

2437

2013-2014 Regular Sessions

I N   S E N A T E

January 17, 2013

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Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to screening for childhood obesity and instruction in good health and reducing the incidence of obesity

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 901 of the education law, as amended by chapter 477  
2 of the laws of 2004, subdivision 1 as amended by section 57 of part A-1  
3 of chapter 58 of the laws of 2006, is amended to read as follows:  
4     S 901. School health services to be provided. 1. School health  
5 services, as defined in subdivision two of this section, shall be  
6 provided by each school district for all students attending the public  
7 schools in this state, except in the city school district of the city of  
8 New York, as provided in this article. School health services shall  
9 include the services of a registered professional nurse, if one is  
10 employed, and shall also include such services as may be rendered as  
11 provided in this article in examining students for the existence of  
12 disease or disability, OR MAY INCLUDE SERVICES RELATED TO EXAMINING FOR  
13 CHILDHOOD OBESITY BASED UPON THE CALCULATION OF EACH STUDENT'S BODY MASS  
14 INDEX AND WEIGHT STATUS CATEGORY PURSUANT TO SECTION NINE HUNDRED FOUR  
15 OF THIS ARTICLE, and in testing the eyes and ears of such students.  
16     2. School health services for the purposes of this article shall mean  
17 the several procedures, including, but not limited to, medical examina-  
18 tions, dental inspection and/or screening, scoliosis screening, vision  
19 screening [and], audiometer tests, AND CHILDHOOD OBESITY AS MEASURED BY  
20 BODY MASS INDEX AND WEIGHT STATUS CATEGORY, designed to determine the  
21 health status of the child; to inform parents or other persons in  
22 parental relation to the child, pupils and teachers of the individual  
23 child's health condition subject to federal and state confidentiality  
24 laws; to guide parents, children and teachers in procedures for prevent-

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

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ing and correcting defects [and], diseases AND CHILDHOOD OBESITY CONDITIONS; to instruct the school personnel in procedures to take in case of accident or illness; to survey and make necessary recommendations concerning the health and safety aspects of school facilities and the provision of health information.

S 2. Subdivisions 1, 3 and 4 of section 903 of the education law, as amended by chapter 281 of the laws of 2007, subdivision 1 as separately amended by section 11 of part B of chapter 58 of the laws of 2007 and paragraph a of subdivision 3 as amended by section 28 of part A of chapter 58 of the laws of 2008, are amended to read as follows:

1. A health certificate shall be furnished by each student in the public schools upon his or her entrance in such schools and upon his or her entry into the grades prescribed by the commissioner in regulations, provided that such regulations shall require such certificates at least twice during the elementary grades and twice in the secondary grades. An examination and health history of any child may be required by the local school authorities at any time in their discretion to promote the educational interests of such child. Each certificate shall be signed by a duly licensed physician, physician assistant, or nurse practitioner, who is authorized by law to practice in this state, and consistent with any applicable written practice agreement, or by a duly licensed physician, physician assistant, or nurse practitioner, who is authorized to practice in the jurisdiction in which the examination was given, provided that the commissioner has determined that such jurisdiction has standards of licensure and practice comparable to those of New York. Each such certificate shall describe the condition of the student when the examination was made, which shall not be more than twelve months prior to the commencement of the school year in which the examination is required, and shall state whether such student is in a fit condition of health to permit his or her attendance at the public schools. THE EXAMINATION MAY INCLUDE A DIABETES RISK ANALYSIS AND, IF NECESSARY, CHILDREN WITH RISK FACTORS FOR TYPE 1 DIABETES, OR RISK FACTORS ASSOCIATED WITH TYPE 2 DIABETES SUCH AS OBESITY, A FAMILY HISTORY OF TYPE 2 DIABETES, OR ANY OTHER FACTORS CONSISTENT WITH INCREASED RISK SHALL BE TESTED FOR DIABETES. Each such certificate shall also state the student's body mass index (BMI) and weight status category. For purposes of this section, BMI is computed as the weight in kilograms divided by the square of height in meters or the weight in pounds divided by the square of height in inches multiplied by a conversion factor of 703. Weight status categories for children and adolescents shall be as defined by the commissioner of health. In all school districts such physician, physician assistant or nurse practitioner shall determine whether a one-time test for sickle cell anemia is necessary or desirable and he or she shall conduct such a test and the certificate shall state the results.

