

New York State ASSEMBLY

Sheldon Silver - Speaker

Tuesday, April 14, 2009

Summary - A03661[Back](#) | [New York State Bill Search](#) | [Assembly Home](#)[See Text](#)**A03661 Summary:**

BILL NO A03661B

SAME AS Same as S 1987-A

SPONSOR O'Donnell (MS)

COSPNSR Glick, Nolan, Greene, Lifton, Benjamin, Bradley, Fields, McEneny, Clark, Eddington, Paulin, Rosenthal, John, Galef, Hevesi, Espaillat, Englebright, Kavanagh, Powell, Rivera N, Lancman, Peralta, Stirpe, Hoyt, Dinowitz, Jaffee, Schimel, Cahill, Brodsky, Titone

MLTSPNSR Alfano, Barra, Bing, Brennan, Diaz, Farrell, Gianaris, Gottfried, Jacobs, Jeffries, Kellner, Koon, Latimer, Lupardo, Markey, Millman, Peoples, Perry, Pheffer, Sweeney, Walker, Weisenberg, Wright

Add Art 2 SS10 - 18, amd SS801-a & 2801, Ed L

Enacts the "Dignity For All Students Act"; authorizes the commissioner of education to establish policies and procedures affording all students in public schools an environment free of harassment and discrimination; requires reporting harassment and discrimination to such commission; makes exemptions.

A03661 Actions:

BILL NO A03661B

01/28/2009 referred to education
 02/04/2009 reported referred to codes
 02/20/2009 amend and recommit to codes
 02/20/2009 print number 3661a
 03/16/2009 amend and recommit to codes
 03/16/2009 print number 3661b
 03/31/2009 reported
 04/02/2009 advanced to third reading cal.284
 04/07/2009 passed assembly
 04/07/2009 delivered to senate
 04/07/2009 REFERRED TO EDUCATION

A03661 Votes:

BILL: A03661B DATE: 04/07/2009 MOTION:

YEA/NAY: 131/005

Abbate	Y	Cahill	Y	Englebr	Y	Hooper	Y	Maisel	Y	Powell	Y	Skartad	Y
Alessi	Y	Calhoun	Y	Errigo	Y	Hoyt	Y	Markey	Y	Pretlow	Y	Spano	Y
Alfano	Y	Camara	ER	Espail	Y	Hyer-Sp	Y	Mayerso	Y	Quinn	Y	Stirpe	Y
Amedore	Y	Canestr	Y	Farrell	Y	Jacobs	ER	McDonou	Y	Rabbitt	Y	Sweeney	Y
Arroyo	Y	Carrozz	ER	Fields	Y	Jaffee	Y	McEneny	Y	Raia	Y	Tedisco	ER
Aubry	ER	Castro	Y	Finch	Y	Jeffrie	Y	McKevit	Y	Ramos	Y	Thiele	Y
Bacalle	Y	Christe	Y	Fitzpat	NO	John	Y	Meng	Y	Reilich	Y	Titone	ER
Ball	Y	Clark	Y	Gabrysz	Y	Jordan	Y	Miller	Y	Reilly	Y	Titus	Y
Barclay	Y	Colton	Y	Galef	Y	Kavanag	Y	Millman	Y	Rive J	Y	Tobacco	Y
Barra	Y	Conte	Y	Gantt	ER	Kellner	Y	Molinar	Y	Rive N	ER	Towns	ER
Barron	Y	Cook	Y	Gianari	Y	Kolb	Y	Morelle	Y	Rive PM	Y	Townsen	NO
Benedet	Y	Corwin	Y	Giglio	Y	Koon	Y	Nolan	ER	Robinso	Y	Walker	Y
Benjami	Y	Crouch	Y	Glick	Y	Lancman	Y	Oaks	Y	Rosenth	Y	Weinste	Y
Bing	Y	Cusick	Y	Gordon	Y	Latimer	Y	O'Donne	Y	Russell	Y	Weisenb	ER
Boyland	Y	Cymbrow	Y	Gottfri	Y	Lavine	Y	O'Mara	Y	Saladin	NO	Weprin	Y
Boyle	Y	DelMont	Y	Greene	Y	Lentol	Y	Ortiz	Y	Sayward	Y	Wright	Y
Bradley	ER	DenDekk	Y	Gunther	Y	Lifton	Y	Parment	Y	Scarbor	Y	Zebrows	Y
Brennan	Y	Destito	Y	Hawley	Y	Lope PD	Y	Paulin	Y	Schimel	Y	Mr Spkr	Y
Brotsky	Y	Diaz	ER	Hayes	Y	Lope VJ	Y	Peoples	Y	Schimmi	Y		
Brook-K	Y	Dinowit	Y	Heastie	Y	Lupardo	Y	Peralta	Y	Schroed	Y		
Burling	NO	Duprey	Y	Hevesi	Y	Magee	Y	Perry	Y	Scozzaf	Y		
Butler	NO	Eddingt	Y	Hikind	ER	Magnare	Y	Pheffer	Y	Seminer	Y		

