if they might -- might say, "Yes, you're going to have a wear uniforms."

SENATOR GOLD: Mr. President, if the Senator would be kind enough to yield to another question.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR COOK: Senator, it's kind of fun when you really talk business, isn't it?

SENATOR GOLD: Yeah.

SENATOR COOK: Okay.

SENATOR GOLD: I think the members of my conference would also be enlightened by your answer if we didn't have to go through this nonsense and we had a mature attitude which allowed people time to conference legislation.

If the Senator -- I happen to believe -- and I hope you don't use this against me in a campaign -- I think you're one of the more serious people up here legislatively, and I think you believe what you put out.

SENATOR COOK: Mr. President, would the Senator yield?

SENATOR GOLD: Sure.

SENATOR COOK: Senator -

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR COOK: What were you doing between 9:00 and 10:00 this morning, if I could be just -- or 9:00 and 11:00?

SENATOR GOLD: What was I doing?

SENATOR COOK: Yeah. I mean, it's none of my business.

SENATOR GOLD: Senator, I'm glad you asked, Senator, because at 9:45 -- I'm sorry -- at 8:45 a.m. this morning, I arrived at the State Police Academy and I met with Colonel Dutcher for a period of time when they were explaining to me their identification system.

SENATOR COOK: Mr. President.

ACTING PRESIDENT KUHL: Yeah.

SENATOR COOK: Would the Senator -- the import of the question, was there any good reason why the Minority, for having known that this bill had been passed to third reading yesterday, might not have had a conference at some time between 9:00 and 11:00 this morning?

SENATOR GOLD: Yeah, and the answer is, Senator -- the answer is yes, and the answer is that the Minority is probably the most cooperative Minority that's ever been around, but we have things to do also, and while you have, on your side of the aisle, the right to set agendas, there is a process, and if I can answer the question and be very, very much on point, Senator Cook, it is your party that sets the rules, and your party has rules which says -- and I teach this to students -- if you want a bill to become a law, it goes through a committee and it's reported from a committee and it goes to first report, and it goes to second report, and then it goes to third reading, and as a matter of fact, on third reading it can be debated, and you know why we have this thing called an active list? Well, I take some honor in that.

I walked over a number years ago and said, "Why do you people go through the charade of reading out 200 numbers, only to have four -- Earl Brydges or Warren Anderson or now

let's say Joe Bruno sitting there laying things aside. If the Majority Leader lays it aside, lay it aside, let us know what you really want. So that was a time-saving mechanism, but you gentlemen and lady set the agendas and you set the rules.

Now, these bills that we're talking about today, Senator Cook, are out here because you asked us to waive the rules, and if we don't waive the rules, then you say, "Why don't we call a Rules Committee meeting and we'll put these bills out of Rules and we're going to mess up the rules anyway."

So, Senator, we did nothing wrong here. If you and the committee chairmen on your side want to abide by the rules and stop this practice of reporting things directly to third and just have them come on first report, second report, then maybe, Senator, we can fit them into a time slot.

I don't mean to be fresh at all, Senator, because you know I have a genuine regard for you but, Senator, we do have things

to do, and that may be offensive to some of your members, but our schedules are set more than 24 hours ahead of time and we just can't drop everything every time you want, although I will drop it when Paterson wants.

Can I yield to Senator Paterson?

ACTING PRESIDENT KUHL: Well, I was going to recognize Senator Paterson anyway, Senator Gold.

Senator Paterson, why do you rise?

SENATOR PATERSON: Thank you, Mr. President.

I just wanted to bring a point of clarification to Senator Gold and Senator Cook which would enhance this illuminating discussion, which I think is actually more exciting than a Colgate/Holy Cross basketball game. The fact is that there were 48 bills that were reported directly to third reading yesterday. What I would like to know is which conference should we have held, because the active list wasn't available until about 9:00

o'clock this morning, so you can understand that it would have been hard to figure out which conference we should have held since there were about nearly 50 choices that we could have used the two hours to discuss these issues. That's why the whole process of the active list is very important and the issue of notification is really just a cooperative way that we can reach a -- an understanding of what it is we are going to be discussing.

So I just wanted the two Senators, my colleagues, to have that information to continue their discussion.

SENATOR GOLD: Thank you.

May I, Mr. President?

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Thank you.

So, Senator Cook, believe me, we, I think in this session, certainly under Senator Connor, I don't think there's a doubt in the world that Senator Connor has led with distinction and with cooperation since he has

taken over in this Minority, and Senator Paterson is directly on point.

So it's not a question of wanting to conference and doing other things. On another day, Senator Cook, you're entitled to total honesty from me. On another morning, maybe I would have had to tell you the truth that I was trying to take money from Mike Tully on a golf course, which everybody knows is impossible with the handicap he plays under, but this morning I had business, and that business deals with legislation which is very important to me, and that's the sale of guns and how we can get guns into the hands of legitimate citizens who may want them and stop them from going to criminals. So this morning I did have other things to do.

But if Senator Cook would yield to a question, Mr. President -

ACTING PRESIDENT KUHL: Senator Cook, do you yield? The Senator yields.

SENATOR GOLD: Under subdivision (e) -- and now you can smile because I went (b),

(c), (d) and I'm up to (e) already -- it says that this code of conduct will talk about -- oh, I'm sorry, (d) -- that if a student -- if there's criminal activity -- now, wait. Where is the one I want? I want to be specific. No, I was right with (e) -- that if they find possession of illegal weapons -- now, Senator, is it your suggestion under this code that if there was a district very, very liberal -- I've got to get that word in because I know you guys like to hit me with it, but supposing there was a district that said, "if a student is found in possession of a handgun more than three times we're going to call the cops." I mean, to me, that sounds absurd. If I caught him with a gun the first time, I would take away that gun and call the cops, but what happens -- I mean, the commissioner gets these things and he says, "Wait a minute. That's wonderful. They're going to call the cops after three times", but isn't there something more involved? I mean, what does the commissioner do in that situation?

SENATOR COOK: The commissioner doesn't do anything. The school district does.

SENATOR GOLD: In other words, the school district has to vote and approve the proposals and -

SENATOR COOK: The school district provides a proposal -- I would indicate, Senator, as you well know, that under federal law, a student is automatically suspended for having a gun one time in a school. So it's a bit of a moot point but nevertheless, as regard to this code of conduct, that would be a provision that the school could theoretically, at least, provide.

SENATOR GOLD: Now, Senator, if you'll continue to yield, on page 3, it says "where a student has been suspended under the provisions of this section for any reason or duration and said pupil is of compulsory attendance age, the school district shall continue to provide for his or her attendance upon instruction. Such suspension may be revoked by the board", et cetera but, Senator,

are we, by this bill, suggesting that we are now going to have either special schools or special places that these people will be sent to?

SENATOR COOK: Senator, we're requiring that there be some process by which the education of the student will be continued. Unfortunately, as you may assume, for some students, suspension from school becomes a bit of a reward. You act out enough and you figure, "Well, I don't want to be in school anyway, so I'll just go in and make a real nuisance of myself and they'll suspend me from school and I'll be out on the street doing what I want to do."

This bill provides that if that student is suspended that in some manner there has to be a continuing education program. Now, I believe that in the city of New York, there probably aren't enough alternative schools, but there are some alternative schools and they may, in fact, have to have more. I'm not sure about that. It may be that on a real small school district where you just don't have the numbers

-- and I'm not going to imply the incidents would be any different in one place to another, but you may have a real small school district where you might only occasionally have a student under suspension, then it might be necessary for a tutor or some other provision that that - that the educational program for the student would continue, but it's my belief and the belief, I think of those who are sponsoring the bill, that education is important and that permitting people a device by which they can, in effect, escape or simply get out of the school, which is where they don't want to be anyway, is a mistake and we ought not to condone it.

SENATOR GOLD: Senator, if you'll continue to yield -

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR GOLD: I believe -- thank you, sir. I believe your language requires them

to attend. It says that it will continue to discuss -- I'm sorry -- "continue to provide for his or her attendance upon instruction", so you couldn't get out of it saying, "Look. Here's a book. I want a report tomorrow. You do it at home." It's got to be a place, right? It's got to be a place.

SENATOR COOK: Senator, it has to be a place, but the place could be the home, but clearly it has to be with a qualified teacher who is -- in other words, you can't simply send a kid home with a book and say, "Here, go read this" which, unfortunately, may be the case. There has to be a specified place in which that instruction is going to occur with a teacher which means that if that happens to be the living room of the home where the student lives, that's the place and the student is required to be there.

SENATOR GOLD: So if I'm understanding you properly, if a district such as New York City had an alternate school, an alternative school, they could use that, but if

you went into an area in a part of the state that did not have a building, the student could be suspended and be required from, let's say 9:00 to 3:00 or whatever period of time, to be at their home available to a teacher and a teacher is going to go into the student's home?

SENATOR COOK: If that, Senator, is the -- is the decision that's made. Now, Senator -- Senator, I would point out that it is the local school district's discretion as to how they're going to do this, and it might well be that they're going to say that the student shall attend the school and shall be in some segregated setting within the school, that's - that's a possibility. It could be -- as a matter of fact, with the fiber-optics these days, you can actually hook people into telecommunication and have them attending the actual classroom and some device could be - could be built to ensure that the student is - is participating, but in some manner, that student has to be involved in instruction.

SENATOR GOLD: Thank you, Mr.

President.

I understand that Senator Paterson has some questions, and I would certainly be glad to yield so he can make those inquiries.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Thank you very much, Mr. President.

If Senator Cook would yield for a question.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, I don't have a current memo on this particular subject, so you may have actually even changed this, so -- the one I have is from 1995, but who will convene the conduct review boards in the school districts?

SENATOR COOK: The conduct review board, Senator, would be called by the administration of the school. However, it is mandatory that if a teacher requests that the

board be convened, that the board shall be convened because the teacher has an absolute right if they are not satisfied -- and, unfortunately, this seems to occur, that the administration is dealing with -- appropriately with a conduct problem of a particular student, and in some cases, it has been alleged to us by teachers, at least, that they send students to the classroom, from the classroom to the principal's office and the principal simply sends them back and says "that's your problem." Well, if that occurs on several occasions, the teacher then has the option of saying, "Look, I have had enough of this. I want you to call this board into session because I want to have an impartial hearing by a board made up of teachers and administrators so that it's not a one-way -- not a one-way street, but I want to have someone who will hear my side of the story because I haven't been able to get what I perceived to be appropriate action from the administration relative to this particular student."

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

And, Mr. President, to Senator Cook, how is the parent of the child involved at this point?

SENATOR COOK: The parent of the child is first -- and I don't presume this is probably much different than what occurs right now. The parent of the child is, of course, called by the administration, I would assume, and again, that would be spelled out in the code exactly how they're going to do it, but would be called to a conference, much as they currently are. Now, the thing that this code of conduct -- that this bill does which is different and which is, I would admit, a radical departure and perhaps the most serious part of the bill is that the parent can be held legally responsible, and that is that if in the process of these conferences, the parent simply refuses to cooperate and the child simply doesn't change

conduct -- his or her conduct, there is a Family Court -- an ability on the part of the school district to petition him to Family Court and have a finding on the part of the Family Court that, in fact, the parent is not carrying out their responsibility to ensure that the child is getting an appropriate education and can take whatever action is appropriate, and it does set up a probation system, where as -- where the - presumably, if it went that far, the -- there would be a counselor provided by the family that would -- that would work with the family. As you know, often this is a dysfunctional family, and the point being that the probation officer would then be able to bring in mental health people or drug abuse people or whoever might be necessary to try to rebuild the family, and this is kind of the bridge that goes from the school over to the human services system. I think - and we're kind of walking into a different discussion now, but I think it's important to point out that this bill is not single-faceted. It's not simply a matter of saying, "Oh, boy, if

we could just whip these kids into shape, they would behave themselves." It is a recognition that often there are factors in the life of that child that create the conditions under which some of this disruption takes place.

So this becomes the vehicle which by the Family Court can then move -- move the entire family, if you will, under supervision so that perhaps some problems that exist that are even more widespread than the child's conduct at school can be dealt with.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. That answer was quite informative.

