NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 3, 2008

3:47 p.m.

REGULAR SESSION

SENATOR JOSEPH A. GRIFFO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT GRIFFO: The Senate will come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance to our Flag.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT GRIFFO: The invocation today will be given by the Reverend Peter G. Young, of Mother Theresa Community.

Father?

REVEREND YOUNG: Thank you very much, Senator.

May we pray for one of our former colleagues, Howard Nolan, who is now in the operating room for a quadruple bypass.

God, by Your love, You made a world where we have become neighbors to each other and we are enabled to love one another.

Grant that we too may use this Senate to strive toward a way of life in keeping with Your plan, O God.

Amen.

ACTING PRESIDENT GRIFFO: The

reading of the Journal.

THE SECRETARY: In Senate, Friday, February 29, the Senate met pursuant to adjournment. The Journal of Thursday, February 28, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT GRIFFO: Without 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.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On page number 14 I offer the following amendments to Calendar Number 169, Senate Print Number 5543C, and ask that said bill retain its place on the order of Third Reading Calendar.

ACTING PRESIDENT GRIFFO: The amendments are received and adopted, and the bill will retain its place on third reading.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Little, on page number 21 I offer the following amendments to Calendar Number 261, Senate Print Number 5302B, and ask that said bill retain its place on the order of Third Reading Calendar.

ACTING PRESIDENT GRIFFO: The amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's Resolution Number 4470 at the desk, by Senator Stewart-Cousins. If we could have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: By Senator Stewart-Cousins, Legislative Resolution Number 4470, honoring the members of the

North East Knights Softball Team, which captured the Bronze Medal at the 2007 Special Olympics World Summer Games in Shanghai, China.

"WHEREAS, It is the sense of this Legislative Body to recognize and pay tribute to those individuals with disabilities from the State of New York who have inspired and brought pride to their community by achieving outstanding success in athletic competition; and

"WHEREAS, Attendant to such concern, and in full accord with its long-standing traditions, this Legislative Body is justly proud to honor the members of the North East Knights Softball Team, which captured the Bronze Medal at the 2007 Special Olympics World Summer Games in Shanghai, China; and

"WHEREAS, Special Olympics provides an opportunity for year-round sports training and athletic competition in a variety of Olympic-style sports for 43,000 children and adults with intellectual disabilities, complimentary to the athletes, their family

and caregivers; and

"WHEREAS, Special Olympics in the State of New York began in 1969. It was started nationally the year before when the first Games were held in Chicago by founder Eunice Kennedy Shriver; and

"WHEREAS, On Wednesday, September 26, 2007, the North East Knights Softball Team departed to compete in the World Games. They trained vigorously and are proud to represent Special Olympics New York, and served as goodwill ambassadors at these esteemed global games; and

"WHEREAS, Over 7,000 athletes from 165 different countries, including 450 Americans, competed in the 2007 Special Olympics World Summer Games; and

"WHEREAS, The North East Knights were led by Frank Ragusa, Team Captain, and the team escaped elimination and finished in third place behind Australia and China; and

"WHEREAS, Coaches Nancy Troiano, Donna Ascher and Joe Bellini have done a superb job in guiding, molding and inspiring the outstanding athletes toward their goals.

Prior to this achievement, the members of the team also competed in the 2005 World Games and won Gold Medals in the floor hockey championship; and

"WHEREAS, True assets to their society, their courage, determination and pride stands as superb examples to all, and as ambassadors they have represented New York and the United States in an admirable fashion; and

"WHEREAS, Through their participation in Special Olympics New York, the members of the North East Knights Softball Team have gained confidence and have built positive self-images, which have expanded into their home, their workplace and their community; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor the members of the North East Knights Softball Team upon the occasion of capturing the Bronze Medal at the 2007 Special Olympics World Summer Games in Shanghai, China; and be further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted

to the members of the North East Knights Softball Team."

ACTING PRESIDENT GRIFFO: Senator Stewart-Cousins.

