

2138

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. JOHN, GANTT -- read once and referred to the  
Committee on Education

AN ACT to amend the education law, in relation to lead screening  
requirements for school enrollment and special education

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

1 Section 1. Subdivision 2 of section 901 of the education law, as added  
2 by chapter 477 of the laws of 2004, is amended to read as follows:

3 2. School health services for the purposes of this article shall mean  
4 the several procedures, including, but not limited to, medical examina-  
5 tions, dental inspection and/or screening, scoliosis screening, LEAD  
6 SCREENING, vision screening and audiometer tests, designed to determine  
7 the health status of the child; to inform parents or other persons in  
8 parental relation to the child, pupils and teachers of the individual  
9 child's health condition subject to federal and state confidentiality  
10 laws; to guide parents, children and teachers in procedures for prevent-  
11 ing and correcting defects and diseases; to instruct the school person-  
12 nel in procedures to take in case of accident or illness; to survey and  
13 make necessary recommendations concerning the health and safety aspects  
14 of school facilities and the provision of health information.

15 S 2. Section 903 of the education law, as amended by chapter 281 of  
16 the laws of 2007, subdivision 1 as separately amended by section 11 of  
17 part B of chapter 58 of the laws of 2007, subdivision 2 and paragraph b  
18 of subdivision 3 as added by chapter 281 of the laws of 2007, and para-  
19 graph a of subdivision 3 as amended by section 28 of part A of chapter  
20 58 of the laws of 2008, is amended to read as follows:

21 S 903. Students to furnish health certificates; and dental health  
22 certificates. 1. A health certificate shall be furnished by each student  
23 in the public schools upon his or her entrance in such schools and upon  
24 his or her entry into the grades prescribed by the commissioner in regu-  
25 lations, provided that such regulations shall require such certificates

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

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1 at least twice during the elementary grades and twice in the secondary  
2 grades. A LEAD SCREENING CERTIFICATE GIVEN PURSUANT TO SECTION THIRTEEN  
3 HUNDRED SEVENTY-C OF THE PUBLIC HEALTH LAW SHALL BE FURNISHED BY EACH  
4 PUPIL SEVEN YEARS OF AGE OR YOUNGER IN THE PUBLIC SCHOOLS PRIOR TO OR  
5 WITHIN THREE MONTHS AFTER INITIAL ENROLLMENT OF THE CHILD IN PUBLIC  
6 SCHOOLS. An examination and health history of any child may be required  
7 by the local school authorities at any time in their discretion to  
8 promote the educational interests of such child. Each certificate shall  
9 be signed by a duly licensed physician, physician assistant, or nurse  
10 practitioner, who is authorized by law to practice in this state, and  
11 consistent with any applicable written practice agreement, or by a duly  
12 licensed physician, physician assistant, or nurse practitioner, who is  
13 authorized to practice in the jurisdiction in which the examination was  
14 given, provided that the commissioner has determined that such jurisdic-  
15 tion has standards of licensure and practice comparable to those of New  
16 York. Each such certificate shall describe the condition of the student  
17 when the examination was made, which shall not be more than twelve  
18 months prior to the commencement of the school year in which the exam-  
19 ination is required, and shall state whether OR NOT such student is in a  
20 fit condition of health to permit his or her attendance at the public  
21 schools. Each such certificate shall also state the student's body mass  
22 index (BMI) and weight status category. For purposes of this section,  
23 BMI is computed as the weight in kilograms divided by the square of  
24 height in meters or the weight in pounds divided by the square of height  
25 in inches multiplied by a conversion factor of 703. Weight status cate-  
26 gories for children and adolescents shall be as defined by the commis-  
27 sioner of health. IN ALL SCHOOL DISTRICTS, THE EXAMINATION OF CHILDREN  
28 SEVEN YEARS OF AGE OR YOUNGER SHALL INCLUDE SCREENING FOR LEAD. In all  
29 school districts such physician, physician assistant or nurse practi-  
30 tioner shall determine whether a one-time test for sickle cell anemia is  
31 necessary or desirable and he or she shall conduct such a test and the  
32 certificate shall state the results.