Senator Cook, I think you have defined quite clearly why we may need this to occur, so this is not really antagonistic to your point which I'm inclined to agree with based on what you're saying. However, this will create a greater burden on the school administration and I would assume a need for additional staff, if I'm not correct.

SENATOR COOK: Mr. President, it might be assumed that you would need additional staff. I'm not sure that that would be true in all cases. Frankly, Senator, I think if there's a school district that is currently doing what they ought to be doing, that this bill doesn't create a need for additional staff. I think that if there are people who are currently trying to deal with behavior problems in the school in both a firm and a sensitive manner, that this bill is not going to make anything different.

Hopefully, Senator, it's an instruction, if nothing else, to school districts that don't -- either don't know or don't care about the problem as to how they ought to deal with it, and I think that it is probably, in some cases, going to require someone else to handle some of this, but I would point out, if you've got discipline problems in a school, somebody's already dealing with those problems, presumably. There's already someone in the administration. If it's a small school,

it probably is the principal. If it's a larger district, it probably is someone else who's a counselor in the school who's dealing with it, but there are already people in place who are doing this.

So I don't think that that particular problem -- I don't think that the school district will probably have to have more people. The place where you may have additional people, Senator, would be in the counseling area, the probation area, and -- but I think this is a necessity.

We have been working with -- and I guess I have to say this -- with upstate districts to try to build bridges between the human services agencies and the schools. This has been more difficult in the City because of the size of the City, and we understand that those problems are more complex, but we think that it is really necessary to build that kind of bridge and, frankly, if it does require some personnel to make that happen, so be it.

My contention is that we're not

going to deal with this problem -- and it's a cause and effect situation -- we're not going to deal with the discipline problem if we don't deal with the family problems. We're not going to deal with the educational problems if we don't deal with discipline problems. So I think one thing follows the other, and if we're really serious about trying to improve the quality of our educational program, I think we have to go back to the roots of the problem and try to deal with those roots, and that's what this bill is attempting to do.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Senator, this is well stated and well organized. The only part that I just have some problems with is that what you're calling for here is somewhat radical from what tradition has been, which may actually inure to the benefit of school children and their parents and the entire school system, which we need, but

interfacing with the Family Court which the schools have previously not done is a highly specialized kind of procedure which I would assume would call for more staff or certainly a more intricate awareness of what's going on. There are lawyers who routinely go into Family Courts who haven't figured out how they work yet, and I'm just pointing out that I think it might call for increased personnel.

I would like to ask Senator Cook, Mr. President, to yield for another question.

ACTING PRESIDENT KUHL: Senator Cook yields.

SENATOR PATERSON: Senator Cook, the actual structure of the conduct review boards and how they interface with the school boards, are they appointed by the school boards?

SENATOR COOK: Yeah, they're appointed by the administration, Senator. Hopefully the teachers would be appointed with -- in consultation with the -- with the appropriate representative body of the teachers,

but we have at the present -- let me back up for a moment. At the present time, as you know, the disciplinary policy of the school is totally within the control of the school board, the administration, and we really don't change that legal principle that it is their legal responsibility, and I'm not sure we can change that. They are a political body or a public body, and I think ultimately they have to have that legal responsibility.

This is really an effort for a safety belt, and so that's the reason why we do provide that the teacher representatives be on the committee, but it is a committee that's appointed by the Board of Education or in the case of the City, I believe by the school district administration, depending on the local school district.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Senator Cook, if this works, it

will be a safety net. If it doesn't work, it's going to be providing additional layers of bureaucratic supervision, and I want to try to elicit from you which of the direction we're going to be going in. I would seem to feel that if the conduct review boards don't report directly to the school boards, that after their appointment, they become independent more as the relationship with the Supreme Court Justice and the President.

SENATOR COOK: Mr. President, I'm sorry. Senator, I probably left you with the wrong impression. They do report to the school board. They are responsible to the school board. They are -- they cannot take any action in and of themselves. They are, in effect, advisory, but they really do -- by their ability to make recommendations, they have some influence.

If there's a parallel, Senator, I would point out that we do have committees that review children with disabilities and that recommend the individual education programs for

those children. Their recommendations are always subject to adoption by the local Board of Education because that Board of Education is the actual official body. In the same manner, any recommendations of this committee would also be subject to the same actual legal control of the Board of Education.

SENATOR PATERSON: Thank you, Senator.

I want to ask you a question about how children with disabilities are -

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: I want to ask you how they're handled under the current legislation, but I would like to stay on this particular point. Let me give you an example because it seems that you have clarified this for me, but let's say that the conduct review board reports information to the superintendent

of the school district. Does the school board find out what the results of that review are?

SENATOR COOK: Yes.

SENATOR PATERSON: They do? All right. That's most helpful. If the Senator would continue to yield.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: My question relates to the suspension of students who have had a criminal complaint filed against them. Is that a correct -

SENATOR COOK: Yes.

SENATOR PATERSON: - assumption? Senator, it's my opinion that that is creating a situation where the school board is going to become the respondent in what could be litigation on the civil rights issue of whether or not the school has denied constitutional presumption to the student based on the actions of a Criminal Court but are not a final action of the court.

SENATOR COOK: Senator, the -- in

the first place, they have to be removed from the classroom, not necessarily suspended from the school. In the second place, the real point of this is that the filing of a criminal complaint has been the device that we have adopted to try to identify the seriousness of the activity of the child. We don't feel that -- that necessarily we should Band-Aid the removal of the student for what you might call disruptive activity that falls short of criminal activity. We think that a pattern of disruption certainly should be grounds for doing that, but we don't say they have to be removed at the first instance.

On the other hand, if something is serious enough that it has -- that it has moved someone to actually enter a criminal complaint, as the incident has been serious enough, we think that the protection of the safety of the other children in the classroom is really the paramount issue here and that, therefore, the student should be removed to a place where they -- at least until this thing is

resolved, they cannot harm the other students or the teachers.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Would there then be a review of what the criminal complaint was?

SENATOR COOK: Well, Senator, presumably, as you know, if there's a criminal complaint, there's a time limit under criminal law that -- that this complaint would have to be resolved, and so in the pendency of that resolution, they would have to be kept out of the classroom, but presumably, there would be some proceeding at some point that would move that forward so that if it were found -- if it were determined to be unfounded, then, of course, the suspension would immediately have to be -- have to end.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Of course, Senator, you were among those who are advocating that we have a speedier resolution of these criminal complaints but, unfortunately, as it stands right now we don't always have that, and I'm concerned about the removal of the child from the classroom where the complaint may not really relate to the jeopardy of the other students who are in the classroom, and so this is what I'm having a little trouble understanding. If we were moving the child from the classroom, to me, there is actually, in a sense, some sort of a punitive action being taken where we haven't necessarily established that there's a cause because the issue may not lie in what action the child took in the classroom. It may really be a complaint that's made outside of the whole ambit of the school administration and the school grounds entirely.

SENATOR COOK: Mr. President, Senator, as you're aware, when it gets to the area of child welfare and protection of children, we have -- we have adopted a standard

of -- which is somewhat different than would apply for other persons. We remove, for example, upon a complaint that there has been abuse in a home that the child is endangered without due process, frankly, for the parents, immediately -- immediate removal. The Social Services Department can actually bang on your door and tell you, "We received a complaint from the neighbor next door that you are doing something which is endangering the life of the -- the well-being of your child. I want the child to go with me" and can actually do that, and that is -- while it is something -- and we read about incidents where this gets abused occasionally and incidents where we consider that maybe somebody used bad judgment, but the premise of the law has always been that in the case of children where there are -- there is the possibility that a child is going to be injured, that what we might consider to be the normal standards that would apply to an adult, that we use a different standard as it relates to the child.

Now, if you've got a child in a classroom and that child has done something or is alleged to have done something that is so serious that it warrants a criminal complaint, there is an endangerment or presumption of endangerment to the other children in the classroom, and because of that principle that we -- that we interpret these things differently as they relate to protecting the welfare of children, we -- I think that that follows in the line with what we're doing in this bill.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Senator, divorced from the comparison you've made, isn't it true that there is really a difference when you view the child and you're able to come in as some service agency may as opposed to getting a criminal complaint where the nature of the complaint may not even have been established and there's just the fact that a complaint actually exists? Some

criminal complaints are not even brought about through the actions of the police. So I'm just saying that in these types of situations, isn't there a high cost of presumption without full establishment, the way the bill reads, that there's a necessity to remove the child from the classroom when we don't know whether or not the child is causing a danger and we at least have the history that at the point we're removing the child from the classroom, there was no other indices that there be a removal because the child is already in the classroom?

SENATOR COOK: Senator, you're probably correct that there are other ways in which this -- this could be accomplished, but as we discussed the various alternatives for doing it, in every case you get involved into a very complicated process of due process, if I can - may be redundant, and it really -- given the situation that you have, where, for example, a child may be actually physically brandishing a weapon, you need to do something immediately to remove that child from the classroom.

Now, if you went the other route, which I think you may be suggesting that you ought to have some kind of a hearing, that you ought to convene, perhaps with the committee on conduct, you go through this, you run into the whole issue of due process and in due course, that's going to happen, but you really need some device by which you can measure whether the activity of a child is an actual endangerment to other people in the classroom and the filing of a criminal complaint seems to be a reasonable measure of that.

I have to assume, Senator, that if there is some disruption in a classroom, that the school is not going to call in the police and immediately file a criminal complaint against the child if it is something that is not of rather major consequence, because they don't want to be involved in that either. They want to deal with it within the school to the degree they can.

So I think the filing of a criminal complaint is a reasonable trigger for

the school to be able to remove the child from the classroom and thus protect the safety of the other children.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you very much, Senator Cook.

I want to ask you about the distinction between the disabled children and children who are just in the public school system.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield? The Senator continues to yield.

SENATOR COOK: Yes.

SENATOR PATERSON: You don't have in your legislation any distinction, yet in federal law, there is a significant distinction to such an extent that the removal of the disabled child, based on some of the issues that we have been discussing this morning and this afternoon, would lead me to feel that, again, the school board would be right for some kind of

lawsuit and litigation based on constitution ality. I want to know if you gave it any thought when you were drafting the legislation, and if it's not in here, which I assume it is, why you chose to delete it?

SENATOR COOK: Senator, there actually is -- on page 2, Senator, there actually is a phrase, line 17, that says that - I'll read it, if I can see it, "provisions" - this has to be in the code of conduct, Senator. "Provisions ensuring such code and enforcement thereof are in compliance with state and federal laws relating to pupils with disabilities." Would you like me to reread that? I know you were busy at the moment.

SENATOR PATERSON: No. Actually, Senator, what -- yes, if you wouldn't mind reading it again.

SENATOR COOK: Okay. The phrase says -- this is among the provisions that have to be in the code of conduct. "Provisions ensuring such code and enforcement thereof are in compliance with state and federal laws

relating to pupils with disabilities."

SENATOR PATERSON: Thank you, Senator.

And I apologize because it is in there and you've quite clearly corrected me on that point.

If the Senator would yield for another question.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: Senator, I'm looking at a case -- I don't know whether or not you're familiar with it. It's the case known as Matter of Jeremy, and in this particular case, the parent who apparently neglected the education of this particular child was found by the court to have done that but the court did not feel that that was sufficient grounds to establish a full case of neglect.

In view of that, does your legislation depart from this judicial review and aim to suggest now that there is a way that we can hold a parent culpable for only the fact

that the child has not been properly educated, or that the environment for a proper education has not been provided?

SENATOR COOK: Senator, I would have to give you a qualified yes. We have not -- we have tried not to make this into a radical measure, but I would have to say that the court would be instructed to consider an allegation that the fact that the parent was not ensuring that the child was receiving a proper education would be a -- would be a finding of neglect, yes.

SENATOR PATERSON: If there's such a finding of neglect, you are still advocating legislation that if this rule were to take place -

SENATOR COOK: Let me read the phrase that's in the bill. "Educationally neglected child means a child whose parent or other legally responsible person has failed to supply the child with an adequate education in accordance with the provisions of Part 1 of Article 65 of the Education Law, which requires

attendance at school," et cetera, "or whose parents or other legally responsible person has wrongfully interfered with or obstructed reasonable efforts of school officials to provide necessary and appropriate education for the child."