SENATOR STEWART-COUSINS: Thank you, Mr. President.

It is really an honor for me to rise today and to present this resolution on behalf of the North East Knights Softball Team.

This fall I had an opportunity to meet three of their members: Frank Ragusa, who is the team captain, and Andrew Sawicki and Richard Hunt. They represented my district, the 35th District. But what they did was make sure that I understood that they represented so much more than that.

These three were just members of a team that went to Shanghai, China, and competed with thousands of other Special Olympians and managed to win the Bronze Medal for their athleticism. And I felt that it was really selfish of me to just honor the three from my district when there are so many from all over the state who have not only shown an

amazing amount of courage, an amazing amount of discipline, an amazing amount of leadership, and have acted as ambassadors for us in China.

We all know how difficult it is for us to go out of our comfort zones. So can you imagine these great athletes leaving their comfort zone, the United States, and going to China? Not only did they learn the culture, they learned that teams work wherever they are, and they brought honor to all of us.

So I wanted to take this opportunity to say what they taught me today, "Ni hao," which in Chinese means "hello," and to thank you for being such an exemplary example of the very best that can be, not only as athletes, but as people. We honor the Special Olympians.

I also wanted to make special note of their coaches, Nancy Troiano, Donna Ascher, and Joe Bellini, because clearly, without great leadership, even the best team can't win.

So again, on behalf of all of my colleagues, we want to congratulate you.

And I'd like to open the resolution for all of my colleagues to join.

Congratulations.

(Sustained applause.)

ACTING PRESIDENT GRIFFO: We welcome you, we congratulate you, and we wish you best wishes.

On the resolution, all in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The resolution is carried.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please recognize Senator Smith.

ACTING PRESIDENT GRIFFO: Senator Smith.

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

Members, colleagues in the chambers, visitors -- "Ni hao ma" to our Chinese contingency up there -- it is with

great pleasure today that we welcome a new member to this chamber.

As it has been said throughout the times of my life, as has been said throughout many places in this country, there is no chamber like the chamber that the State Senate holds in the State of New York. The individual members all have a certain confident level, they all have a certain level of intellect, they all provide a great deal of representation on behalf of the constituents that they serve.

Today we are here to welcome a member to our conference, a conference that has for many years seen a number of individuals come and go. We are so proud of this gentleman by the name of Darrel Aubertine.

Darrel Aubertine has recently won a special election in the North Country, representing Oswego, Jefferson and St. Lawrence. He comes from the New York State Assembly, where he served them very proud. He comes with a background and interest not only for the common person, but

also to do what's best for this one state of New York which we all represent.

So, ladies and gentlemen, it is my pleasure for me to introduce to some of you, and to reintroduce to many of you, the newest member to this august body, Senator Darrel Aubertine.

(Standing ovation.)

ACTING PRESIDENT GRIFFO: Senator Skelos.

SENATOR SKELOS: Mr. President, I too want to welcome you, on behalf of the Majority and Senator Bruno, to the chamber.

Elections are elections, and sometimes people are happy, sometimes people are a little less happy.

But I know that you're going to enjoy being with this chamber. We are a great legislative body, and we do welcome you.

SENATOR AUBERTINE: Thank you.

ACTING PRESIDENT GRIFFO: Welcome, Senator Aubertine.

SENATOR AUBERTINE: Thank you. Mr. President, if I might.

ACTING PRESIDENT GRIFFO: Senator

Aubertine.

SENATOR AUBERTINE: I certainly want to thank all my colleagues for that wonderful warm welcome. And I certainly look forward to working with each and every one of you on all the issues that come before us over the next year.

