

8398

2009-2010 Regular Sessions

I N A S S E M B L Y

May 19, 2009

Introduced by M. of A. NOLAN -- (at request of the State Education Department) -- read once and referred to the Committee on Education

AN ACT to amend the education law and the public health law, in relation to the provision of special education programs and services and implementation of the federal individuals with disabilities education improvement act of 2004; to amend chapter 352 of the laws of 2005, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, in relation to making certain provisions thereof permanent; to amend chapter 378 of the laws of 2007, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, in relation to making the provisions thereof permanent; to repeal subdivision 17 of section 1950 of the education law relating to development of special education facilities plans by boards of cooperative educational services, and to repeal subdivision (a) of section 8 of chapter 430 of the laws of 2006, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, in relation to making the provisions thereof permanent

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

1 Section 1. Subdivision 17 of section 1950 of the education law is
2 REPEALED.
3 S 2. Section 2215 of the education law is amended by adding a new
4 subdivision 17 to read as follows:
5 17. TO DETERMINE THE ADEQUACY AND APPROPRIATENESS OF THE FACILITIES
6 SPACE AVAILABLE TO HOUSE SPECIAL EDUCATION PROGRAMS IN THE GEOGRAPHIC
7 AREA SERVED BY THE BOARD OF COOPERATIVE EDUCATIONAL SERVICES, CONSISTENT
8 WITH THE LEAST RESTRICTIVE ENVIRONMENT REQUIREMENT.
9 S 3. Subdivision 1 of section 2856 of the education law is amended by
10 adding a new paragraph (d) to read as follows:

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

LBD11770-03-9

1 (D) THE STATE AID ATTRIBUTABLE TO A STUDENT WITH A DISABILITY ATTEND-
2 ING A CHARTER SCHOOL AND PAYABLE IN PROPORTION TO THE LEVEL OF SERVICES
3 THAT THE CHARTER SCHOOL PROVIDES IN ACCORDANCE WITH THIS SUBDIVISION
4 SHALL BE COMPUTED IN THE MANNER PRESCRIBED IN THIS PARAGRAPH.

5 (I) DEFINITIONS. FOR THE PURPOSE OF THIS SUBDIVISION:

6 A. "PUPIL WITH A DISABILITY" SHALL MEAN A PUPIL WITH A DISABILITY AS
7 DEFINED PURSUANT TO CLAUSE ONE OF PARAGRAPH I OF SUBDIVISION ONE OF
8 SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER.

9 B. "PERIOD OF ENROLLMENT" SHALL MEAN THAT PERIOD COMMENCING ON THE
10 FIRST DAY OF THE SCHOOL YEAR THAT A PUPIL IS ENROLLED IN AND IS PHYS-
11 ICALLY PRESENT AT, OR LEGALLY ABSENT FROM, AN EDUCATIONAL PROGRAM OR
12 SERVICE OF A CHARTER SCHOOL AND ENDING ON THE LAST DAY OF THE SCHOOL
13 YEAR THAT SUCH PUPIL IS SO ENROLLED AND PHYSICALLY PRESENT AT, OR LEGAL-
14 LY ABSENT FROM, SUCH PROGRAM OR SERVICE.

15 C. "ENROLLMENT" FOR EACH CHARTER SCHOOL STUDENT SHALL MEAN THE
16 QUOTIENT, CALCULATED TO THREE DECIMALS WITHOUT ROUNDING, OBTAINED WHEN
17 THE TOTAL NUMBER OF WEEKS OF THE PERIOD OF ENROLLMENT OF SUCH STUDENT IS
18 DIVIDED BY THE TOTAL NUMBER OF WEEKS IN THE FULL SCHOOL YEAR OF THE
19 EDUCATIONAL PROGRAM OR SERVICE OF THE CHARTER SCHOOL. FOR THE PURPOSES
20 OF THIS SECTION, THREE CONSECUTIVE DAYS OF ENROLLMENT WITHIN THE SAME
21 WEEK AND WITHIN THE SAME MONTH SHALL BE THE EQUIVALENT OF ONE WEEK OF
22 ENROLLMENT, PROVIDED THAT NO MORE THAN FOUR WEEKS OF ENROLLMENT MAY BE
23 COUNTED IN ANY CALENDAR MONTH.

24 D. "LEVELS OF SERVICE" SHALL MEAN THE CATEGORIES OF PROGRAMS FOR
25 STUDENTS WITH DISABILITIES SPECIFIED IN CLAUSES (I) AND (II) OF SUBPARA-
26 GRAPH THREE AND SUBPARAGRAPH SIX OF PARAGRAPH I OF SUBDIVISION ONE OF
27 SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER THAT ARE PROVIDED BY THE
28 CHARTER SCHOOL DIRECTLY OR INDIRECTLY.