So it is -- I guess I would have to answer you, Senator, that it does expand the definition of "neglect".

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Well, that's exactly my point, Senator Cook, that that part of -- Part 1 of Section 65 of the Education Law by itself does not seem to be rising to the threshold according to this court decision in the Third Department in 1994 that this was enough that would establish what you are trying to seek in this bill; and without even commenting on whether or not I agree with you, I'm just saying that I don't know if it would stand for judicial review

on this particular point, and I wondered if it would be not more prudent to, in a sense, find other violations before making that determination as was set forth in this case in the Matter of Jeremy.

SENATOR COOK: Senator, of course, I can't predict what a court would do, and I have to presume that if we're able to enact this into law that there will be court decisions from time to time that are going to require it to be refined in various ways. But it would be my interpretation that by the fact that we have made this statement in this section of law, it, in effect, underlines the responsibilities that are in the other section, and that in fact the failure of the parent to do what is necessary to enable the school district to carry out their responsibilities would be an instruction to the Court, if you will, of legislative intent.

So I think that this covers it. If it does not cover it, then I assume we'll have to make another effort to refine it more,

but I am reluctant as I have indicated in other cases to make this bill so ironclad that we don't give the local people the ability to deal with individual cases. These are -- this is a very sensitive matter. It's sensitive relative to the children, sensitive relative to the parent, and I don't want to be in a position of mandating a type of action that is so ironclad that justice would not be served in some particular case.

I guess if we have to err a bit on the side of leaving the door open on some possible abuses, then I guess that would be the way I would choose to go.

SENATOR PATERSON: Thank you very much.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: This is a concept you believe in, and this is something that may or may not stand for review, and I certainly understand why you would want to put it in the legislation. I just don't feel it

belongs there based on the edict of the court in this 1994 case in the Third Department.

I want to thank Senator Cook for his answers to my questions which he may have found to be a little basic, maybe a little simplistic, perhaps a little pedantic, maybe even a little callow, a little puerile, perhaps a little immature, maybe even a little dumb.

SENATOR COOK: Mr. President.

ACTING PRESIDENT KUHL: Senator Cook, why do you rise?

SENATOR COOK: Mr. President, I don't know what most of those words mean, so I don't really consider them to be any of them.

Thank you.

SENATOR PATERSON: But I want to assure Senator Cook that I have retained a mentor from the psychic hotline, and, therefore, I will know what bills are coming out in the future and I promise to be more prepared.

Thank you.

ACTING PRESIDENT KUHL: Senator Stachowski, why do you rise?

SENATOR STACHOWSKI: If Senator Cook will yield for a couple of questions?

ACTING PRESIDENT KUHL: Senator Stachowski, I'm keeping a list. I have Senator Dollinger and then Senator Lachman.

SENATOR STACHOWSKI: I was sitting here the whole time. I'm sorry.

ACTING PRESIDENT KUHL: For the benefit of the members, I would remind them that this debate started at 11:18 so that there's approximately 45 minutes left until you get to the two-hour time period.

Senator Dollinger, you said that you wish to yield to Senator Stachowski.

SENATOR DOLLINGER: I do, Mr. President.

ACTING PRESIDENT KUHL: Senator Stachowski. How about you, Senator Lachman, do you wish to yield to Senator Stachowski?

SENATOR LACHMAN: Yes, I do.

ACTING PRESIDENT KUHL: Senator Seabrook, you wish to speak on the issue?

All right.

Senator Stachowski, the Chair recognizes you.

SENATOR STACHOWSKI: I apologize, Mr. President, for not raising my hand when David and I were the only two here, but I didn't realize everybody had put their hand up as they came in.

Senator, if you would just yield, because there was a memo, but that was on the "A" print, and you may have addressed their problems, and so I just wanted to ask you these couple questions. Statewide Youth Advocacy, Inc., had a question about Section 5 concerning the mandating of an automatic suspension of a student upon allegation by a school official to a Family Court presentment agency or district attorney of conduct that might rise to the level of a crime. Their question was would this deprive students of their due process rights and be tantamount to a punishment without a trial. Has that been addressed since the original bill?

SENATOR COOK: Senator, it has

not been addressed, and I think we had a bit of this conversation before.

Due process is very important in our society, but we've also -- we've also -- as it relates to the protection of the welfare of children, we have in other cases said that the tantamount thing is the protection of the safety of the child, and if there is a situation in which a person is involved in criminal conduct that may in fact endanger other children in the classroom, that's something where we think it's important that we separate that child from the rest of the students until that matter has been resolved.

We could have done it in different ways. But had we done it in different ways, it would have made a long process during which time, presumably, that child would have still been in the classroom and the other children and the teachers could have been endangered by their conduct. So we have used this as the measure by which we can determine how a child will be removed.

Now, we could have said, well, there has to be a finding that the other children are in imminent danger. What does that mean? That means then you've got to go through a hearing process and all the due process, and that's true, but I think we have made the presumption here that what we want to do is to get the child out of the classroom into a, if you will, a segregated setting so that they are not endangering other students.

SENATOR STACHOWSKI: The only reason I asked that question was because part of the concern of the school boards is additional lawsuits, and this would seem to be an area that could cause that.

SENATOR COOK: Senator, I think we have probably protected them from additional, because we have given them an absolute standard. If we had done the other thing, where they had to make the finding, then I think you might possibly have been putting them in danger because then it would have been a decision on their part. But where you have an absolute

standard and they follow that standard, I think they are protected.

SENATOR STACHOWSKI: If Senator would yield, again.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

Senator Cook yields.

SENATOR STACHOWSKI: Senator, there is another area that they brought up, and it also struck me in going through the bill was there is an awful lot of things referred to Family Court, and it seems to me that, at least in hearing from people that deal in Family Court, they are kind of crowded already and now we are sending this whole additional caseload to them.

How do we propose they will handle this? Are we going to increase the number of family judges, therefore, maybe doing another full employment thing for lawyers and maybe lawyers who don't have great practices, giving them a chance to earn a living by becoming judges. That's a question I have. I

threw those extra two things in because you and I share a common interest in lawyer full employment bills so -

SENATOR COOK: Senator, I'm concerned that we don't overburden Family Court because I happen to think it is the most important court we have, and we certainly don't want to clutter them up. I would tell you that as we constructed this process, we see the Family Court proceeding as an absolute ultimate thing that would happen in a very, very tiny minority of the cases. I can not imagine that a school district is going to use this process very often. They certainly are -- there are certainly other procedures set up along the way that are going to make the situation such that hopefully the problem will get resolved, and it would only be in the case where it's blatant, and I think there would have to be a showing in the Family Court where blatantly the parent has either neglected or interfered with the education of the child that you would ever get to Family Court.

So I understand your concern. I don't disagree with it, but I don't think it's going to cause an awful lot of these cases to end up in Family Court.

SENATOR STACHOWSKI: One last question, Mr. President, if Senator Cook will yield.

Do you see with this process and this way of dealing with students in the classroom that are disruptive and probably speeding up the way they are removed as opposed to the way they are now, maybe, would this in a way enhance the enrollment at the various schools that are designed to handle kids that can't manage in regular school settings, and this would alleviate, probably, a financial crush that they are getting currently in -- you know, in -

SENATOR COOK: Well, Senator -

SENATOR STACHOWSKI: You know I'm referring more to special ed' schools where they become deemed emotionally challenged children, and if this is a bill that's going to help them

in the long run, then I'm all for it.

SENATOR COOK: I wish I could answer you in the affirmative, but I'm always reluctant, frankly, when I put a bill out here to say it's going to save a lot of money because I hope it does; but, frankly, we're trying to deal with a problem, and that's the thrust that we're going at.

SENATOR STACHOWSKI: Mr. President, it's more as a statement. I didn't catch at the beginning if there were memos in favor of this bill because the only thing I had was on the original, and I'm sorry I didn't mean to ask another question but I just wanted to make sure if there were any people -- I know who is against it. But I would like to know if there were groups in favor of it, and for that reason I'd have to ask Senator Cook to yield once more, and then I am finished.

Thank you very much.

SENATOR COOK: Mr. President, we don't have memorandums in support of this specific bill. Frankly, we have stolen pieces

from a lot of different places, and I think those principles have been endorsed by various people in various bills, some of which Senator Saland may have introduced or Senator Volker, and, in fact, one of the bills which is the next one on the calendar for which we do have memos, but not this specific bill.

ACTING PRESIDENT KUHL: Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Mr. President. Will Senator Cook yield?

ACTING PRESIDENT KUHL: Senator Cook, do you yield to Senator Dollinger? Senator yields.

SENATOR DOLLINGER: I apologize some of my questions dovetail Senator Paterson and Senator Gold, but a couple quick things. On page 2 of the bill, which is number 360, is that correct, Senator?

SENATOR COOK: Page 2?

SENATOR DOLLINGER: Page 2 of Bill 360.

SENATOR COOK: Yes.

SENATOR DOLLINGER: Where it talks about the stipulation upon the filing of a criminal complaint, the student shall immediate ly be removed from the classroom, one of the things that I noticed in this bill and in the other bills is that there's an emphasis on the phrase "classroom." Do you intend here that he be removed from all his classes?

SENATOR COOK: Well, Senator, the intention is they are going to be removed from the usual classroom. The reason it says "classroom" is that they are not suspended from school.

SENATOR DOLLINGER: Right. That dovetails with 365 which involves the ability to remove from the class but requires them to provide alternate education.

Thank you.

Again, if Senator Cook will continue to yield?

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: In the

Section in line 13 and 14 of the bill, it talks about expulsion of students. Could you just tell me, so I understand, what are the circumstances under which a student can be expelled from school currently?

SENATOR COOK: I have to apologize, Senator, we've got to -

The staff tells me that word "expulsion" is not a legal term, that, frankly, it shouldn't be in the lettering. We don't think it does any harm because it doesn't mean anything.

SENATOR DOLLINGER: I guess - through you, Mr. President.

I wasn't familiar with the circumstances under which you could expel a student from school, and that's why I asked the question. The phrase "expulsion" is in there, and I was wondering whether you were introducing a new concept that would be included in the code of conduct that we have no state rule that permits an expulsion of a student.

I suggest even if this bill

passes, I guess, if it sees life hereafter -

SENATOR COOK: I think you are correct, Senator.

SENATOR DOLLINGER: The red pen might go there.

SENATOR COOK: I think you're correct.

SENATOR DOLLINGER: I have just two other clarifying questions.

On page 7, when it talks about the definition of "educationally neglected child," does this include any requirement that it be willful?

SENATOR COOK: Well, Senator, yes, because it says that the legally responsible person has failed to supply the child with an adequate education, et cetera, or has wrongfully interfered with or obstructed the reasonable efforts of the school officials to provide an education.

I think that if you wrongfully interfere with, I think that's willful.

SENATOR DOLLINGER: Right, but

again through you, Mr. President, if Senator Cook will continue to yield.

ACTING PRESIDENT KUHL: Senator Cook continue to yield?

Senator continues to yield.

SENATOR DOLLINGER: My question is, what is the phrase that you failed to provide the child with an "adequate education"? Does that mean that, if your child fails to get his or her high school diploma at the end of grade 12, that you've failed?

SENATOR COOK: No, Senator, and that's why that other phrase is in there relative to attending school; that, unfortunately, there isn't any way that we can compel a child to learn, I guess. But if the parent has ensured that the child has attended school and that has not interfered in any way with the efforts that the school has made to provide the education to the child, then the parent has fulfilled their responsibility.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Cook will yield?

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Give me an example of what the "wrongfully interfered with or obstructed the reasonable efforts of school officials to provide necessary and appropriate education" -

SENATOR COOK: Sure.

SENATOR DOLLINGER: Give me an example of that.

