

STATE OF NEW YORK

5867

2017-2018 Regular Sessions

IN SENATE

May 3, 2017

Introduced by Sen. MARCELLINO -- 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 the definition of a
student with a disability

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Subdivision 1 of section 4401 of the education law, as
2 amended by chapter 378 of the laws of 2007, is amended to read as
3 follows:

4 1. A "child with a disability" or "student with a disability" means a
5 person under the age of twenty-one who is entitled to attend public
6 schools pursuant to section thirty-two hundred two of this chapter and
7 who, because of mental, physical or emotional reasons can only receive
8 appropriate educational opportunities from a program of special educa-
9 tion. Such term does not include a child whose educational needs are due
10 primarily to unfamiliarity with the English language, environmental,
11 cultural or economic factors. Lack of appropriate instruction in read-
12 ing, including in the essential components of reading instruction as
13 defined in subsection three of section twelve hundred eight of the
14 elementary and secondary education act of nineteen hundred sixty-five,
15 or lack of appropriate instruction in mathematics or limited English
16 proficiency shall not be the determinant factor in identifying a student
17 as a student with a disability. Such disabilities shall include but not
18 be limited to:

19 (a) Autism means a developmental disability significantly affecting
20 verbal and nonverbal communication and social interaction, generally
21 evident before age three, that adversely affects a student's educational
22 performance. Other characteristics often associated with autism are
23 engagement in repetitive activities and stereotyped movements, resist-
24 ance to environmental change or change in daily routines, and unusual
25 responses to sensory experiences. The term does not apply if a student's

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

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1 educational performance is adversely affected primarily because the
2 student has an emotional disturbance as defined in paragraph (d) of this
3 subdivision. A student who manifests the characteristics of autism after
4 age three could be diagnosed as having autism if the criteria in this
5 paragraph are otherwise satisfied.

6 (b) Deafness means a hearing impairment that is so severe that the
7 student is impaired in processing linguistic information through hear-
8 ing, with or without amplification, that adversely affects a student's
9 educational performance.

10 (c) Deaf-blindness means concomitant hearing and visual impairments,
11 the combination of which causes such severe communication and other
12 developmental and educational needs that they cannot be accommodated in
13 special education programs solely for students with deafness or students
14 with blindness.

15 (d) Emotional disturbance means a condition exhibiting one or more of
16 the following characteristics over a long period of time and to a marked
17 degree that adversely affects a student's educational performance:

18 (1) an inability to learn that cannot be explained by intellectual,
19 sensory, or health factors;

20 (2) an inability to build or maintain satisfactory interpersonal
21 relationships with peers and teachers;

22 (3) inappropriate types of behavior or feelings under normal circum-
23 stances;

24 (4) a generally pervasive mood of unhappiness or depression; or

25 (5) a tendency to develop physical symptoms or fears associated with
26 personal or school problems. The term includes schizophrenia. The term
27 does not apply to students who are socially maladjusted, unless it is
28 determined that they have an emotional disturbance.

29 (e) Hearing impairment means an impairment in hearing, whether perma-
30 nent or fluctuating, that adversely affects the child's educational
31 performance but that is not included under the definition of deafness in
32 this section.

33 (f) Learning disability means a disorder in one or more of the basic
34 psychological processes involved in understanding or in using language,
35 spoken or written, which manifests itself in an imperfect ability to
36 listen, think, speak, read, write, spell, or to do mathematical calcu-
37 lations. The term includes such conditions as perceptual disabilities,
38 brain injury, minimal brain dysfunction, and developmental aphasia. The
39 term does not include learning problems that are primarily the result of
40 visual, hearing or motor disabilities, of an intellectual disability, of
41 emotional disturbance, or of environmental, cultural or economic disad-
42 vantage.

43 (g) Intellectual disability means significantly subaverage general
44 intellectual functioning, existing concurrently with deficits in adap-
45 tive behavior and manifested during the developmental period, that
46 adversely affects a student's educational performance.

47 (h) Multiple disabilities means concomitant impairments (such as
48 intellectual disability-blindness, intellectual disability-orthopedic
49 impairment, etc.), the combination of which cause such severe educa-
50 tional needs that they cannot be accommodated in a special education
51 program solely for one of the impairments. The term does not include
52 deaf-blindness.