33 2. a. A dental health certificate shall be requested from each  
34 student. Each student is requested to furnish a dental health certif-  
35 icate at the same time that health certificates are required. An exam-  
36 ination and dental health history of any child may be requested by the  
37 local school authorities at any time in their discretion to promote the  
38 educational interests of such child. Each certificate shall be signed by  
39 a duly licensed dentist who is authorized by law to practice in this  
40 state, and consistent with any applicable written practice agreement, or  
41 by a duly licensed dentist who is authorized to practice in the juris-  
42 diction in which the examination was given, provided that the commis-  
43 sioner has determined that such jurisdiction has standards of licensure  
44 and practice comparable to those of New York. Each such certificate  
45 shall describe the dental health condition of the student when the exam-  
46 ination was made, which shall not be more than twelve months prior to  
47 the commencement of the school year in which the examination is  
48 requested, and shall state whether such student is in fit condition of  
49 dental health to permit his or her attendance at the public schools.

50 b. A notice of request for dental health certificates shall be  
51 distributed at the same time that parents or person in parental  
52 relationship to students are notified of health examination requirements  
53 and shall state that a list of dentists to which children who need  
54 comprehensive dental examinations may be referred for treatment on a  
55 free or reduced cost basis is available upon request at the child's  
56 school. The department shall, in collaboration with the department of

1 health, compile and maintain a list of dentists to which children who  
2 need comprehensive dental examinations may be referred for treatment on  
3 a free or reduced cost basis. Such list shall be made available to all  
4 public schools and be made available to parents or person in parental  
5 relationship upon request. The department shall promulgate regulations  
6 to ensure the gathering and dissemination of the proper information to  
7 interested parties.

8 3. a. Within thirty days after the student's entrance in such schools  
9 or grades, the health certificate shall be submitted to the principal or  
10 his or her designee and shall be filed in the student's cumulative  
11 health record. If such student does not present a health certificate as  
12 required in this section, unless he or she has been accommodated on  
13 religious grounds, the principal or the principal's designee shall cause  
14 a notice to be sent to the parents or person in parental relationship to  
15 such student STATING that if the required health certificate is not  
16 furnished within thirty days from the date of such notice, an examina-  
17 tion will be made of such student, as provided in this article. Each  
18 school and school district chosen as part of an appropriate sampling  
19 methodology shall participate in surveys directed by the commissioner of  
20 health pursuant to the public health law in relation to students' BMI  
21 and weight status categories as reported on the school health certif-  
22 icate and which shall be subject to audit by the commissioner of health.  
23 Such surveys shall contain the information required pursuant to subdivi-  
24 sion one of this section in relation to students' BMI and weight status  
25 categories in aggregate. Parents or other persons in parental relation  
26 to a student may refuse to have the student's BMI and weight status  
27 category included in such survey. Each school and school district shall  
28 provide the commissioner of health with any information, records and  
29 reports he or she may require for the purpose of such audit. The BMI and  
30 weight status survey and audit as described in this subdivision shall be  
31 conducted consistent with confidentiality requirements imposed by feder-  
32 al law.

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

36 4. Notwithstanding the provisions of subdivisions one, two and three  
37 of this section, no examinations for a health certificate or health  
38 history shall be required or dental certificate requested, and no  
39 screening examinations for sickle cell anemia shall be required where a  
40 student or the parent or person in parental relation to such student  
41 objects thereto on the grounds that such examinations or health history  
42 conflict with their genuine and sincere religious beliefs.

43 S 3. Section 904 of the education law, as amended by chapter 477 of  
44 the laws of 2004, subdivision 1 as amended by section 12 of part B of  
45 chapter 58 of the laws of 2007, is amended to read as follows:

46 S 904. Examinations by health appraisal. 1. Each principal of a public  
47 school, or his or her designee, shall report to the director of school  
48 health services having jurisdiction over such school, the names of all  
49 students who have not furnished health certificates as provided in  
50 section nine hundred three of this article, or who are children with  
51 disabilities, as defined by article eighty-nine of this chapter, and the  
52 director of school health services shall cause such students to be sepa-  
53 rately and carefully examined and tested to ascertain whether any  
54 student has defective sight or hearing, or any other physical disability  
55 which may tend to prevent him or her from receiving the full benefit of  
56 school work, or from requiring a modification of such work to prevent