SENATOR COOK: There is a requirement that when the child is suspended that the educational program has to be carried out. Let's assume that we've got a tutoring situation, which you heard about -- you may have not heard about it because you weren't here, but in a small school district, this might be one alternative that the school will use, and the parent says, "No, I'm not going to let some tutor come into my house; I don't want them here," and I guess probably they may even be within their rights to do that. I suppose they probably are. But they basically said, "My

child is not going to go to school. They don't need to go to school." That's wrongfully interfering. In other words, the parents in some manner, if you will, take the side of the child -- and that's not a right term, but they interfere with the efforts of the school to do whatever the school is trying to do to get this child to attend the alternative school or to do the things that are required and, if the parent just basically says, "No, you know, it's not important. I'm not even going to talk to the school. I'm not going to show up for conferences."

This whole Family Court procedure, as I indicated earlier, is a last - the last desperate effort, if you will, to do something about the child's education, and it really is envisioned that this would almost never occur, and it would have to be a very blatant thing that would occur.

SENATOR DOLLINGER: Again through you, Mr. President. If Senator Cook will yield.

ACTING PRESIDENT KUHL: Senator

Cook, do you continue to yield?

Senator continues to yield.

SENATOR DOLLINGER: I read that as an either/or phrase. It says that you failed to supply the child with adequate education, and then it makes reference to the fact in I assume Article 65, and I apologize for the fact that I didn't read it.

SENATOR COOK: It's basically attendance.

SENATOR DOLLINGER: Compulsory education requirement. So, in other words, this says that if you fail to supply the child with adequate education. Is there a definition of the phrase, "adequate education" in Article 65 of the Education Law?

SENATOR COOK: No, Senator, there is not. Senator, I'm not an attorney. You are. You probably deal in Family Court. There are a lot of judgment calls in here. The school has really got to basically make a strong case. We have done everything we can to ensure that the child has had an education. We have tried

to contact the parent. We have set up all sorts of alternative ways to get this education, and these people just plain refuse to cooperate, and I think the burden of proof is plainly upon the school to make that kind of showing, and that's really what we're talking about.

SENATOR DOLLINGER: Mr. President, if Senator Cook, will yield to just one more question.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: The adjustment agency procedure that's part 2 of the bill which starts on page 8 and goes to page 9 and 10. My question is, one, are there currently adjustment agencies set up; and, two, what's the cost of this kind of an adjustment agency as contained in this bill? What will it cost the Family Court to set up an educational supervision unit, which is what I think this envisions? Is that a correct characterization in generic terms, "an educational supervision unit"?

SENATOR COOK: Yes. Senator, in some cases there will probably have to be an additional cost. In many areas, in most areas we have -- as we had this discussion a bit earlier, we have been working with human services agencies and probation and health people and mental health people and the schools to develop a kind of a bridge, a relationship with families so that we deal with the dysfunctional family problem which may be at the base of the child's educational problem.

So I guess my answer is that we think that in most cases this really exists. It just formalizes something that's there. But, frankly, in some cases, if it does not exist it probably -- and, again, I'm not going to make any rash claims, but I think it will very closely pay for itself. Because if we are able to develop that kind of relationship between the school and the home and the human services agencies, we're going to forego some other kinds of problems that they are going to have to deal with, anyway.

So in all probability, you talk about probation services, if you don't deal with this, you are going to have these kids in probation sooner or later, anyway.

SENATOR DOLLINGER: I agree with that.

On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: I don't think anyone in this chamber has the concern for education that the Chairman of the Education Committee has, and I understand how this problem that this bill seeks to address, the difficulty of getting parents to monitor the education of their children, which I know the Chairman of the Education Committee believes is the key to our economic future in this state for everyone -- it is the doorway to opportunity. It's the doorway to the middle class. It's the doorway to the American dream. I understand your frustration that prepares a bill like this that says we've got to begin to try to legally use every tool we

can to get parents more involved in the education of their children.

However, in reading this bill, albeit quickly, I see that the way it works may do just the opposite -- may do just the opposite. May not.

I'm concerned about the definition of "educationally neglected" because it doesn't imply a willful standard. It simply says that they failed to supply the child with adequate education in accordance with the provisions of the compulsory education statute.

My fear is and the reason why, although I know it's a legal argument to analyze that and pick through it, is that so many times in this chamber, I have heard members stand up and say, "Those courts, they are out of control. They are interpreting things inconsistent with our intent. They are running roughshod over what we intended to have done.

The reason why they do is because we leave these things somewhat inartfully drafted to say what is an adequate education for

a child? We don't define that. So we let the courts go galloping through our mind to try to figure out what we meant, and they may decide that failure to supervise the homework is a basis for educational neglect.

There is no willful requirement here. It doesn't mention the word "willful". It may be just a negligence standards; that is, if you just happen to fail to do it.

It then says if you obstruct the school from achieving the goal. Well, does that mean if you don't monitor the child doing his homework? I agree with you, if you don't come to parent teacher conferences, could that be another factor? That may all go into it.

That may be the kind of thing that an inventive lawyer, either for a school district or for a family says yes or no, these should be factors.

The problem is we're going to end up with a whole series of adjustment procedures and a whole series of potential problems for which we haven't sat down, thought it through

and, I think, perhaps more artfully drafted it.

I'm also concerned about the adjustment bureau. I understand and I agree with the Chairman of the Education Committee, that, in many cases, we may see these children time and time again. We may find them in the Family Court system. We may find them in the criminal justice system, and it seems to me that the benevolent intent behind adjustment procedures is to get intervention quicker and, hopefully, get the education on a sound base, get the family more involved in education, and we won't have to worry about getting them involved in the Family Court or getting them involved in the criminal justice system.

So there are lots of good things in this bill, lots of good intentions in this bill. I guess I learned a long time ago that certain roads may be paved with good intentions.

Frankly, even at this point, I'm going to wait for the rest of the debate to see how I vote on this bill. I think the intention is important. I think the message is very

important. Whether this sends the message is the question I'm going to wait for the rest of the debate to figure out whether it answers it.

Thank you.

ACTING PRESIDENT KUHL: Chair recognizes Senator Lachman.

SENATOR LACHMAN: Mr. President. Distinguished Chair of the Education Committee, I'm not going to ask any questions and, therefore, will not presuppose that you have to yield.

I just want to enunciate three principles, which will reflect my votes on this package of five bills.

The first principle is that all children in all schools have the equal ability to learn, regardless of their background, their socioeconomic status, their race, their national origin.

The second principle is that all these children cannot adequately learn unless they are placed within a safe and secure environment, which is essential to the process

of learning, and if these bills go in the direction of securing that safe environment, then I will vote for these bills.

3. There is a United States Supreme Court decision, Tinker versus Iowa, that I believe the Supreme Court ruled on in 1972 that stated categorically that the civil liberties and civil rights of all children do not stop at the schoolhouse door. I assume that the distinguished chair and the members of the committee have taken that into consideration in the construction of the bills that now appear before us.

Those are the three principles that will guide my decision on the votes that I will offer to these bills.

Thank you.

ACTING PRESIDENT KUHL: Chair recognizes Senator Seabrook.

SENATOR SEABROOK: Yes, Mr. President. Will Senator Cook yield for a couple questions, please?

ACTING PRESIDENT KUHL: Senator

Cook, do you yield to Senator Seabrook?

Senator yields.

SENATOR SEABROOK: Senator Cook, just a couple of questions that I have. Are there codes of conduct in existence today?

SENATOR COOK: Yes. Senator, most schools do have codes of conduct. I think -- as a matter of fact, I think perhaps there's even a regulation by the commissioner that requires codes of conduct.

Our point, frankly, in putting that language in this bill was to clarify that if school districts wish to do certain things in their code of conduct that they have the legal power to do it.

But your answer is, yes, in general, there are codes of conduct in most schools.

SENATOR SEABROOK: So there is no real compelling interest to change this now, that -- a real ground swell of talking about the change of the code of conduct?

SENATOR COOK: Senator, the code

of conduct is the starting point for the construct of the bill. If you start in the middle of the process and you say, okay, if a child is misbehaving in school you are going to do da-da-da da-da, and you don't define at the initial point what is expected of the child and you don't advise the parents and the child what those expectations are, then it starts to beg the question later on in the process as to why the process exists.

So the code of conduct is really the starting point for the process.

SENATOR SEABROOK: Will the Senator yield for another question?

ACTING PRESIDENT KUHL: Senator yields.

SENATOR SEABROOK: The issue of a dress and language that is deemed appropriate, is that in existence presently?

SENATOR COOK: Senator, there is a certain amount of controversy over that issue, as you may well be aware. We have not yielded to the temptation of trying to say what that

code shall consist of, simply because we recognize that in different districts in different parts of the state that standard might be different; that what would be -- I hate to bring this up, but the obscenity code, as you know, really relates to acceptable community standards, and I think that what we're trying to do is say that the school district may establish standards for speech and dress that are acceptable to the school and are in conformity, if you will, with general community standards.

SENATOR SEABROOK: Will the Senator yield again?

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

The Senator continues to yield.

SENATOR SEABROOK: That's an interesting point as it relates to the language question, and I guess it has a little to do with geographical areas, as well, because I have some concern about it, a kid who might transfer to another district and just so happens to hear the rap record, "Bitches With an Attitude," and if

he moved to a further district that had some problems -- and they are on the Top 10 chart in the rock industry right now. So would that be considered language that would be inadequate?

SENATOR COOK: Senator, I think you would have to -- if you are going to get into any kind of punitive action, you are always going to be subject to a review of what is reasonable and constitutional and, if the use of certain slang is part of your normal language and that were banned, that would probably exceed the constitutional limits of what you can do. On the other hand, if there are certain words which we usually define as four-letter words and people have them emblazoned on their T-shirts or they utilize those words in discussion in the classroom, or they use them in, if you might say, a threatening manner in normal discussion in the school, then you might -- then I think that begins to fall into the area where you might be able to define it.

Interesting area, and, again, I keep going off into dangerous territory here,

but it's a little bit akin to sexual harassment complaints. There's not a clear defining line as to what constitutes a sexual harassment. It is a pattern as to what you do and how you do it and how you say it, and I think that's why we've tried to let the school district make that definition that they can define what they consider to be a -- to create a problem.

Senator, part of the situation is I'm not trying to altogether deal just with violence. I think -- to talk about the philosophy for a little minute.

I think that part of the reason why we have violence in the high school is because at the elementary level, we often just kind of slough off activities on the part of younger children who just don't think they have to show any respect for the teacher or respect for the other students, and they call people names. They do all sorts of things, and we sort of say, yes, that's just kids growing up; and I'm not one who believes that we can have a rigid whip standard as to what perhaps you and I

experienced when we were in school, either.

SENATOR SEABROOK: True.

SENATOR COOK: But I think some place there is a middle ground.

SENATOR SEABROOK: Right.

SENATOR COOK: That's really what we're trying to do.

SENATOR SEABROOK: That was the point of concern that I had as relates to the language situation, and in New York City, where the mayor has a slogan that our city can kick your ass -- your city's ass, and if they move upstate they can create a language problem, and so that's why I have some concern about its usage in the language area.

SENATOR COOK: Senator, I'm also of the opinion that it's not inappropriate to establish a climate in which people understand that the school building and the school property is a place different from the street.

SENATOR SEABROOK: I agree.

SENATOR COOK: I think that perhaps part of our problem with school conduct

has been the perception that we have built, unintentionally, through the years, that there is no difference, and I think that part of the seriousness of education of a child -- how they regard education, how they regard the classroom, how they regard why they are there, is partially communicated by the fact that you say to kids, "You know, I don't mind if you say that down on the street corner, that's your business, but you don't say it here."

SENATOR SEABROOK: Right.

SENATOR COOK: That's part of the philosophy.

SENATOR SEABROOK: One other thing that I have a concern about the bill, and perhaps you can clarify it. There is the question that is fundamental to the rights which we cherish in America and that's due process, and one of the things that is within here, I saw that a criminal complaint or an alleged criminal complaint could actually remove the student from the classroom, just an alleged. We don't get removed from this house for alleged complaints.

So I have a question and a concern about due process, and that is, what provisions are provided in here, one, for due process; two, for legal representation that should be provided in this particular forum because you are actually going to a tribunal, and what's provided there?