53 (i) Orthopedic impairment means a severe orthopedic impairment that
54 adversely affects a student's educational performance. The term includes
55 impairments caused by congenital anomaly (e.g., clubfoot, absence of
56 some member, etc.), impairments caused by disease (e.g., poliomyelitis,

1 bone tuberculosis, etc.), and impairments from other causes (e.g., cere-
2 bral palsy, amputation, and fractures or burns which cause contrac-
3 tures).

4 (j) Other health-impairment means having limited strength, vitality or
5 alertness, including a heightened alertness to environmental stimuli,
6 that results in limited alertness with respect to the educational envi-
7 ronment, that is due to chronic or acute health problems, including but
8 not limited to a heart condition, tuberculosis, rheumatic fever, nephri-
9 tis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning,
10 leukemia, diabetes, attention deficit disorder or attention deficit
11 hyperactivity disorder or tourette syndrome, which adversely affects a
12 student's educational performance.

13 (k) Speech or language impairment means a communication disorder, such
14 as stuttering, impaired articulation, a language impairment or a voice
15 impairment, that adversely affects a student's educational performance.

16 (l) Traumatic brain injury means an acquired injury to the brain
17 caused by an external physical force or by certain medical conditions
18 such as stroke, encephalitis, aneurysm, and anoxia or brain tumors with
19 resulting impairments that adversely affect educational performance. The
20 term includes open or closed head injuries or brain injuries from
21 certain medical conditions resulting in mild, moderate or severe impair-
22 ments in one or more areas, including cognition, language, memory,
23 attention, reasoning, abstract thinking, judgment, problem solving,
24 sensory, perceptual and motor abilities, psychosocial behavior, physical
25 functions, information processing, and speech. The term does not include
26 injuries that are congenital or caused by birth trauma.

27 (m) Visual impairment including blindness means an impairment in
28 vision that, even with correction, adversely affects a student's educa-
29 tional performance. The term includes both partial sight and blindness.

30 (n) Dyslexia means a specific learning disability that is neurobiolog-
31 ical in origin. It is characterized at the level of a keen observer as
32 frustration, withdrawal, anxiety, aversion to homework and schoolwork,
33 underperformance, and an undoing of the personal sense of ability,
34 psycho-somatic symptoms that are triggered by school-failure to read or
35 perform well at spelling, written expression or other language tasks, or
36 mixing up right and left hands. Other observable characteristics
37 include difficulties with accurate and/or fluent word recognition and by
38 poor spelling and decoding abilities. These difficulties typically
39 result from a deficit in the phonological component of language that is
40 often unexpected in relation to other cognitive abilities and the
41 provision of effective classroom instruction. Secondary consequences may
42 include problems in reading comprehension and reduced reading experience
43 that can impede growth of vocabulary and background knowledge.

44 (o) "Special education" means specially designed instruction which
45 includes special services or programs as delineated in subdivision two
46 of this section, and transportation, provided at no cost to the parents
47 to meet the unique needs of a child with a disability. A "child with a
48 handicapping condition" means a child with a disability.

49 § 2. Subdivision 1 of section 4401 of the education law, as amended by
50 chapter 311 of the laws of 1999, is amended to read as follows:

51 1. A "child with a disability" or "student with a disability" means a
52 person under the age of twenty-one who is entitled to attend public
53 schools pursuant to section thirty-two hundred two of this chapter and
54 who, because of mental, physical or emotional reasons can only receive
55 appropriate educational opportunities from a program of special educa-
56 tion. Such term does not include a child whose educational needs are due

1 primarily to unfamiliarity with the English language, environmental,
2 cultural or economic factors. Lack of instruction in reading or math-
3 ematics or limited English proficiency shall not be the determinat
4 factor in identifying a student as a student with a disability. Such
5 disabilities shall include but not be limited to:

6 (a) Autism means a developmental disability significantly affecting
7 verbal and nonverbal communication and social interaction, generally
8 evident before age three, that adversely affects a student's educational
9 performance. Other characteristics often associated with autism are
10 engagement in repetitive activities and stereotyped movements, resist-
11 ance to environmental change or change in daily routines, and unusual
12 responses to sensory experiences. The term does not apply if a student's
13 educational performance is adversely affected primarily because the
14 student has an emotional disturbance as defined in paragraph (d) of this
15 subdivision. A student who manifests the characteristics of autism after
16 age three could be diagnosed as having autism if the criteria in this
17 paragraph are otherwise satisfied.

