



MEMORANDUM OF OPPOSITION

A.10712 (O'Donnell)/S.7740 (Saland)

In relation to cyberbullying

June 18, 2012

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The New York State Council of School Superintendents OPPOSES this legislation, and urges its defeat.

This legislation expands the recently enacted Dignity for all Students Act by requiring school districts, among other things to (1) establish cyberbullying protocols; (2) investigate and receive reports of harassment and cyberbullying that occur outside of the schools domain; (3) take actions to prevent recurrences; (4) coordinate with law enforcement; (5) develop a bullying prevention strategy; (6) provide notice to all school community members of the school's policies; and (7) train employees on requirements.

Superintendents, principals, and other school personnel entered education to positively affect the lives of young people and work every day to stop and prevent harassment and bullying. But this legislation would impose responsibilities upon schools which they cannot meet.

School districts should not be made to stand in the position of parental guidance and oversight. There is simply no way districts can possibly know acts of cyberbullying outside of school. And if reported, cyberbullying often involves comments being made on password protected websites, such as Twitter, Facebook or MySpace, thus making investigation of these incidents extremely difficult. Both Facebook and Twitter require “friending” or permission to view personal information posted. Teachers and administrations should not be forced to “friend” their students in order to investigate claims of bullying online in password protected areas.

This legislation threatens to lead to endless litigation against districts for perceived failures to monitor and investigate events that neither the school district nor its employees witnessed, and did not occur in the school’s domain, property or control. Further, this also requires district administrators to make a determination on what is or isn’t criminal conduct – with no requirement for law enforcement to even cooperate with a district.

To properly investigate claims of cyberbullying, especially on hosted websites such as Twitter and Facebook, the school district would have to have access to the student’s Facebook or Twitter account which is protected. According to Facebook’s own policy, “Federal law prohibits Facebook from disclosing user content (such as messages, Wall (timeline) posts, photos, etc.) in response to a civil subpoena.” Thus how is a district administrator suppose expected to gain access to this password protected information to complete an accurate investigation? Facebook, for example, acknowledges that even

if from law enforcement, “[w]e may disclose information pursuant to subpoenas, court orders, or other requests (including criminal and civil matters) if we have a good faith belief that the response is required by law [emphasis added].” Districts could attempt to gain New York subpoenas, then attempt to serve them in California, while the California court or Facebook rejects them, all at huge costs to districts and taxpayers.

Law enforcement may be the proper route for these matters, certainly not investigations by school administrators. School districts do not possess the capacity for the types of online investigations that must occur under this legislation. Police departments often have cybercrime bureaus or experts that are able to provide support to criminal investigations of online events. School districts do not have these capabilities, and cannot afford to hire outside internet experts.

Further, the burden placed upon administration is severe, at a time when districts are cutting administration to save classroom programming and instructional positions, and being required to undertake massive new administrative requirements under the state’s cumbersome new teacher evaluation requirements. The short reporting timelines for district employees are also problematic.

Instead of forcing districts into an investigatory role of password protected, difficult to access online venues, scarce resources should be spent on increase awareness efforts and ongoing anti-bullying education campaigns and communication policies and procedures.

Better communication about harrassment and bullying is key, as is parental involvement and oversight. School districts cannot act in a parental capacity for issues and events occuring wholly outside of their control.

Because of the imposition of investigatory duties in matters wholly outside a school’s domain, possible legal and litigation consequences against school districts, extensive unfunded mandates, and burdens on administration, we must oppose.