A03661 Memo:

BILL NUMBER:A3661B

TITLE OF BILL: An act to amend the education law, in relation to enacting the dignity for all students act

PURPOSE OR GENERAL IDEA OF BILL:

The purpose of this bill is to afford all students an environment free of any harassment that substantially interferes with their education, regardless of the basis of the harassment, and free of discrimination based on actual or perceived race, color, weight, national origin, ethnic group, religion, disability, sexual orientation, gender, or sex.

SUMMARY OF SPECIFIC PROVISIONS:

Section one of the bill establishes its short title, the Dignity for all Students Act.

Section 2 of the bill amends the Education Law by adding a new article 2 entitled "Dignity for all Students." New article 2 sets forth the legislative intent in section 10, and sets forth definitions in section 11. The definition of "harassment" in section 11 (7) was carefully drafted to ensure that this legislation protects children against harassment in a manner that is consistent with the First Amendment protections of speech and expression. See *Tinker v. Des Moines School District*, 393 U.S. 503 (1969) and its progeny. In addition, by moving the list of protected classes to the end of the definition, and by adding the phrase "not limited to" at the beginning of the list, the amendment made in the B-print explicitly establishes, in the bill text itself, that the list is non-exclusive and that the definition is content neutral.

Harassment is defined as "creation of a hostile environment by conduct

or by verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being;...". Education Law S11(7), as proposed in this bill. The definition includes an objective reasonableness standard and, consistent with Tinker and the cases decided after Tinker, it also provides that speech (e.g., the verbal threats included in the definition) becomes harassment only when it does, or foreseeably would, substantially interfere with a student's education. It is also the legislative intent that, consistent with the hostile environment case law developed in the employment context, conduct or verbal behavior must be severe or pervasive in order to substantially interfere with educational performance, opportunities, etc. and to therefore be harassment under this definition. This content-neutral definition is followed by a non-exclusive list of protected classes whose members are often the targets of the type of harassment the bill seeks to prevent. The purpose of listing these protected classes is to provide examples of the types of status-based harassment frequently encountered by students without in any way limiting the application of the definition to individuals in those classes.

Section 12 prohibits harassment, as defined in section 11(7) and discussed above, and it also prohibits discrimination on the basis of actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex in any activity occurring on school grounds or at a school function. New section 12 includes language intended to make clear that the Dignity for All Students Act does not contravene or override existing provisions of law, including but not limited to the Education Commissioner's regulations, regarding single gender schools and athletic teams.

Sections 13 and 14 of new article 2 respectively provide for the policies and guidelines to be established by school districts, and the State Education Commissioner's responsibilities. This part of the bill requires school districts to develop procedures which create a school environment free of discrimination and harassment and to establish guidelines for training school personnel. School districts must also establish guidelines for development of nondiscriminatory instructional and counseling methods and require that at least one member of each school's staff be trained to handle human relations in the areas in which discrimination and harassment are prohibited. The Commissioner of Education is to provide advice, which may include model policies, and direct services, to the extent possible, to help districts prevent discrimination and harassment. The commissioner will also provide grants, from funds appropriated for such purpose, to local school districts to assist them in implementing the guidelines provided for by the bill.

Section 15 of new Education Law article 2 requires the commissioner to create a procedure whereby material incidents of discrimination and harassment on school grounds or at school functions are reported to the State Education Department at least annually. The commissioner may use the existing UVIR (uniform violent incident reporting) system for this purpose; however, it is the legislative intent that the UVIR system will be adapted to include information about the specific nature of the incident, i.e., the type or types of bias involved in a reported incident of harassment or discrimination, including the possibility that multiple types of bias could be involved in a single incident, and all of the types of bias involved should be reported.

Section 16 of new Education Law article 2 provides protection for people who report incidents of discrimination or harassment. Section 17 provides for applicability of the new article with respect to certain institutions and other laws, and section 18 provides for severability and construction.

Section 3 of the bill amends section 801-a of the education law by requiring sensitivity to the harassment or discrimination prohibited by section 2 of this bill to be incorporated into the civility and character training currently required by section 801-a of the education law.

Section 4 of the bill amends section 2801 of the education law by adding a new paragraph n. Section 5 of the bill provides that the bill will take effect 120 days after enactment.