18 (b) Deafness means a hearing impairment that is so severe that the
19 student is impaired in processing linguistic information through hear-
20 ing, with or without amplification, that adversely affects a student's
21 educational performance.

22 (c) Deaf-blindness means concomitant hearing and visual impairments,
23 the combination of which causes such severe communication and other
24 developmental and educational needs that they cannot be accommodated in
25 special education programs solely for students with deafness or students
26 with blindness.

27 (d) Emotional disturbance means a condition exhibiting one or more of
28 the following characteristics over a long period of time and to a marked
29 degree that adversely affects a student's educational performance:

30 (1) an inability to learn that cannot be explained by intellectual,
31 sensory, or health factors;

32 (2) an inability to build or maintain satisfactory interpersonal
33 relationships with peers and teachers;

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35 stances;

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38 personal or school problems. The term includes schizophrenia. The term
39 does not apply to students who are socially maladjusted, unless it is
40 determined that they have an emotional disturbance.

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42 nent or fluctuating, that adversely affects the child's educational
43 performance but that is not included under the definition of deafness in
44 this section.

45 (f) Learning disability means a disorder in one or more of the basic
46 psychological processes involved in understanding or in using language,
47 spoken or written, which manifests itself in an imperfect ability to
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49 lations. The term includes such conditions as perceptual disabilities,
50 brain injury, minimal brain dysfunction, and developmental aphasia. The
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53 emotional disturbance, or of environmental, cultural or economic disad-
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55 (g) Intellectual disability means significantly subaverage general
56 intellectual functioning, existing concurrently with deficits in adap-

1 tive behavior and manifested during the developmental period, that
2 adversely affects a student's educational performance.

3 (h) Multiple disabilities means concomitant impairments (such as
4 intellectual disability-blindness, intellectual disability-orthopedic
5 impairment, etc.), the combination of which cause such severe educa-
6 tional needs that they cannot be accommodated in a special education
7 program solely for one of the impairments. The term does not include
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11 impairments caused by congenital anomaly (e.g., clubfoot, absence of
12 some member, etc.), impairments caused by disease (e.g., poliomyelitis,
13 bone tuberculosis, etc.), and impairments from other causes (e.g., cere-
14 bral palsy, amputation, and fractures or burns which cause contrac-
15 tures).

16 (j) Other health-impairment means having limited strength, vitality or
17 alertness, including a heightened alertness to environmental stimuli,
18 that results in limited alertness with respect to the educational envi-
19 ronment, that is due to chronic or acute health problems, including but
20 not limited to a heart condition, tuberculosis, rheumatic fever, nephri-
21 tis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning,
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28 (l) Traumatic brain injury means an acquired injury to the brain
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31 resulting impairments that adversely affect educational performance. The
32 term includes open or closed head injuries or brain injuries from
33 certain medical conditions resulting in mild, moderate or severe impair-
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35 attention, reasoning, abstract thinking, judgment, problem solving,
36 sensory, perceptual and motor abilities, psychosocial behavior, physical
37 functions, information processing, and speech. The term does not include
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53 provision of effective classroom instruction. Secondary consequences may
54 include problems in reading comprehension and reduced reading experience
55 that can impede growth of vocabulary and background knowledge.

1 (o) "Special education" means specially designed instruction which
2 includes special services or programs as delineated in subdivision two
3 of this section, and transportation, provided at no cost to the parents
4 to meet the unique needs of a child with a disability. A "child with a
5 handicapping condition" means a child with a disability.

6 § 3. This act shall take effect immediately; provided, however, that
7 it shall not affect any student's individualized education program that
8 has been approved for the 2017--2018 school year; provided, further,
9 that the amendments to subdivision 1 of section 4401 of the education
10 law made by section one of this act shall be subject to the expiration
11 and reversion of such subdivision pursuant to section 22 of chapter 352
12 of the laws of 2005, as amended, when upon such date the provisions of
13 section two of this act shall take effect.