So again, thank you very much, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 56, by Member of the Assembly John, Assembly Print Number 9473, an act to amend Chapter 433 of the Laws of 2007 amending the Labor Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 176, by Senator Rath, Senate Print 678, an act to amend the Family Court Act, in relation to orders of disposition.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 181, by Senator DeFrancisco, Senate Print 1271, an act to amend the Estates, Powers and Trusts Law, in relation to the right of election.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 226, by Senator Padavan, Senate Print 6542, an act in relation to the authorization for a city with a population of one million or more.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number

240, by Senator Larkin, Senate Print 1918, an act to amend the General Business Law and others, in relation to peddling New York agricultural products.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 180th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 253, by Senator Larkin, Senate Print 189, an act to amend the Education Law, in relation to suspending the pay of any tenured person.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 255, by Senator Saland, Senate Print 1096, an act to amend the Education Law, in relation to involuntary transfer.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Yes, thank you, Mr. President.

I was excused in 2007 when this bill was passed, and had I been present, I would have voted no. And I intend to vote no today on this bill.

I do believe that there is a major concern about violent students in the classroom, and I can understand the cause for

alarm and concern.

However, I am very concerned that we have added disruptive as well as violent students to this bill. And I have found that in too many instances, teachers use the definition too loosely of "disruptive" in order for me to vote and to support this bill.

I would hope that my colleagues would think this through and amend this bill and put the category of "disruptive" in a totally different set of language.

Therefore, Mr. President, I will in fact be voting no.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson to be recorded in the negative.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I'm going to continue to oppose this legislation, as I have in the past.

And we now are looking at changing the language to include transfer of pupils to another school under the so-called appropriate educational setting in another school.

This presumes that the students will receive a quality environment wherever they're transferred to. I have had students who have been transferred to other schools involuntarily. Already, they do it in New York City.

These young people have no one to advocate for them, and they lose the opportunity to continue uninterrupted in their school. Because why? They've been disruptive. Perhaps. Now, "disruptive" is a subjective characterization of a young person's behavior.

And, too, we have done nothing in New York City -- certainly not enough -- to make sure that every single young person has access to mental health crisis intervention services.

So I am totally opposed to this. And I certainly hope that my colleagues will take a step back -- Senator Saland, take a step back -- and consider what this means to young people in our city and in our state.

So I'm going to continue to oppose this. No.

ACTING PRESIDENT GRIFFO: Senator Montgomery to be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 255 are Senators Adams, Duane, Gonzalez, Hassell-Thompson, Montgomery, Parker and Perkins.

Ayes, 51. Nays, 7.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 260, by Senator Little, Senate Print 4963A, an act to amend the Real Property Tax Law, in relation to definition.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect September 1, 2008.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 265, by Senator Libous, Senate Print 1591, an act to amend the Religious Corporation Law, in relation to sale, mortgage and lease.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 290, by Senator Flanagan, Senate Print 3885, an act to amend the General Municipal Law, in relation to games of chance.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 2. Senators Duane and Padavan recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 307, by Senator Maziarz, Senate Print 257A, an act to amend the Penal Law, in relation to the crime of surreptitious surveillance.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of November.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 349, by Senator O. Johnson, Senate Print 5928, an act to authorize the commissioner of transportation to alienate and convey.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 350, by Senator Griffo, Senate Print 6748, an act authorizing the Town of Vernon.

ACTING PRESIDENT GRIFFO: There is a home-rule message at the desk.

Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

Senator Skelos, that completes the

noncontroversial reading of the calendar.

SENATOR SKELOS: Mr. President, is there any further business at the desk?

ACTING PRESIDENT GRIFFO: There is no further business at the desk at this time.

SENATOR SKELOS: Mr. President, Senator Bruno hands up the following committee assignments and asks that they be filed in the Journal.

ACTING PRESIDENT GRIFFO: Received and filed.

SENATOR SKELOS: There being no further business to come before the Senate, I move we stand adjourned until Tuesday, March 4th, at 3:00 p.m.

ACTING PRESIDENT GRIFFO: On motion, the Senate stands adjourned until Tuesday, March 4th, at 3:00 p.m.

(Whereupon, at 4:07 p.m., the Senate adjourned.)