29 E. "WEIGHTED PUPIL WITH A DISABILITY" SHALL MEAN THE PRODUCT OF THE
30 ENROLLMENT FOR EACH CHARTER SCHOOL STUDENT WITH A DISABILITY MULTIPLIED
31 BY THE SPECIAL SERVICES WEIGHTING WHERE THE SPECIAL SERVICES WEIGHTING
32 FOR ANY PUPIL WITH A LEVEL OF SERVICE SPECIFIED IN CLAUSE (I) OF SUBPAR-
33 AGRAPH THREE OF PARAGRAPH I OF SUBDIVISION ONE OF SECTION THIRTY-SIX
34 HUNDRED TWO OF THIS CHAPTER SHALL BE ONE HUNDRED SIXTY-FIVE PERCENT, AND
35 FOR ANY PUPIL WITH A LEVEL OF SERVICE SPECIFIED IN CLAUSE (II) OF
36 SUBPARAGRAPH THREE OF PARAGRAPH I OF SUBDIVISION ONE OF SECTION THIRTY-
37 SIX HUNDRED TWO OF THIS CHAPTER SHALL BE NINETY PERCENT. THE WEIGHTING
38 FOR A PUPIL WITH A LEVEL OF SERVICE THAT MEETS THE DEFINITION OF AN
39 INTEGRATED SETTINGS WEIGHTED PUPILS WITH DISABILITIES AS DEFINED PURSU-
40 ANT TO SUBPARAGRAPH SIX OF PARAGRAPH I OF SUBDIVISION ONE OF SECTION
41 THIRTY-SIX HUNDRED TWO OF THIS CHAPTER SHALL BE INCREASED BY AN ADDI-
42 TIONAL FIFTY PERCENT.

43 F. "ADJUSTED EXPENSE PER PUPIL WITH A DISABILITY" SHALL MEAN THE PROD-
44 UCT OF (I) THE TWO THOUSAND FOUR--TWO THOUSAND FIVE APPROVED OPERATING
45 EXPENSE PER PUPIL FOR TWO THOUSAND SIX--TWO THOUSAND SEVEN AID COMPUTED
46 BY THE COMMISSIONER IN ACCORDANCE WITH PARAGRAPH F OF SUBDIVISION ONE OF
47 SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER AND BASED ON DATA USED BY
48 THE COMMISSIONER FOR THE PURPOSES OF PRODUCING A SCHOOL AID COMPUTER
49 LISTING IN SUPPORT OF THE ENACTED BUDGET REQUEST FOR THE TWO THOUSAND
50 SEVEN--TWO THOUSAND EIGHT SCHOOL YEAR AND ENTITLED "SA070-8", PROVIDED,
51 HOWEVER, THAT SUCH EXPENSE PER PUPIL SHALL BE NOT LESS THAN TWO THOUSAND
52 DOLLARS AND NOT MORE THAN NINE THOUSAND TWO HUNDRED FIFTY DOLLARS,
53 MULTIPLIED BY (II) FOR THE TWO THOUSAND NINE--TWO THOUSAND TEN AND TWO
54 THOUSAND TEN--TWO THOUSAND ELEVEN SCHOOL YEARS, ONE AND ONE HUNDRED TWO
55 ONE-THOUSANDTHS, AND FOR THE TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE
56 SCHOOL YEAR AND THEREAFTER, THE SUM OF ONE AND THE PERCENTAGE INCREASE

1 IN THE CONSUMER PRICE INDEX FOR THE CURRENT YEAR OVER SUCH CONSUMER
2 PRICE INDEX FOR THE TWO THOUSAND SIX--TWO THOUSAND SEVEN SCHOOL YEAR, AS
3 COMPUTED PURSUANT TO SUBPARAGRAPH II OF PARAGRAPH C OF SUBDIVISION FOUR
4 OF SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER.

5 G. "EXCESS COST AID RATIO FOR FOUNDATION AID ATTRIBUTABLE TO A PUPIL
6 WITH A DISABILITY" SHALL MEAN THE EXCESS COST AID RATIO FOR THE TWO
7 THOUSAND SIX--TWO THOUSAND SEVEN SCHOOL YEAR COMPUTED BY THE COMMISSION-
8 ER IN ACCORDANCE WITH SUBPARAGRAPH TWO OF PARAGRAPH A OF SUBDIVISION
9 FIVE OF SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER AND BASED ON DATA
10 USED BY THE COMMISSIONER FOR THE PURPOSES OF PRODUCING A SCHOOL AID
11 COMPUTER LISTING IN SUPPORT OF THE ENACTED BUDGET REQUEST FOR THE TWO
12 THOUSAND SEVEN--TWO THOUSAND EIGHT SCHOOL YEAR AND ENTITLED "SA070-8".