3. a. Within thirty days after the student's entrance in such schools or grades, the health certificate shall be submitted to the principal or his or her designee and shall be filed in the student's cumulative health record. If such student does not present a health certificate as required in this section, unless he or she has been accommodated on religious grounds, the principal or the principal's designee shall cause a notice to be sent to the parents or person in parental relationship to such student that if the required health certificate is not furnished within thirty days from the date of such notice, an examination will be made of such student, as provided in this article. Each school and school district [chosen as part of an appropriate sampling methodology] shall participate in surveys directed by the commissioner of health

1 pursuant to the public health law in relation to students' BMI and  
2 weight status categories as reported on the school health certificate  
3 and which shall be subject to audit by the commissioner of health. Such  
4 surveys shall contain the information required pursuant to subdivision  
5 one of this section in relation to students' BMI and weight status cate-  
6 gories in aggregate. Parents or other persons in parental relation to a  
7 student may refuse to have the student's BMI and weight status category  
8 included in such survey. Each school and school district shall provide  
9 the commissioner of health with any information, records and reports he  
10 or she may require for the purpose of such audit. The BMI and weight  
11 status survey and audit as described in this subdivision shall be  
12 conducted consistent with confidentiality requirements imposed by feder-  
13 al law.

14 b. Within thirty days after the student's entrance in such schools or  
15 grades, the dental health certificate, if obtained, shall be filed in  
16 the student's cumulative health record.

17 4. Notwithstanding the provisions of subdivisions one, two and three  
18 of this section, no examinations for a health certificate or health  
19 history shall be required or dental certificate requested, and no  
20 screening examinations for sickle cell anemia OR CHILDHOOD OBESITY shall  
21 be required where a student or the parent or person in parental relation  
22 to such student objects thereto on the grounds that such examinations or  
23 health history conflict with their genuine and sincere religious  
24 beliefs.

25 S 3. Subdivision 1 of section 904 of the education law, as amended by  
26 section 12 of part B of chapter 58 of the laws of 2007, is amended to  
27 read as follows:

28 1. Each principal of a public school, or his or her designee, shall  
29 report to the director of school health services having jurisdiction  
30 over such school, the names of all students who have not furnished  
31 health certificates as provided in section nine hundred three of this  
32 article, or who are children with disabilities, as defined by article  
33 eighty-nine of this chapter, and the director of school health services  
34 shall cause such students to be separately and carefully examined and  
35 tested to ascertain whether any student has defective sight or hearing,  
36 or any other physical disability which may tend to prevent him or her  
37 from receiving the full benefit of school work, or from requiring a  
38 modification of such work to prevent injury to the student or from  
39 receiving the best educational results. Each examination shall also  
40 include a calculation of the student's body mass index (BMI) and weight  
41 status category. For purposes of this section, BMI is computed as the  
42 weight in kilograms divided by the square of height in meters or the  
43 weight in pounds divided by the square of height in inches multiplied by  
44 a conversion factor of 703. Weight status categories for children and  
45 adolescents shall be as defined by the commissioner of health. In all  
46 school districts, such physician, physician assistant or nurse practi-  
47 tioner shall determine whether a one-time test for sickle cell anemia is  
48 necessary or desirable and he or she shall conduct such tests and the  
49 certificate shall state the results. If it should be ascertained, upon  
50 such test or examination, that any of such students have defective sight  
51 or hearing[,] or other physical disability, including sickle cell  
52 anemia, as above described, OR ARE OBESE, the principal or his or her  
53 designee shall notify the parents of, or other persons in parental  
54 relation to, the child as to the existence of such disability. If the  
55 parents or other persons in parental relation are unable or unwilling to  
56 provide the necessary relief and treatment for such students, such fact

1 shall be reported by the principal or his or her designee to the direc-  
2 tor of school health services, whose duty it shall be to provide relief  
3 for such students. Each school and school district [chosen as part of an  
4 appropriate sampling methodology] shall participate in surveys directed  
5 by the commissioner of health pursuant to the public health law in  
6 relation to students' BMI and weight status categories as determined by  
7 the examination conducted pursuant to this section and which shall be  
8 subject to audit by the commissioner of health. Such surveys shall  
9 contain the information required pursuant to this subdivision in  
10 relation to students' BMI and weight status categories in aggregate.  
11 [Parents or other persons in parental relation to a student may refuse  
12 to have the student's BMI and weight status category included in such  
13 survey.] Each school and school district shall provide the commissioner  
14 of health with any information, records and reports he or she may  
15 require for the purpose of such audit. The BMI and weight status survey  
16 and audit as described in this section shall be conducted consistent  
17 with confidentiality requirements imposed by federal law. [Data  
18 collection for such surveys shall commence on a voluntary basis at the  
19 beginning of the two thousand seven academic school year, and by all  
20 schools chosen as part of the sampling methodology at the beginning of  
21 the two thousand eight academic school year.] The department shall also  
22 utilize the collected data to develop a report of child obesity and  
23 obesity related diseases.