SENATOR COOK: Senator, nothing is provided, and we've had this discussion two or three times. I realize through no fault of your own or other people, you have not been in the classroom -- in the classroom -- in the chamber.

As regards to the welfare of children, we have done things in law and they have been upheld that would not normally be due process, and I cited in discussion with someone else the case that if someone alleges that a parent is abusing the child that child welfare authorities may appear at the door and actually take that child out of the home immediately on the complaint based on the assumption that the higher responsibility of the state is to protect

the child from injury, and this is really on the same basis. It is based on the assumption that if you have a child who has done something that is serious enough to warrant a criminal complaint -- and we've used that as kind of a benchmark -- that what you need to do is get that child out of the classroom and into some other place.

We're not putting them in jail. We were not detaining them after school. We are not doing anything else except putting them in a different setting within the school until -- and this is where the due process comes in -- until the due process that relates to the criminal complaint is resolved in another forum, but it isn't related in the school, but it is really based on the assumption that you have a responsibility to protect the other children in the classroom; and, frankly, the teacher from what might be a criminal activity.

I had an instance in my district, and I'm sure other people can cite the same thing, where a child walked into a classroom and

shot the teacher. Now, if we had a due process that said, Well, gee, you know, this kid shot the teacher; maybe we ought to convene a board and we ought to have a hearing and we ought to discuss whether this child is an endangerment to people in the classroom," you know, three or four weeks later we might be able to take the kid out of the classroom.

Obviously, that's a stretch of the point, but the point being I think there's adequate precedent that it does not violate due process to assume that we have to protect the other children from danger.

SENATOR SEABROOK: Just one other question, Senator, what happens when the removal of that child on this alleged complaint, the complaint is found to be unfounded? Can that child bring an education neglect proceeding against that teacher for not being allowed the privilege to participate in a regular setting of that classroom in which they were assigned?

SENATOR COOK: Senator, there's no right to participate in a given classroom.

If you and I and everybody in this room attends a given school, they assign us to classrooms on some basis -- you know, whatever basis. And if they decide to assign us to one classroom with one teacher, they haven't violated our rights by doing that. So by removing that child -- and, remember, in other sections of the bill, it says you have to continue the education program.

SENATOR SEABROOK: Right.

SENATOR COOK: So by removing the child from that classroom, they really aren't violating their rights because they are continuing the education; and, also, as I pointed out earlier, they are not saying you got to stay after school or do anything of the other -- anything other that's punitive. It's simply at that point you are sort of saying, you know, we've got to protect these other kids. We need to get you down the hall in a room where you are not going to endanger them.

SENATOR SEABROOK: Thank you, Senator.

On the bill.

ACTING PRESIDENT KUHL: Senator Seabrook, on the bill.

SENATOR SEABROOK: I think the bill which we are looking at today has some merits but a lot of deep concern. I think that what Senator Cook is attempting to do is something that's real, and we understand that. Those codes existed when I was in school and when Senator Cook was in school in terms of the duties and responsibilities and that code that existed from the family that exuded into the school, so we understood that.

But I think that there are some grave concerns as it relates to the real issues. I think that dealing on the basis of those individuals who bring weapons into schools is certainly on point and should be dealt with, but I have some real concerns about changing the code that is already in existence and certainly has not shown that it needs to be changed as it relates to dress, although I do believe that there should be a uniform pattern that says that teachers as well as students should have some

sense of a dress code, but since we live in America and we allow people to -- as long as they present themselves, they are entitled to dress as they desire.

I think also, when we talk about the whole question of language, I have some concerns, although I do understand. But when you hear those in higher offices than us use those particular words that we thought were considered bad and profane words and now are a part of the lexicon of the day, so we have some question about how do we take away that so there are some constitutional questions that I think need to be answered.

But I think as it moves in the direction of talking about dealing with this question of violence, I have a concern because I think that when we start allowing the suspensions and involvement of teachers involved in suspension, we've seen what has happened in special education in our society, and in particular in New York City and the higher percentage of African-Americans who are the

predominant males in special education. They represent 87 percent of all of the suspensions in New York City, and so there's a serious concern and a problem; and does the dress code or does the language create that problem that causes the suspension?

I dare say that there are some other compelling factors that I think that this body should look at which I think could eliminate a lot of the violence and problems within schools. I think if we decided to spend the amount of dollars that we spend on a kid in a private institution, that we produce all of these individuals. Then we spend $16,000 in a school in the Bronx in Riverdale, which are private schools, and we spend about $7800 on a kid in the public school system, and sometimes less. So I think when we do that we are basically saying you get what you pay for.

I would hope -- and I agree that there should be conduct within the schools and responsibility, and teachers should have more responsibility as well as dealing with the

administrators. But I think we're really moving down a very slippery slope when we start treading on some constitutional questions, and perhaps a bill that specifically deals with cleaning up that act on violence, I think it's apropos to deal with that. When we start talking about dealing with these constitutional questions, I have grave concerns about dealing with that as it relates to children, although I applaud some of the things that's in the bill.

I'm in total agreement that we need to begin to focus on that and direct, but I would say that this bill right now is a little too broad and it treads on dealing with some constitutional questions.

ACTING PRESIDENT KUHL: Chair recognizes Senator Montgomery, and also to remind the members that this debate started at 11:18.

Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President. I will be as brief as I can. If the sponsor, Senator Cook, would yield.

ACTING PRESIDENT KUHL: Senator Cook, do you yield to Senator Montgomery?

The Senator yields.

SENATOR MONTGOMERY: Senator Cook, I also certainly applaud your wish to establish sort of a code of behavior and interaction, a standard, I suppose, for all of the parties within a school community. But I would like to ask you a question.

Your bill spends a lot of time, if I'm on the right bill, talking about dealing with parents who are deemed to -- or students who are deemed to be educationally neglected by their parents, and I just wanted to ask you a couple of questions about that.

On page 5, starting at line 23, where the new section that you are adding, it says, "Where a request for the filing of a juvenile delinquency petition is submitted by a school principal or school superintendent pursuant to" section, subdivision, and what have you, "such principal or superintendent may suspend such pupil for a period not to exceed 20

school days, and the hearing requirements of this section shall be stayed, pending a determination by presentment agency or district attorney to commence a proceeding against such student. If no proceeding is commenced within such time period, the hearing requirements apply."

Can you explain? Does that mean then that the school itself now can -- the period of time that a student can be suspended can exceed 20 school days, depending on the ability of the court to convene or to get a date? What does that mean, that 20-day section?

SENATOR COOK: Only, Senator, if there's actually a delinquency case that is filed. In other words, they can't suspend them just on a whim. At that point, if they are involved in a juvenile delinquency proceeding, then they can stay suspended for the duration of that proceeding.

SENATOR MONTGOMERY: So who determines that it's a juvenile delinquency -

it says a petition.

SENATOR COOK: If there is a petition in the court, yes, for the pendency of that.

SENATOR MONTGOMERY: In other words, this is a case of a child who has already been determined to be a juvenile delinquent?

SENATOR COOK: No, it's the case where you might be filing simultaneously - well, it could be, but it's a case where you might be filing simultaneously a petition.

Senator, the safety valve in this is the other piece that says you got to continue the educational program. Reluctantly, I have to confess that that is going to cost the district some money. The district is not going to be anxious to have that child suspended for any longer than they have to, knowing that during that period of time they are going to have to be paying for an alternative type of education. So I think that's the reason why the school is not going to do it for any longer than they have to; and, secondly, it could be argued that it's

actually beneficial to the child to have the alternative education, because in many instances those types of schools, those types of programs really do help children who are having problems in school or creating problems because they are having problems.

SENATOR MONTGOMERY: I was just trying to clarify that, if the principal has filed for a juvenile delinquency petition with the court, the child can be suspended up to 20 days. So the bill provides for that.

All right. I just wanted to be clear about that.

Senator, I think it's at the bottom of that same page, where it talks about the jurisdiction of the court depending on the age referral to presentment agency or district attorney, on line 40, where a school principal or superintendent determines that conduct by a student endangers the health, safety or security of others, including but not limited to conduct constituting possession of deadly weapon, which clearly we know is beyond -- it goes beyond just

simply misconduct.

But you are now saying that the principal or that school or the school district or an agent of the school will file for that child to go directly to the D.A. or some other agency of law.

SENATOR COOK: They may file.

SENATOR MONTGOMERY: So the school now has a direct relationship, in other words, with the D.A.'s office.

SENATOR COOK: For the complaint, Yes.

SENATOR MONTGOMERY: The same with the police department. So they no longer have to deal at all with the local police department. They can just go directly to the D.A.

SENATOR COOK: Yeah. Now, that presumes that they have the expertise to collect the evidence and do all that kind of stuff, and I think they do that under some hazard because, as you know, under the rules of evidence, if they take the information in to the D.A. which

has been improperly developed and they're not trained to do that kind of thing, they may well not have much of a case. So I think they do that with some -- under some -

SENATOR MONTGOMERY: Now, Senator, you know, in New York City there's been this ongoing battle between the mayor and the Board of Ed' regarding the police department being involved, so I'm just, you know, noting that this seems to move that around altogether, that we no longer really need to have the police there, we can just -- the school itself has a relationship with the D.A. or can have in cases where the student is deemed to -- to have violated your code vis-a-vis this legislation.

SENATOR COOK: Well, Senator, you say violate the code. That's -- that's not quite true.

SENATOR MONTGOMERY: Or violated the law.

SENATOR COOK: They have to have violated the law and actually endanger someone, and as you're aware -- I don't know whether it

happens in every school building in New York, but the ones that I have been in have a security -- usually, I guess it's a private -- a private security force that's in the school, and there may at some point be -- restrained a student who was actually endangering other people and that permits the school administration utilizing, I guess what resources they have. Usually it's the district attorney.

SENATOR MONTGOMERY: Senator Cook, when a parent has been deemed to be neglectful, who can make that determination and how does that happen vis-a-vis your legislation?

SENATOR COOK: It has to be the Family Court judge, Senator.

SENATOR MONTGOMERY: Who can refer that parent to the courts.

SENATOR COOK: Yeah. This is basically a petition -- it establishes a ground and a procedure by which the school district can -- and I'm being repetitious with some other people, but I don't know how else to say it.

Basically it goes to the Family Court, to be inartful about it, and says, "Look, we've tried everything under the -- that we know how to do to get the parents to come in, to cooperate with us and work with us to try to deal with problems that this child perhaps has and is creating in the school", and they have just plain refused to cooperate, and we cannot -- this child cannot obtain an education if there is not some action on the part of the parent, and they have to, obviously, make a showing before the Family Court judge that that is the case, and I would have to say I think this would be a very, very rare occasion on which this would occur, in the first instance, and secondly, that a Family Court judge would be -- have to be pretty well convinced that the case was -- was pretty overwhelming before the Family Court judge is going to make this kind of a finding. I mean, it's a little bit -- it's not quite like saying, you know, they haven't fed them for three days. That's pretty obvious.

I think the finding that somebody

hasn't cooperated in the education is going to be a little tougher to prove, but the point is that there are cases where families just plain refuse to cooperate with the school and hope fully this will be a little bit of encouragement for them to be a bit more open to doing that.

SENATOR MONTGOMERY: Okay. Thank you, Senator Cook.

Mr. President, just on the bill briefly.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I guess the -- while the intent of the legislation is noble and I believe certainly no one in this room would argue with the -- with the desire to have a standard of operating -- a standard of relating, rather, to each other in school the same as we have in this body and in other bodies that we operate in as adults is most desirable.

I do have some very particular issues that the bill, in my mind, does not address. One is that I think we create for the

school system an arm -- a position of being an arm of law enforcement, and I certainly don't believe that is either the intent of the sponsor or the desire of local boards of education and local schools, but this certainly -- this legislation, in my mind, does that, that we now have the school reaching directly into the courts, filing petitions against students and their parents for various infractions.

The bill states also -- there are two aspects that are particularly disturbing. One is that in an event where the school determines that the parent is neglectful, vis-a-vis, Senator Cook, then there is a determination that all of the children in that family are also neglected. So that if the parent is having difficulty with one child because that child happens to be a particularly difficult personality, has a particular conflict with the school for this year or maybe over a period of time, it is assumed that that parent is neglectful of all other children in the family, even though that may not be so.