13 (II) EXCESS COST AID PER PUPIL SHALL EQUAL THE PRODUCT OF THE EXCESS
14 COST AID RATIO AND THE ADJUSTED EXPENSE PER PUPIL WITH A DISABILITY.

15 (III) FOUNDATION AID ATTRIBUTABLE TO A PUPIL WITH A DISABILITY SHALL
16 EQUAL THE PRODUCT OF THE EXCESS COST AID PER PUPIL AND THE WEIGHTED
17 PUPIL WITH A DISABILITY.

18 (IV) HIGH COST AID ATTRIBUTABLE TO A PUPIL WITH A DISABILITY, IF ANY,
19 SHALL BE COMPUTED PURSUANT TO SUBDIVISION FIVE OF SECTION THIRTY-SIX
20 HUNDRED TWO OF THIS CHAPTER.

21 (V) SUPPLEMENTAL PUBLIC EXCESS COST AID ATTRIBUTABLE TO A PUPIL WITH A
22 DISABILITY SHALL BE EQUAL TO THE POSITIVE QUOTIENT, IF ANY, OF THE TOTAL
23 AID APPORTIONED TO THE DISTRICT PURSUANT TO SUBDIVISION FIVE-A OF
24 SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER DIVIDED BY THE NUMBER OF
25 TOTAL UNWEIGHTED PUPILS WITH DISABILITIES IN THE DISTRICT IN THE BASE
26 YEAR.

27 (VI) THE STATE AID ATTRIBUTABLE TO A STUDENT WITH A DISABILITY SHALL
28 EQUAL THE SUM OF THE FOUNDATION AID ATTRIBUTABLE TO A PUPIL WITH A DISA-
29 BILITY, THE HIGH COST AID ATTRIBUTABLE TO THE PUPIL, AND THE SUPPLE-
30 MENTAL PUBLIC COST AID ATTRIBUTABLE TO THE PUPIL.

31 S 4. Paragraph a of subdivision 1 and paragraph a and subparagraph 1
32 of paragraph b of subdivision 2 of section 3602-c of the education law,
33 paragraph a of subdivision 1 as amended by chapter 474 of the laws of
34 2004, paragraph a and subparagraph 1 of paragraph b of subdivision 2 as
35 amended by chapter 378 of the laws of 2007, are amended and subdivision
36 2 is amended by adding a new paragraph e to read as follows:

37 a. "Services" shall mean instruction in the areas of gifted pupils,
38 career education and education for students with disabilities, and coun-
39 seling, psychological and social work services related to such instruc-
40 tion provided during the regular school year for pupils enrolled in a
41 nonpublic school located in a school district, provided that such
42 instruction is given to pupils enrolled in the public schools of such
43 district. SUCH TERM SHALL ALSO INCLUDE EDUCATION FOR STUDENTS WITH DISA-
44 BILITIES PROVIDED IN JULY AND AUGUST IN ACCORDANCE WITH PARAGRAPH E OF
45 SUBDIVISION TWO OF THIS SECTION.

46 a. Boards of education of all school districts of the state shall
47 furnish services to students who are residents of this state and who
48 attend nonpublic schools located in such school districts, upon the
49 written request of the parent or person in parental relation of any such
50 student. Such a request for career education or services to gifted
51 students shall be filed with the board of education of the school
52 district in which the parent or person in parental relation of the
53 student resides on or before the first day of June preceding the school
54 year for which the request is made. In the case of education for
55 students with disabilities, such a request shall be filed with the trus-
56 tees or board of education of the school district of location on or

1 before the first of [June] APRIL preceding the school year for which the
2 request is made[, or by July first, two thousand seven for the two thou-
3 sand seven--two thousand eight school year only,] FOR THOSE STUDENTS FOR
4 WHOM AN INDIVIDUALIZED EDUCATIONAL SERVICE PROGRAM WAS DEVELOPED AND
5 IMPLEMENTED PURSUANT TO THIS SECTION PRIOR TO SUCH DATE, AND ON OR
6 BEFORE THE FIRST OF JUNE PRECEDING THE SCHOOL YEAR FOR WHICH THE REQUEST
7 IS MADE FOR THOSE STUDENTS WHO WILL BE FIRST RECEIVING EDUCATION FOR
8 STUDENTS WITH DISABILITIES PURSUANT TO THIS SECTION IN THE SCHOOL YEAR
9 FOR WHICH THE REQUEST IS MADE OR FOR WHOM AN INDIVIDUALIZED EDUCATIONAL
10 SERVICE PROGRAM IS FIRST DEVELOPED AND IMPLEMENTED ON OR AFTER APRIL
11 FIRST AND ON OR BEFORE JUNE FIRST; provided that where a student is
12 first identified as a student with a disability after the first day of
13 June preceding the school year for which the request is made, [or thirty
14 days after the chapter of the laws of two thousand seven which amended
15 this paragraph, takes effect where applicable, and prior to the first
16 day of April of such current school year,] such request shall be submit-
17 ted within thirty days after AN INDIVIDUALIZED EDUCATION SERVICE PROGRAM
18 IS DEVELOPED FOR such student [is first identified. For students first
19 identified after March first of the current school year, any such
20 request for education for students with disabilities in the current
21 school year that is submitted on or after April first of such current
22 school year, shall be deemed a timely request for such services in the
23 following school year].