24 S 4. Section 912 of the education law, as amended by chapter 477 of  
25 the laws of 2004, is amended to read as follows:

26 S 912. Health and welfare services to all children. The voters and/or  
27 trustees or board of education of every school district shall, upon  
28 request of the authorities of a school other than public, provide resi-  
29 dent children who attend such school with any or all of the health and  
30 welfare services and facilities which are made available by such voters  
31 and/or trustees or board of education to or for children attending the  
32 public schools of the district. Such services may include, but are not  
33 limited to all services performed by a physician, physician assistant,  
34 dentist, dental hygienist, registered professional nurse, nurse practi-  
35 tioner, school psychologist, school social worker or school speech ther-  
36 apist, and may also include dental prophylaxis, vision and hearing  
37 screening examinations, CHILDHOOD OBESITY SCREENING, the taking of  
38 medical histories and the administration of health screening tests, the  
39 maintenance of cumulative health records and the administration of emer-  
40 gency care programs for ill or injured students. Any such services or  
41 facilities shall be so provided notwithstanding any provision of any  
42 charter or other provision of law inconsistent herewith. Where children  
43 residing in one school district attend a school other than public  
44 located in another school district, the school authorities of the  
45 district of residence shall contract with the school authorities of the  
46 district where such nonpublic school is located, for the provision of  
47 such health and welfare services and facilities to such children by the  
48 school district where such nonpublic school is located, for a consider-  
49 ation to be agreed upon between the school authorities of such  
50 districts, subject to the approval of the qualified voters of the  
51 district of residence when required under the provisions of this chap-  
52 ter. Every such contract shall be in writing and in the form prescribed  
53 by the commissioner, and before such contract is executed the same shall  
54 be submitted for approval to the superintendent of schools having juris-  
55 diction over such district of residence and such contract shall not  
56 become effective until approved by such superintendent.

1 S 5. Subdivisions 4 and 5 of section 918 of the education law, as  
2 added by chapter 493 of the laws of 2004, are amended to read as  
3 follows:

4 4. The committee is encouraged to study AND MAKE RECOMMENDATIONS ON  
5 all facets of the current nutritional policies of the district includ-  
6 ing, but not limited to, the goals of the district to promote health and  
7 proper nutrition, REDUCE THE INCIDENCE OF CHILDHOOD OBESITY, vending  
8 machine sales, menu criteria, educational curriculum teaching healthy  
9 nutrition, AND educational information provided to parents or guardians  
10 regarding healthy nutrition and the health risks associated with obesi-  
11 ty, ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC RESPIRATORY DISEASES.  
12 PROVIDED, FURTHER, THE COMMITTEE MAY PROVIDE INFORMATION TO PERSONS IN  
13 PARENTAL RELATION ON opportunities offered to parents or guardians to  
14 encourage healthier eating habits to students, and the education  
15 provided to teachers and other staff as to the importance of healthy  
16 nutrition AND ABOUT THE DANGERS OF CHILDHOOD OBESITY. In addition the  
17 committee shall consider recommendations and practices of other  
18 districts and nutrition studies.

19 5. The committee is encouraged to report periodically to the district  
20 regarding practices that will educate teachers, parents or guardians and  
21 children about healthy nutrition and raise awareness of the dangers of  
22 CHILDHOOD obesity, ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC RESPIR-  
23 ATORY DISEASES. The committee is encouraged also to provide any parent  
24 teacher associations in the district with such findings and recommenda-  
25 tions.

26 S 6. Subdivisions 1 and 5 of section 803 of the education law, as  
27 amended by chapter 118 of the laws of 1957, are amended to read as  
28 follows:

29 1. All pupils above the age of eight years in all elementary and  
30 secondary schools, shall receive as part of the prescribed courses of  
31 instruction therein such physical education under the direction of the  
32 commissioner of education as the regents may determine. Such courses  
33 shall be designed to aid in the well-rounded education of pupils and in  
34 the development of character, citizenship, OVERALL physical fitness,  
35 GOOD health [and], the worthy use of leisure AND THE REDUCTION IN THE  
36 INCIDENCE OF CHILDHOOD OBESITY. Pupils above such age attending the  
37 public schools shall be required to attend upon such prescribed courses  
38 of instruction.

39 5. (A) It shall be the duty of the regents to adopt rules determining  
40 the subjects to be included in courses of physical education provided  
41 for in this section, the period of instruction in each of such courses,  
42 the qualifications of teachers, and the attendance upon such courses of  
43 instruction.