1 injury to the student or from receiving the best educational results.  
2 Each examination shall also include a calculation of the student's body  
3 mass index (BMI) and weight status category. For purposes of this  
4 section, BMI is computed as the weight in kilograms divided by the  
5 square of height in meters or the weight in pounds divided by the square  
6 of height in inches multiplied by a conversion factor of 703. Weight  
7 status categories for children and adolescents shall be as defined by  
8 the commissioner of health. In all school districts, such physician,  
9 physician assistant or nurse practitioner shall determine whether a  
10 one-time test for sickle cell anemia is necessary or desirable and he or  
11 she shall conduct such tests and the certificate shall state the  
12 results. If it should be ascertained, upon such test or examination,  
13 that any of such students have defective sight or hearing, or other  
14 physical disability, including sickle cell anemia, as above described,  
15 the principal or his or her designee shall notify the parents of, or  
16 other persons in parental relation to, the child as to the existence of  
17 such disability. If the parents or other persons in parental relation  
18 are unable or unwilling to provide the necessary relief and treatment  
19 for such students, such fact shall be reported by the principal or his  
20 or her designee to the director of school health services, whose duty it  
21 shall be to provide relief for such students. IN ALL SCHOOL DISTRICTS,  
22 THE EXAMINATION OF CHILDREN SEVEN YEARS OF AGE OR YOUNGER SHALL INCLUDE  
23 SCREENING FOR LEAD. Each school and school district chosen as part of an  
24 appropriate sampling methodology shall participate in surveys directed  
25 by the commissioner of health pursuant to the public health law in  
26 relation to students' BMI and weight status categories as determined by  
27 the examination conducted pursuant to this section and which shall be  
28 subject to audit by the commissioner of health. Such surveys shall  
29 contain the information required pursuant to this subdivision in  
30 relation to students' BMI and weight status categories in aggregate.  
31 Parents or other persons in parental relation to a student may refuse to  
32 have the student's BMI and weight status category included in such  
33 survey. Each school and school district shall provide the commissioner  
34 of health with any information, records and reports he or she may  
35 require for the purpose of such audit. The BMI and weight status survey  
36 and audit as described in this section shall be conducted consistent  
37 with confidentiality requirements imposed by federal law. Data  
38 collection for such surveys shall commence on a voluntary basis at the  
39 beginning of the two thousand seven academic school year, and by all  
40 schools chosen as part of the sampling methodology at the beginning of  
41 the two thousand eight academic school year. The department shall also  
42 utilize the collected data to develop a report of child obesity and  
43 obesity related diseases.

44 2. Notwithstanding the provisions of subdivision one of this section,  
45 no examinations shall be required pursuant to this section where a  
46 student or the parent or person in parental relation to such student  
47 objects thereto on the grounds that such examinations conflict with  
48 their genuine and sincere religious beliefs.

49 S 4. The section heading and subdivision 5 of section 905 of the  
50 education law, the section heading as amended and subdivision 5 as added  
51 by chapter 477 of the laws of 2004, are amended, subdivision 5 is renum-  
52 bered subdivision 6 and a new subdivision 5 is added to read as follows:

53 Record of screening examinations for vision, LEAD, hearing and  
54 scoliosis.

55 5. THE SCHOOL MEDICAL INSPECTOR WHO SCREENS A CHILD FOR LEAD SHALL  
56 PROVIDE TO THE PARENT OR PERSON IN PARENTAL RELATION TO THE CHILD AND