There is an another section which provides for the fact that a person -- a family who is residing in a residence that is for homeless families or a family who is currently -- it says "in determining the jurisdiction of the court under this article, the child need not be in the care or custody of the respondent as of the date of the petition." So that parent may be in some sort of a treatment program or may be separated from the child at the moment for one reason or another, but the family may be living in a homeless shelter and the school can still petition for them to be brought to court under this law.

So I think it's quite interesting that we are establishing very strict standards of behavior for children and for parents, and we are also establishing that parents may even be arrested and jailed for up to six months under this legislation if they -- if they are deemed to be neglectful under this law, but we have not been able to somehow deal with how does the system respond with a lot more latitude and

flexibility so that it can more adequately reach out to provide support and, indeed, as you -- as you say in this bill, appropriate education. I mean, the school fails children by the millions and I don't -- I don't see anywhere -- I don't have anywhere any proposal as to what should we do about schools who fail children. So, obviously, that's -- that's something that we can't deal with here, and I'm not saying that you, Senator Cook, don't intend to deal with it and would not like to, but I do say that we've gone quite far, I think, in looking to make arrest of parents for being neglectful, as defined by this law, for allowing for a school to put a child into the court system on its own will and there's just not -- there's not the kind of supports and safeguards that I think are crucial, especially in the city of New York where we have some 200,000 students who are - who are suspended on any given day in that - from that system.

So, Senator Cook, while I understand your -- your desire to establish a

code, I think this just reaches a bit far in terms of making parents ultimately possibly the scapegoat for the failure of the system.

So I will be voting no on this, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 10. This act shall take effect January 1, 1997.

ACTING PRESIDENT KUHL: Call the roll.

The Chair recognizes Senator Wright to explain his vote.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Wright to explain his vote.

SENATOR WRIGHT: Thank you, Mr. President.

I had the occasion two years ago to serve with Senator Cook in several days of a seminar referred to as "Vision 21", and during that seminar, we had several days of interaction with school personnel, both at the teaching as

well as the administrative level but, equally important, we had the opportunity to interact with students, interact with individuals from the community, from the business community, all of the -- what have become known as the stakeholders, if you will, in the education process, and while we spend a great deal of time here in Albany talking about the finances of education, they wanted to spend time talking about what was actually going on within the school themselves, and one of the key issues was the environment of the school relative to safety and creating a learning environment, and what came through time and time again from the average individual participating in this several days seminar was "Our focus is all wrong. We spend all of our time focusing on the three and four percent that are disruptive and not focusing on the other 95 percent of the students who are there to learn."

I think what this bill does is says "We recognize the rights of the other 95 percent of the student population who are in

that school to learn." I think Senator Cook should be commended for his efforts. He's starting in the right direction in terms of what needs to be done, in terms of restoring an environment to our classrooms that's conducive to learning where our children can feel safe and in turn the teachers themselves can feel safe.

I'm fully in support of this bill and vote aye. Thank you.

ACTING PRESIDENT KUHL: Senator Wright will be recorded in the affirmative.

Senator Leichter to explain his vote.

SENATOR LEICHTER: Mr. President. Senator Cook, I think you've addressed a very important issue, and since I know you, I know you've addressed it in a very sincere fashion and have given it a lot of thought, but unfortunately, I think the way this was rushed to the floor has really marred what should be a much more thoughtful and much more deliberative process to deal with a very important issue.

You yourself -- I heard you say -- I was in our room and heard you over the squawk box -- I think I heard you correctly, the bill has been sort of patched together from various bills, that the people in the advocacy groups, the school boards, those who really are most affected by the bill haven't even had a chance to look at it, to respond to it, to put in their memos on it. Where are the hearings before these groups on this bill? You put in a bill and you have to admit that you have a word in there where you talk about expulsion when it doesn't even exist under the law. You set up a very complicated new procedure for the Family Court. Has this been checked with OCA? How is this going to work? I'm not even sure that that sort of an agency can act within the confines of the judicial system. It seems to me that you're -- you're mixing some executive and judicial functions.

So, Senator, this really deserves more thought, more consideration, more work. Should we have codes? I think that's an

excellent idea. Should the penalty be as you've provided in here? I don't know. I see provisions in there just upon the filing of any criminal complaint, a student is ousted. You know that a criminal complaint can be filed by an individual. I can go to court and file a criminal complaint against you. Under the wording of that bill, that person would be suspended from school. There are things of that sort that really need work, that need to be thought out.

I know that you're dealing with this in a bona fide manner. I don't think it's just a matter of getting headlines, and so on, and I know there's a philosophy that you people have about having codes, having greater discipline, and you may be right in some instances, but let's do it in a deliberative, careful fashion. I think that we hurt the issue in proceeding as we have with this bill, and while it has some good ideas, it really is not well worded. It's not well thought out. It requires more work.

I vote in the negative.

ACTING PRESIDENT KUHL: Senator Leichter will be recorded in the negative.

The Chair recognizes Senator Mendez to explain her vote.

SENATOR MENDEZ: Thank you, Mr. President.

I also think that Senator Cook has come up with the idea -- with proposing a solution to a problem.

However, I have great, great displeasure with some aspects of this bill because it ends up being, Mr. President, a marriage between the public school system and the criminal justice system.

The positive aspect of the bill is that about the code of conduct. It should be like years before in which students, all students did go to school with a uniform and then parents who were not that affluent wouldn't have to be accosted by their own children to buy these kinds of jeans or these kinds of sneakers or whatever. This is a dangerous thing.

The negative aspects of the bill, Mr. President, I believe violate horribly the rights of the students, and we must find solution to the violence in schools in a different fashion. In fact, everybody's accepting about the violence in school. In New York City, there are at least 1.1 million students, one percentage of students who are - a simple -- a simple -

ACTING PRESIDENT KUHL: Excuse me, Senator Mendez.

SENATOR MENDEZ: -- a simple little process -

ACTING PRESIDENT KUHL: I can hear you now. Thank you.

SENATOR MENDEZ: -- of dealing with unruly children has existed for years and years in our schools, and that is a teacher has the right to take an unruly child, a child that misbehaves and send him or her to the princi pal's office, and then the executive director of that little school, in this instance the principal, is the one that should be dealing

with these.

For those reasons, I vote in the negative.

ACTING PRESIDENT KUHL: Senator Mendez in the negative.

Senator Abate to explain her vote.

SENATOR ABATE: Yes. I would like to explain why I am not voting for this legislation.

All of us have started out applauding Senator Cook, and I do that because -- I do that also because I think everyone in this room has an enormous amount of respect for Senator Cook and we know that when he sponsors a piece of legislation, he does it in an informed, thoughtful and in a manner because he believes in what he's putting forward.

I oppose this bill on two grounds. One is the process. I received this bill for the first time this morning. Sometimes bills aren't as complicated as others. We can get bills ten or fifteen minutes in advance,

look at them, understand the intent and also look and understand what would be the implications of the enforcement of the provisions of this bill.

This bill, however, is very complicated. It involves a lot of pieces, not just of our education system, but as impacts on other systems also. I think we should not rush to pass this bill because I don't know the effects of this bill. I think this is a kind of bill where we should have public hearings. As Senator Leichter said, I would like to hear from Family Court to see what it would mean to move the jurisdiction of education neglect cases from the school system and move them to the Family Court system. What does that mean in terms of presentment? How are the corporation counsel or other attorneys going to be involved? There's so many unanswered questions in this bill that I believe need to be answered.

I'm particularly troubled by the provision about automatically suspending students, and I'm told that that does not mean

we kick students out of the school. It means we remove them from classes. There may be some jurisdictions that, when you move someone from a classroom, you move into an empty classroom and nothing will be going on. I don't know what that means, and clearly it cannot be automatically done just because there's been a filing of a Criminal Court complaint. It may or may not warrant removal, but one has to look at some kind of fact-finding process to see whether it warrants removing that child from the classroom.

I think the way many provisions of this bill are written is just much too broad. I agree that we should not tolerate violence in the classroom. Teachers should not be exposed to violence. I can imagine what it must be like to be assaulted as a teacher and the next day to have to come into that classroom and face that same situation. I mean, I think we're all sympathetic. I'm not sure, though, that the provisions in this bill protect teachers, will encourage quality education and

also protect the rights of students at the same time.

So while I agree with the intent, the devil is always in the detail, and I'm hoping that those of us who do not support it today send a strong message to you, Senator Cook. Please take another look at this bill to see if we can accomplish what you want to do but in a much more, I think judicious, middle ground way, and I think we'll be much more effective in doing so.

ACTING PRESIDENT KUHL: Senator Abate in the negative.

Senator Marcellino to explain his vote.

SENATOR MARCELLINO: Mr. President, thank you.

And I too would like to rise and congratulate my colleague and chairman of the Education Committee, Senator Cook, for bringing to the floor an issue that has to be addressed and must be addressed.

For many years, I taught in the

New York City school system and was responsible for discipline as the dean of students in that school. The situation of a teacher in a classroom trying to teach when students feel that the discipline code in the school has no meaning because it cannot be enforced on them, that lawyers now have the right to sit in on what used to be guidance situations, where teachers have to continue teaching a class after a student gets up, curses them out because he or she doesn't agree with something or doesn't like something that was said, or has a fight with a kid next to him, curses the teacher out and then 40 minutes of a class is left and you have to teach a class that has been disrupted, the students are in disarray and they're not ready to learn. That whole system has got to change.

If we're talking about quality education, and we do constantly talk about quality education, how education is the most important thing, that our students and children is the most important thing, and we all want the best for our students, I say to you and I submit

to you, you can't have quality education without a safe environment for teachers to teach and students to learn.

Those who are unruly must be taken out of the classroom so that those who want to learn can learn, and the only way to do that is to seriously address the issue of discipline and control.

Public school education is taking a major hit, is not working, is failing throughout this country. You hear it over and over again how public school systems are not doing the job they once did, how they're failing, and I submit to you, one of the reasons is because they no longer have control of the students in the system. We've over rationalized. We've put too many legal impediments in the way of control.

Public schools must take everyone who walks in the door and cannot exclude anyone. I agree with that 100 percent. That's the philosophy of public education and it should continue. We're a great nation because of

that. Wouldn't do anything to change that, but those who will not learn and go out of their way to prevent others from learning must be removed so that those who wish to learn can learn. This bill begins the process, begins the debate. I will support it. I vote for it and I applaud Senator Cook for bringing it up.

Thank you.

ACTING PRESIDENT KUHL: Senator Marcellino will be recorded in the affirmative.

The Chair recognizes Senator Gold to explain his vote.

SENATOR GOLD: Thank you, Mr. President.

First of all, before I make any other comments, I do want to take some difference with Senator Marcellino when he talks about lawyers and legal impediments. Maybe it's my background and my prejudice, but I think an awful lot of lawyers save as many lives as doctors, and let's not belittle civil rights and all of that.

The other point I want to make is

that we have a process, conference committees - I don't know whether we're going to get to that. Maybe during the budget we'll get to that. I think that there are some times when a signal goes out that something's important and it's just got to be on the table, and I think this is one of those situations, and were I to vote in the negative, I would vote in the negative based upon the concerns of Senator Abate and the concerns of Senator Leichter.

In an earlier discussion, someone said to Senator Abate, "Yeah, you're talking like a lawyer" and she looked at him and said, "Well, what are we? We're lawmakers. We're lawyers. This stuff has legal implications and we ought to be apprised of that."

I am going to vote for the bill, and the reason I'm going to vote for it is that I think that there are very strong ideas that the bill is dealing with that should be discussed. I cannot believe that the Assembly would pass this bill in its current form, although I can believe that if we push hard

enough, the Assembly will get involved in this issue and perhaps we will have a Conference Committee and perhaps we can have Senator Babbush and Senator Leichter, Senator Abate and we have people on that committee who can deal with some of the technical aspects which, in all fairness, Senator Cook, I think could use a little polishing up, but I don't know how we get to polish unless we get it out there on the table, and while I don't believe in one-house bills, I don't believe in all of that, I do believe that every once in a while, we need an issue on the table out there because it's a sign that we're going to deal with it, and I don't know how you cannot deal with it. I don't care whether you're a liberal or a conservative or what you want to call yourself. In the privacy of personal conversation over a Coke or a martini, everybody I know admits that, if you want children to have an opportunity, they've got to be able to get a safe education, and so it's something that we can argue about the commas, we can dot the i's, cross the t's, and

more importantly, because that's not what Senator Leichter and Senator Abate were talking about. They were talking about things which I think are really very substantive. We've got to get to those issues also.