44 (B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE REGENTS  
45 MAY PROVIDE IN ITS RULES THAT THE PHYSICAL EDUCATION INSTRUCTION  
46 REQUIREMENT FOR ALL STUDENTS ENROLLED IN ELEMENTARY AND SECONDARY SCHOOL  
47 GRADES SHALL, WHERE FEASIBLE, INCLUDE DAILY PHYSICAL EXERCISE OR ACTIV-  
48 ITY, INCLUDING STUDENTS WITH DISABLING CONDITIONS AND THOSE IN ALTERNA-  
49 TIVE EDUCATION PROGRAMS. THE REGENTS MAY INCLUDE IN ITS RULES THAT  
50 STUDENTS ENROLLED IN SUCH ELEMENTARY AND SECONDARY SCHOOLS SHALL PARTIC-  
51 IPATE IN PHYSICAL EDUCATION, EXERCISE OR ACTIVITY FOR A MINIMUM OF ONE  
52 HUNDRED TWENTY MINUTES DURING EACH SCHOOL WEEK. THE REGENTS MAY PROVIDE  
53 FOR A TWO-YEAR PHASE-IN SCHEDULE FOR DAILY PHYSICAL EDUCATION IN ELEMEN-  
54 TARY SCHOOLS IN ITS RULES.

55 S 7. The section heading and subdivision 1 of section 804 of the  
56 education law, the section heading as amended by chapter 401 of the laws

1 of 1998 and subdivision 1 as added by chapter 982 of the laws of 1977,  
2 are amended and a new subdivision 3-b is added to read as follows:

3 Health education regarding alcohol, drugs, tobacco abuse, THE  
4 REDUCTION IN THE INCIDENCE OF OBESITY, and the prevention and detection  
5 of certain cancers. 1. All schools shall include, as an integral part of  
6 health, SCIENCE AND PHYSICAL education, instruction so as to discourage  
7 the misuse and abuse of alcohol, tobacco[,] and other drugs, TO REDUCE  
8 THE INCIDENCE OF OBESITY, and promote attitudes and behavior that  
9 enhance health, well being, and human dignity.

10 3-B. INSTRUCTION REGARDING THE LONG TERM HEALTH RISKS ASSOCIATED WITH  
11 OBESITY AND METHODS OF PREVENTING AND REDUCING THE INCIDENCE OF OBESITY,  
12 INCLUDING GOOD NUTRITION AND REGULAR EXERCISE. SUCH INSTRUCTION MAY BE  
13 AN INTEGRAL PART OF REQUIRED HEALTH, SCIENCE AND PHYSICAL EDUCATION  
14 COURSES.

15 S 8. Subdivision 1 of section 804-a of the education law, as added by  
16 chapter 730 of the laws of 1986, is amended to read as follows:

17 1. Within the amounts appropriated, the commissioner is hereby  
18 authorized to establish a demonstration program and to distribute state  
19 funds to local school districts, boards of cooperative educational  
20 services and in certain instances community school districts, for the  
21 development, implementation, evaluation, validation, demonstration and  
22 replication of exemplary comprehensive health education programs to  
23 assist the public schools in developing curricula, training staff, and  
24 addressing local health education needs of students, parents, and staff.  
25 SUCH PROGRAMS SHALL SERVE THE PURPOSE OF DEVELOPING AND ENHANCING  
26 PUPILS' HEALTH KNOWLEDGE, SKILLS, ATTITUDES AND BEHAVIORS, WHICH IS  
27 FUNDAMENTAL TO IMPROVING THEIR HEALTH STATUS AND ACADEMIC PERFORMANCE,  
28 AS WELL AS REDUCING THE INCIDENCE OF ADOLESCENT PREGNANCY, ALCOHOL  
29 ABUSE, TOBACCO ABUSE, TRUANCY, SUICIDE, SUBSTANCE ABUSE, OBESITY, ASTH-  
30 MA, OTHER CHRONIC RESPIRATORY DISEASES, AND OTHER PROBLEMS OF CHILDHOOD  
31 AND ADOLESCENCE.

32 S 9. Section 813 of the education law, as added by chapter 296 of the  
33 laws of 1994, is amended to read as follows:

34 S 813. School lunch period; scheduling. Each school shall schedule a  
35 reasonable time DURING EACH SCHOOL DAY for each full day pupil attending  
36 pre-kindergarten through grade twelve WITH AMPLE TIME to consume lunch  
37 AND TO ENGAGE IN PHYSICAL EXERCISE OR RECREATION.

38 S 10. This act shall take effect immediately, except that sections  
39 one, two, three, four and five of this act shall take effect two years  
40 after this act shall have become a law.