The B-print revises the harassment definition by moving the non-exclusive list of protected classes from the middle of the definition to the end of the definition, and by adding the phrase "not limited to" at the beginning of the list. This change clarifies the consistently expressed legislative intent that the list is non-exclusive and that the definition is content neutral. The B-print also makes a conforming change in proposed new Education Law S10, by removing the list of protected classes and simply stating the broad legislative intent to provide a school environment free of discrimination and harassment. There are no other changes in the B-print.

JUSTIFICATION:

In deciding First Amendment cases in school settings, courts have recognized "the special need to maintain a safe, secure and effective learning environment," Harper v. Poway Unified School, 445 F.3d 1166 at 1176 (9th Cir. 2006), citing Tinker v. Des Moines School District, 393 U.S. 503 (1969). Students need such a safe, welcoming and supportive school environment so that they can concentrate on their academic and personal growth, and they should never have to be preoccupied by the threat or actual occurrence of harassment or discrimination at school. The Dignity for All Students Act promotes civility among students and between students and teachers. It will also help create an atmosphere where learning is paramount and distractions to learning are minimized.

Moreover, the Act provides a response to the large numbers of harassed and stigmatized students skipping school and engaging in high risk behaviors like drug use, alcohol abuse, and perhaps even suicide. No child or teen should ever be pushed to such extremes because of an intolerable environment in his or her school. Scholarly literature and common sense establish that harassment and intimidation interfere with students' ability to learn. By prohibiting harassment in public schools and establishing the basis for proactive measures such as training and model policies, the "Dignity for All Students Act" takes a major step in creating more nurturing environments in all our schools.

A 2008 review of existing literature, that also analyzed 1993-94 data from a large urban school district, noted that bullying victimization is estimated to affect 15-20% of the U.S. student population. The authors defined bullying to include threats, intimidation and other conduct, and concluded it was the most common form of "low level"

school violence. Meyer-Adams, N. & Conner, B.T., "School violence: Bullying behavior and the Psychosocial School Environment in Middle Schools," *Children & Schools*, Vol. 30, NO.4 (October 2008). The negative effects of bullying include increased truancy and dropout rates as well as negative psychosocial effects such as depression, etc. *Id.* at p. 212. Verbal teasing and intimidation are the most common form of bullying. Dupper, D.R. & Meyer-Adams, N., "Low-level violence: A neglected aspect of school culture," *Urban Education*, Vol. 37, No.3 at p. 351 (2002). A 1992 study found that 88% of secondary school students reported having observed bullying and 76.8% stated they had been victims. *Id.* In addition to the negative effects discussed above, bullying victims' grades may suffer and even "good

kids" may be pushed into starting fights. *Id.* at 352. There is also harm to those who witness peer harassment. *Id.*

The continuing need for this legislation is apparent from recent data demonstrating the prevalence of bias-based harassment in New York schools. A survey commissioned by the Gay, Lesbian and Straight Education Network (GLSEN) found that more than one-third (39%) of New York students reported that bullying, name-calling, and harassment is a serious problem in school. Students were asked about the frequency of witnessing other students bullied, called names, or harassed in school. From *Teasing to Torment: A Report on School Climate in New York* (GLSEN 2005), at p. 8. The most commonly reported harassment was based on physical appearance. Sixty-six percent (66%) of students reported that people at school were harassed at least sometimes because of their looks or body size, with 38% reporting that this happened often or very often. *Id.* This bill therefore now includes weight as one of the examples contained in the non-exclusive list at the end of the harassment definition. Bullying and harassment based on how people expressed their gender, or because of their actual or perceived sexual orientation was also very common. Fifty seven percent of respondents reported that students were bullied or harassed at least sometimes because of the way they expressed their gender, and about a quarter (23%) said these behaviors occurred often or very often. *Id.* More than five out of ten (52%) reported that students were harassed because they were or were perceived to be lesbian, gay, or bisexual, *Id.* identified as being so. *Id.* at 2. About a quarter (24%) said these behaviors occurred often or very often. *Id.* at 8.

PRIOR LEGISLATIVE HISTORY:

A.3496-A/S.1571 (passed Assembly 2007 and 2008); A.9491/S.1454 (passed Assembly 2006); A.4963/S.1454 (passed Assembly 2005); A.1118/S.1925 (2003-04) passed Assembly 2003 and 2004; A.2634-A /S.1628-A (2001-02) passed Assembly 2002; A.9244A/S.5775-A (2000).

FISCAL IMPLICATIONS:

Minimal.

EFFECTIVE DATE:

This act shall take effect 120 days after enactment.

Contact Webmaster

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