But I'm going to vote yes today to get it out on the table and, Senator Cook, my congratulations.

ACTING PRESIDENT KUHL: Senator Gold will be recorded in the affirmative. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 360 are Senators Abate, Leichter, Mendez, Montgomery, Paterson, Seabrook and Smith. Ayes 51, nays 7.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 365, by the Senate Committee on Rules, Senate Print 5157, an act to amend the Education Law, in relation to the prompt initiation of

disciplinary action.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

SENATOR MONTGOMERY: Explanation.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Cook, an explanation has been asked for by two Senators, Senator Montgomery and also Senator Dollinger.

SENATOR COOK: Mr. President, this essentially -

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos, why do you rise?

SENATOR SKELOS: Yes. If we could have the last section read for Senator Leichter to vote.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of September.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Leichter, how do you vote?

SENATOR LEICHTER: No.

ACTING PRESIDENT KUHL: Senator Leichter will be recorded in the negative. The roll call is withdrawn.

Senator Cook for an explanation.

SENATOR COOK: Mr. President, the prob... well, in a very confined way, this bill parallels the other bill, the real difference being that it permits the teacher to actually suspend the student from the classroom for up to five days. It does not have any of the Family Court provisions in it, but it does say that the teacher may actually suspend the child from the classroom, not suspend him from school, and it does require that the educational program be continued.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator

Cook, do you yield to Senator Dollinger?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Just a couple quick questions, Senator. First of all, so I understand it, on page 2 of the bill it talks about alternative educational settings that disruptive students will be placed in.

SENATOR COOK: I beg your pardon? I'm having trouble hearing.

SENATOR DOLLINGER: I apologize. On page 2 of the bill it talks about the alternative educational settings. Do you know how many districts in the state currently have those alternative settings?

SENATOR COOK: Senator, no, I don't. I assume that probably everybody has an alternative setting of some sort, but whether it actually falls within the confines of what you and -- you might be envisioning, I'm not sure that's the case. It's a little bit -- as I said on the other bill, it depends on the school

district. In a very small school district, the alternative setting may be a tutor going to the home.

SENATOR DOLLINGER: Okay. Through you, Mr. President, if Senator Cook will continue to a yield.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: What happens if the student in the alternative setting is disruptive?

SENATOR COOK: Well, Senator, I think that there's no particular provision in this bill because -- and that's part of the problem of the reason in our comprehensive bill that we put the Family Court provision in there because we really felt that you needed some other step. You can go through, with this bill, all of the steps that are currently available in terms of a disruptive student. The real

difference that this makes with current law, frankly, is that one provision that the teacher may remove the student from the classroom.

SENATOR DOLLINGER: Let's talk about that again if we can, Mr. President, if Senator Cook will yield.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: As I read this bill, what it says is that a teacher may suspend -- may remove a student from his or her classroom for five days.

SENATOR COOK: Yep.

SENATOR DOLLINGER: Just so I make sure I understand that, if I'm disruptive in Teacher Onorato's classroom and I engage in disruptive behavior, he can toss me out of the classroom for five days, but I can still go to Senator Montgomery's class, can't I?

SENATOR COOK: You could go

wherever the administration tells you to go. In other words, the principal -- as I envision it, the teacher would simply call the principal and say, "I'm not going to put up with this kid anymore. I want him out of my classroom". It then becomes incumbent upon the principal to say, "All right. We'll put him in Senator Montgomery's classroom or somebody else's or we're going to put him in the back office and send a teacher down there" or whatever. So that's -- it's really moot on that, but I would point out, Senator, that's not really different from what currently happens.

SENATOR DOLLINGER: Well, that's what I'm trying to find out. I understand -- I read it -- and again, I'm one of those lawyers who tends to read these things very carefully as I expressed earlier, because I want to make sure when we pass a law, we don't have some day have the courts doing something that we didn't intend, and the best way to do that is to make sure that our draftsmanship is precise and accurate, but as I read this, this says that a

teacher -- Teacher Onorato can say to me, student "You have been disruptive. You can't come to my class. You're being tossed out", and when I went to school, that was being known as going to see the principal. When you were sent down to the principal's office, it was akin to going to purgatory when I was in school, but you go to the principal's office, then Teacher Onorato can continue to exclude me for up to five days of class just from his class, but as a student, I get to continue to go to all my other classes, all right? And this bill says that you have to have an alternative education so I make up for the five classes that I missed with Senator Onorato, because I agree with you. If we get to the point where it goes to the principal and the principal decides that the conduct is worthy of suspension, that then triggers the ten-day suspension language which is contained on page 3 of the bill, is that correct?

SENATOR COOK: Yeah. And - which isn't a lot different -- while the present

suspension period, I think is five, it extends it to ten.

SENATOR DOLLINGER: Well, but - again through you, Mr. President, that's perhaps what I don't understand. This bills says that the teacher can remove the student from his or her class for five days without any kind of hearing except the informal hearing that's referred to here, which is a conference initiated by the principal with the parent, which they can come in for an informal conference. The principal could trigger a suspension under the language in paragraph (d) which says "in case of a suspension" -- a suspension would be a provision that says, "You don't go to any class. You don't go to Teacher Onorato's, Teacher Montgomery's or any other class. You're suspended and you have to go to an alternative setting", is that correct?

SENATOR COOK: Yeah. Senator, if I may try to uncomplicate this.

SENATOR DOLLINGER: Okay.

SENATOR COOK: The only

difference -- two differences between this bill and the present law is the ability of the teacher to suspend the student from their own class for five days and the extension of the suspension from school which is currently five days to ten days. Everything else stays the way it is in present law.

SENATOR DOLLINGER: Okay. Again through you, Mr. President, just for a clarification again. The suspension can't occur without the formal hearing occurring, is that correct?

SENATOR COOK: Up to ten days, Senator, without a hearing, understanding that there is a commissioner's regulation that says that they're supposed to continue to have an education program but, of course, there's no legal teeth -- well, there's no statutory teeth in that.

SENATOR DOLLINGER: Again, I just want to make sure I understand this. On page 3 of the bill, it says -- Subdivision (d) which changes from five days to ten days, my question

is it says here "the suspending authority shall provide the pupil with notice and if the pupil denies such conduct, explanation -- an opportunity to explain his version of the relevant events. The aforesaid notice and opportunity shall be heard to take place prior to the suspension of the pupil."

SENATOR COOK: Senator, the suspension -- if the school proposes to suspend the student for more than ten days, then that hearing process clicks in. If it's less than that, then it doesn't. You don't have to have the hearing. Under present law, if you suspend a student for more than five days, you have to have the hearing. If you don't suspend -- if you only suspend him for up to five days, then the hearing isn't necessary. The only change we're making is changing five to ten and permitting the teacher to suspend the student from the classroom.

SENATOR DOLLINGER: But again, just to make sure I understand this. Section (d) says if you're going to suspend for less

than ten days -- ten days or less, you have to have a hearing before you can have the suspension occur.

SENATOR COOK: Senator, we're dealing with some semantics here. What you're talking about and the language you're referring to says, in effect, the principal has got to bring the student into the room and confer with them and give them a chance to make their case, but it is not in the legal sense of the word the hearing that the due process in which the student really has, if you will, rights that they can affirm.

SENATOR DOLLINGER: Okay. Again, let me make sure -- I'll condense it real quickly. The teacher gets to remove the students for five days with just an informal conference. If the -

SENATOR COOK: And the -- no. And also the principal can suspend with an informal conference.

SENATOR DOLLINGER: Right, but the teacher gets five days informal conference.

If the suspension is going to be for ten days or less, than there has to be what is sort of an interim process-

SENATOR COOK: That's another informal conference.

SENATOR DOLLINGER: -- which is not a formal hearing, but nonetheless is a hearinglike setting in which relevant conduct explanations can be given.

SENATOR COOK: It's probably a parent conference. You bring the parents in, the kid in, you say, you know, "You have been a real disruption here. What do you think about this?" And after all is said and done, the principal says "You know, you're going to have to pay some penance. You're out for ten days." That's about what happens. It is different from the formal hearing process where everybody gets to assert their rights.

SENATOR DOLLINGER: After ten days, full due process protections click in? Okay.

On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: I guess I concur with Senator Cook. I don't see that this has a significant alteration from the current practice with which we try to deal with disruptive students. It does provide for alternative settings.

I think Senator Cook may be familiar with the experience in Rochester, where in an attempt to solve the problem of disruptive pupils, the city of the Rochester developed an alternative school, Josh Lofton, for pupils that had disruptive problems. That has already come and gone. We've already sort of been through that phase in Rochester. There were great difficulties with that school. Only portions of that concept of a separate school remain, and we've tried to deal with the disruption problem on a school-by-school basis.

So it seems to me this moves in the right direction. I think that the balancing that's struck here between five days for a

teacher to remove from their class, it's narrowly confined to just include the class. A teacher can't say "You can't come to school." What a teacher can say is "You can't come into my classroom because of your behavior." It seems to me that's reasonable.

The interim due process protection of a suspension, which would be a removal from all of your classes for a period of less than ten days has some informal due process and after ten days you then have the full due process protection. I think that's a reasonable balance and I'm prepared to support the bill.

I would also point out, I think, Senator Cook, you and I may have gotten our education in the same places. I talked about going to the principal's office as like going to purgatory. You say that those who go there do penance. It may say something about our collective and shared pasts.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate on the bill.

SENATOR ABATE: Yes. Mr.

President, will Senator Cook yield to a very brief question?

ACTING PRESIDENT KUHL: Senator Cook, do you yield to Senator Abate? The Senator yields.

SENATOR ABATE: If I can preface my question with just a remark. I'm less troubled by this bill. I think teachers need the tools to control the classroom, but I am concerned about the language itself, if it's going to be interpreted correctly.

If you look at subsection (3) (b), it describes who is a disruptive student, and clearly the first part talks about individuals who commit an act of violence. I think that's clear in terms of interpretation.

The second part, though, concerns me, "or upon the personal property of a teacher or any other person lawfully upon the school district property." So does that mean if a student kicks the tires of a car outside or breaks a window or -- does it have to be within the classroom? I mean, what are you talking

about when you wrote this section; what do you mean, violence upon property.

SENATOR COOK: Senator, I'm advised that the teacher can only the remove the student under (3)(a), that the -- I don't know where it says that -- okay. If you look on line 42 -

SENATOR ABATE: Yes. I see the word "after" -- oh, in the same section? Yes - no, I understand that the teacher -- upon these acts, if they identify a disruptive student, the teacher could remove that individual from his or her classroom. I guess I would ask you and would you consider looking at drafting that language, "violence upon personal property", because I think that's subject to interpreta tion, and does that mean kicking some books that are on the floor, and does it have to be more narrowly defined; and that's my concern.

Senator Cook, is that a yes?

SENATOR COOK: Well, Senator, I guess I have to confess, I didn't write the bill.

SENATOR ABATE: Right. Okay. Thank you very much, Senator.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of September.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar 365 are Senators Leichter and Montgomery. Ayes 56, nays 2.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 368, by Senator Levy, Senate Print 1410, an act to amend the Penal Law, in relation to the offense of assault in the second degree in

certain instances.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 57, nays 1, Senator Montgomery recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator DiCarlo.

SENATOR DiCARLO: On that last bill, 368, I would like to vote in the negative, no.

ACTING PRESIDENT KUHL: Senator DiCarlo will be recorded in the negative on Calendar Number 368.

THE SECRETARY: Calendar Number 369, by the Senate Committee on Rules, Senate Print 5162, an act to amend the Penal Law, in relation to harassment of teachers and school personnel.