1 THE SCHOOL A CERTIFICATE OF SCREENING, WHICH SHALL INCLUDE AND EXPLAIN  
2 THE RESULTS OF THE TEST FOR LEAD LEVELS. THE CERTIFICATE OR COPY OF THE  
3 CERTIFICATE SHALL BE KEPT IN A PERMANENT FILE OF THE SCHOOL FOR AT LEAST  
4 AS LONG AS THE PUPIL IS ENROLLED. THE SCHOOL MEDICAL INSPECTOR SHALL  
5 PROVIDE OR MAKE REASONABLE EFFORTS TO PROVIDE FOLLOW-UP TESTING AS  
6 NECESSARY FOR A CHILD WHOSE SCREENING IDENTIFIES LEAD LEVELS EQUAL TO OR  
7 GREATER THAN TEN MICROGRAMS PER DECILITER OF WHOLE BLOOD. NOTWITHSTAND-  
8 ING ANY OTHER PROVISIONS OF ANY GENERAL, SPECIAL, OR LOCAL LAW, THE  
9 SCHOOL AUTHORITIES CHARGED WITH THE DUTY OF SCREENING CHILDREN FOR LEAD  
10 PURSUANT TO THIS ARTICLE SHALL NOT SUFFER ANY LIABILITY TO ANY PERSON AS  
11 A RESULT OF SUCH SCREENING, WHICH LIABILITY WOULD NOT HAVE EXISTED UNDER  
12 ANY PROVISION OF LAW, STATUTORY OR OTHERWISE, IN THE ABSENCE OF THIS  
13 ARTICLE.

14 6. Notwithstanding any provision of this section to the contrary, no  
15 screening examinations for vision, LEAD, hearing, or scoliosis condition  
16 shall be required where a student or the parent or person in parental  
17 relation to such student objects thereto on the grounds that such exam-  
18 inations conflict with their genuine and sincere religious beliefs.

19 S 5. Paragraph a of subdivision 2 of section 4401-a of the education  
20 law, as amended by chapter 378 of the laws of 2007, is amended to read  
21 as follows:

22 a. state the reasons in writing for the referral and include any test  
23 results, records or reports upon which the referral is based, INCLUDING  
24 BLOOD LEAD LEVELS, unless such test results, records or reports are  
25 unavailable. IF TEST RESULTS, RECORDS, OR REPORTS OF SCREENING FOR  
26 BLOOD LEAD LEVELS ARE NOT AVAILABLE, THE COMMITTEE ON SPECIAL EDUCATION  
27 FOR THE SCHOOL DISTRICT SHALL REFER THE PARENT OR PERSON IN PARENTAL  
28 RELATION TO THE CHILD BEING REFERRED FOR SPECIAL EDUCATION SERVICES TO A  
29 PRIMARY CARE PROVIDER OR THE LOCAL HEALTH AUTHORITY FOR SUCH SCREENING;

30 S 6. The opening paragraph of paragraph a of subdivision 1 of section  
31 4402 of the education law, as amended by chapter 352 of the laws of  
32 2005, is designated subparagraph 1 and a new subparagraph 2 is added to  
33 read as follows:

34 (2) THE BOARD OF EDUCATION OR TRUSTEES OF EACH SCHOOL DISTRICT AND THE  
35 CHANCELLOR OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK SHALL  
36 ASCERTAIN AND REPORT ANNUALLY DURING EACH SCHOOL YEAR TO THE DEPARTMENT,  
37 UNDER REGULATIONS PRESCRIBED BY THE COMMISSIONER, THE NUMBER OF CHILDREN  
38 WITH HANDICAPPING CONDITIONS IN SUCH DISTRICT WHO HAVE LEAD LEVELS EQUAL  
39 TO OR GREATER THAN TEN MICROGRAMS PER DECILITER OF WHOLE BLOOD, THE  
40 BLOOD LEAD LEVELS OF CHILDREN PLACED IN SPECIAL EDUCATION PURSUANT TO  
41 THIS ARTICLE, THE NATURE OF THE HANDICAPPING CONDITIONS OF SUCH CHIL-  
42 DREN, THE NUMBER OF SUCH CHILDREN WITH EACH HANDICAPPING CONDITION, AND  
43 THE NATURE OF THE SERVICES REQUIRED BY SUCH CHILDREN.

44 S 7. This act shall take effect immediately, provided, however, that  
45 the amendments to paragraph a of subdivision 2 of section 4401-a of the  
46 education law made by section five of this act shall not affect the  
47 expiration of such section and shall be deemed to expire therewith;  
48 provided, further, that the amendments to the opening paragraph of para-  
49 graph a of subdivision 1 of section 4402 of the education law made by  
50 section six of this act shall not affect the expiration of such para-  
51 graph and shall be deemed to expire therewith.