SENATOR PATERSON: Explanation.

SENATOR VOLKER: Mr. President, although I'm not Senate Rules, I'm the closest thing to Senate Rules right now.

This legislation, as the title that was read, says -- would provide that any person who, with intent to harass, annoy or alarm a school employee, which would mean a teacher or anybody employed by the school, subjects that employee to physical contact on school grounds or within 1,000 feet of school grounds would be guilty of aggravated harassment, which is a Class A misdemeanor.

Basically what this does is to elevate what is now a violation, it's called an offense or violation to a misdemeanor. A misdemeanor means that you can spend up to a year in jail, and that's basically it. This

type of bill has been asked for by a number of groups, particularly in New York City and in the urban areas who have seen an increasing number of assaults or near assaults as they're called, particularly on school employees.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I believe there's an amendment at the desk.

ACTING PRESIDENT KUHL: There is an amendment at the desk.

SENATOR DOLLINGER: Mr. President, I would waive the reading of the amendment and ask for permission to explain it briefly.

ACTING PRESIDENT KUHL: Reading of the amendment is waived. Recognize Senator Dollinger to explain.

SENATOR DOLLINGER: Mr. President, this is an amendment that incorporates a provision of a bill that I've carried for the last year that deals with a

problem very supportive of the problem that Senator Volker of the Committee on Codes has raised with respect to this bill, the problem of what happens inside the classroom and on the school grounds with respect to teachers.

My concern is and, frankly, stems from incidents that occurred in my home district in Monroe County. It's the safety and security of children going to school. We have had a number of highly publicized incidents in Monroe County where people have driven by school children approaching schools and harassed them and threatened them, and we've been told by the Monroe County Sheriff's Department that they don't have an adequate tool to use against those whose conduct annoys or threatens children on their way to school.

So what this amendment seeks to do is to raise that conduct, the conduct often times of older children, in some cases adults, in some cases people driving in cars as they approach children who are going to school, that it will raise it to the level of aggravated

harassment and make it a Class A misdemeanor to engage in that kind of conduct.

This specific statute relates to an incident that happened actually next door to my district in the 55th District at the Jefferson Middle School in Pittsford and - maybe the Jefferson Primary School in Pittsford, when a car approached three school children as they were walking up the driveway to school, made threatening, annoying comments to them, and we were told by the sheriff of Monroe County that they couldn't prosecute that crime other than as a violation.

So this is a bill that I think addresses a very specific problem. The same types of concerns about security for those inside school buildings should extend to those who are outside school buildings, and most importantly, the most important people in our schools, the children who are walking and need to know that we in this state will protect them while they walk to school.

I would ask that this be

amended. It amends the same section. I believe it's the right thing to do to send a message to everyone in this state that we will protect our children as they walk to school. I'd ask that the amendment be accepted, Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Volker on the amendment.

SENATOR VOLKER: Mr. President, I would only say, Senator Dollinger, that that is a problem that you probably don't realize what you've done here, but we looked into it and this is really overkill. What you have done here is you have made a misdemeanor for "any". This could be inside the school with a shoving match where a shoving match between two 15-year-olds could end up a misdemeanor because it would not only apply to people outside the school but would also apply to people inside the school and if they're 16 or under and they have any relationship to the school, you would make a shoving match between two juveniles very potentially would be subject to a misdemeanor.

I don't think you really intend

that. I think the problem is the reason you put that section in there that says "or to a person under 16 years of age" is because quite obviously once you get outside the realm of the thousand feet of the school district you can't cover that unless you raise the statute generally. So you have hit the problem.

The real way to deal with this I suppose is to raise the penalty for the statute in general. We have had some difficulty doing that, particularly on the other side of this Capitol. What we are specifically targeting here is the problem people within the school. We'd be happy to talk about dealing with the issue with children and, by the way, I'd be happy to talk to the sheriff of Monroe County. I can assure you that there are some things that could be done if those kinds of situations happened on a regular basis. There are some - some law enforcement things that can be done to deal with that, but I think part of the problem is you are probably dealing with juveniles on juveniles and that's always a big problem

because of the Family Court situation, and that's not so easily resolved either in this house or in the other house.

Let me just say to you that I think we're trying to deal here with a very specific problem, with the problem on the school grounds or within the proximity to the school grounds that involves employees, not just teachers, but school employees. I think your proposal is something to look at but, frankly, I think it goes too far and I think would doom this whole proposal to defeat in the other house, without question.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I would say that we did have a discussion about this in the Codes Committee, but it seems to me that we so seldom in this house get a chance to take care of a specific problem, and I agree with the chairman of the Codes Committee that the bill is -- as drafted on the floor, is aimed and targeted at a

specific problem.

What I'm suggesting is that the question that I'm calling attention to is equally as significant, equally as important, and from my perspective as much a problem in my district as the problem that's highlighted by this bill. Since what we're going to do is change the aggravated harassment sections of the Penal Law to protect the class of people inside the school, we ought to change the aggravated harassment to protect an even more vulnerable class of people who are on school grounds or approaching the schools.

So it seems to me that we get - seldom get chances to have bills come up to change the aggravated harassment section involving schools and conduct in schools. Let's do it as a package. Let's protect the kids on their way to school. Let's protect those in buildings. If it's overly broad, it can either be worked out in conference committee or, quite frankly, I'm one of those who have been told a number of times in this chamber, Don't worry,

we'll let the judiciary apply a reasoned law to these statutes and we won't have to worry about them being overly broad because the judiciary will correct that problem in the event it becomes one.

ACTING PRESIDENT KUHL: Excuse me, Senator Dollinger.

Senator Nozzolio, why do you rise?

SENATOR NOZZOLIO: I rise to ask Senator Dollinger if he would yield to a question.

ACTING PRESIDENT KUHL: Senator Dollinger, will you yield to Senator Nozzolio?

SENATOR DOLLINGER: Yes.

ACTING PRESIDENT KUHL: Senator Dollinger yields.

SENATOR NOZZOLIO: Thank you, Mr. President.

Rick, you're normally very tenacious about drafting standards, about legislative language that could be subject to misinterpretation.

SENATOR DOLLINGER: I appreciate the compliment. Frankly, I don't understand - I can't understand how since none of my bills make it to the floor, so -

SENATOR NOZZOLIO: However - however, I think there's a problem here, Rick, and I looked at section 3 (aa) line 7 of the amendment which talks about shoving, kicking. In effect, Rick -- Senator Dollinger, would not an individual who was under 16 on a JV basketball team shoving another individual on the floor of the gym be subject to penalties under this statute that you're suggesting?

SENATOR DOLLINGER: I don't think there's a court that would apply that kind of reasonable interpretation of this statute. No, I don't believe that would ever apply.

SENATOR NOZZOLIO: No?

SENATOR DOLLINGER: Any more so than, quite frankly, if a 15-year-old while playing his teacher on the same basketball court happened to shove the teacher. I don't think, under Senator Volker's statute, that would

constitute the same kind of conduct.

SENATOR NOZZOLIO: Senator, your language says that "shove or otherwise subject such person to physical contact." Contact in and of itself under your language will, in fact, as I read it, subject a broad interpretation and I believe that because of that broadness that this is so broadly written that it -- although the intent may be very good, I believe in effect what assurances -- I mean, put that in the form of a question that what assurances do we have at all that some legitimate sanctioned athletic activaty or a pick-up game that may not be sanctioned out in the school yard, be not subject to misinterpretation?

SENATOR DOLLINGER: Well, Mr. President, first of all, it's the same language, the same kind of language is used in the underlying statute. Seems to me that that criticism could apply to the legislation proposed through the Committee on Rules through Senator Volker, and I point out that a reasonable court, a reasonable court, a

reasonable judge would say, Wait a second. You go on a basketball court, you consent to a certain amount of physical contact.

This certainly doesn't affect that. This is a question where the conduct is unconsented. I think anybody would say that shoving a teacher on a basketball court, an unintentional shove that is the kind of consentual activity that's part of contact sports.

What this is designed to do pure and simple is to amend the statute to say, if you pull up next to someone, a little kid walking to school and you harass him or threaten him, it's going to be a Class A misdemeanor.

As I pointed out, and I talked to Senator Volker, perhaps he could talk to the sheriff of Monroe County or the district attorney of Monroe County. When we had an incident back there in the spring, they called me and said, We can't do it. We need changes in law.

The aggravated harassment statute is the way to do it. At the time Senator Jones and I drafted this bill specifically at their request. I now specifically request on behalf of the district attorney of Monroe County, the sheriff of Monroe County, the people of Monroe County and the people of the state of New York, that this be made a part of this law and a part of this bill by approval of the amendment.

ACTING PRESIDENT KUHL: The question is on the amendment. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(Response of "Nay." )

ACTING PRESIDENT KUHL: The nays have it. The amendment is defeated.

Secretary will read the last section on the main bill.

THE SECRETARY: Section 2. This bill shall take effect on the first of September.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: The Chair recognizes Senator DiCarlo to explain his vote.

SENATOR DiCARLO: Thank you, Mr. President.

I'm going to vote no on this bill for the same reason I voted no on the bill right before this. If you want to increase the penalties on assaults in all of these areas, I'm with you a hundred percent, but I just think it's wrong that we increase penalties for certain groups of citizens in this state.

So that's the reason I'm going to vote no, not because I'm opposed to increasing penalties but just because I think we shouldn't be doing this.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 57, nays one, Senator DiCarlo voting in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

The Chair recognizes Senator Mendez.

SENATOR MENDEZ: Yes. I was out of the chamber for a while. I want to be recorded in the negative on bill Calendar Number 365.

ACTING PRESIDENT KUHL: Without objection, Senator Mendez will be recorded in the -

SENATOR MENDEZ: Yes on 368.

ACTING PRESIDENT KUHL: Without objection, Senator Mendez will be recorded in the negative on Calendar Number 365 and yes on Calendar Number 368.

Senator Skelos?

SENATOR SKELOS: Is there any housekeeping at the desk.

ACTING PRESIDENT KUHL: Yes, we have a committee report that could be read in.

SENATOR SKELOS: Have it read.

ACTING PRESIDENT KUHL: Yes, I have to return to reports of standing committees and ask the Secretary to read.

THE SECRETARY: Senator LaValle, from the Committee on Higher Education, reports the following bills:

Senate Bill 35, by Senator Holland, an act to authorize the Salvation Army Eastern Territorial School for Officers Training;

Senate Print 211, by Senator Holland, an act authorizing the United States military to recruit on the campuses;

Senate 3731, by Senator Nozzolio, an act to amend the Education Law, in relation to the registration of non-resident pharmacists.

All bills reported directly to third reading.

ACTING PRESIDENT KUHL: Without objection, all bills reported directly to third reading.

Senator Mendez.

SENATOR MENDEZ: Yes, Mr. President. I wanted to announce an immediate closed conference of the Minority in Room 314.

ACTING PRESIDENT KUHL: There will be an immediate meeting, a closed conference, closed conference of the Minority in Room 314. Immediate closed conference of the Minority in Room 313, Minority Conference Room.

SENATOR SKELOS: Mr. President, can I have unanimous consent to make a statement?

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, the Chair recognizes Senator Skelos for a unanimous consent statement.

SENATOR SKELOS: Mr. President, for the last several weeks we've seen a horrible bloodletting of innocent people in Israel - four bombs since February 25th, 60 people killed including many women and children, more than 100 wounded.

This, unfortunately, seems to threaten the peace process in Israel and the people of Israel, the country that I had the pleasure to visit several years ago feel power less to stop the bombings striking at the heart

of this beautiful country.

I would just request that we adjourn in memory of those who tragically lost their lives by these acts of cowardice, and pray for the recovery of those injured.

(A moment of silence was observed.)

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business, I move we adjourn in memory of those who lost their lives in Israel and again with the prayers that those who are injured have a speedy recovery and that we adjourn until Monday, March 11th, 1996 at 3:00 p.m., sharp, intervening days to be legislative days.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned in the memory of those unfortunate individuals who suffered from severe tragedy in Israel.

(Whereupon at 2:23 p.m., the Senate adjourned.)