24 (1) For the purpose of obtaining education for students with disabili-
25 ties, as defined in paragraph d of subdivision one of this section, such
26 request shall be reviewed by the committee on special education of the
27 school district of location, which shall develop an individualized
28 education service program for the student based on the student's indi-
29 vidual needs in the same manner and with the same contents as an indi-
30 vidualized education program, EXCEPT AS OTHERWISE PROVIDED IN THIS
31 SUBPARAGRAPH. The committee on special education shall assure that
32 special education programs and services are made available to students
33 with disabilities attending nonpublic schools located within the school
34 district on an equitable basis, as compared to special education
35 programs and services provided to other students with disabilities
36 attending public or nonpublic schools located within the school
37 district, EXCEPT THAT THERE SHALL BE NO ENTITLEMENT UNDER THIS SECTION
38 TO THE PROVISION OF A SPECIAL CLASS OR INTEGRATED CO-TEACHING SERVICES,
39 AS SUCH TERMS ARE DEFINED IN THE REGULATIONS OF THE COMMISSIONER, BY THE
40 SCHOOL DISTRICT OF LOCATION FOR ALL OR PART OF THE SCHOOL DAY. Review
41 of the recommendation of the committee on special education may be
42 obtained by the parent or person in parental relation of the pupil
43 pursuant to the provisions of section forty-four hundred four of this
44 chapter; PROVIDED THAT A DUE PROCESS COMPLAINT, OTHER THAN A DUE PROCESS
45 COMPLAINT RELATING TO CHILD FIND REQUIREMENTS BROUGHT PURSUANT TO PARA-
46 GRAPH C OF THIS SUBDIVISION, SUBMITTED ON OR AFTER SEPTEMBER FIRST, TWO
47 THOUSAND NINE SHALL BE SUBMITTED TO MEDIATION PURSUANT TO SECTION
48 FORTY-FOUR HUNDRED FOUR-A OF THIS CHAPTER AND AT LEAST ONE MEDIATION
49 SESSION SHALL BE HELD PRIOR TO MAKING A REQUEST FOR AN IMPARTIAL
50 HEARING.

51 E. A NONPUBLIC SCHOOL STUDENT WHOSE DISABILITY IS SEVERE ENOUGH TO
52 EXHIBIT THE NEED FOR A STRUCTURED LEARNING ENVIRONMENT OF TWELVE MONTHS
53 DURATION TO MAINTAIN DEVELOPMENTAL LEVELS SHALL BE ELIGIBLE TO RECEIVE
54 SPECIAL EDUCATION PROGRAMS AND SERVICES IN JULY AND AUGUST IN ACCORDANCE
55 WITH THE INDIVIDUALIZED EDUCATION SERVICE PROGRAM DEVELOPED BY THE
56 COMMITTEE ON SPECIAL EDUCATION OF THE SCHOOL DISTRICT OF LOCATION AND

1 THE PROVISIONS OF SECTION FORTY-FOUR HUNDRED EIGHT OF THIS CHAPTER.
2 PROVIDED, HOWEVER, THAT A NONPUBLIC SCHOOL STUDENT SHALL NOT BE ENTITLED
3 PURSUANT TO THIS SECTION TO PLACEMENT IN A SPECIAL CLASS OR INTEGRATED
4 CO-TEACHING SERVICES, AS SUCH TERMS ARE DEFINED IN THE REGULATIONS OF
5 THE COMMISSIONER, IN JULY AND AUGUST. NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW TO THE CONTRARY, THE SCHOOL DISTRICT OF LOCATION SHALL
7 BE ELIGIBLE FOR STATE AID FOR SUCH SERVICES EXCLUSIVELY PURSUANT TO
8 SECTION FORTY-FOUR HUNDRED EIGHT OF THIS CHAPTER.

9 S 5. Subdivision 7 of section 3602-c of the education law, as amended
10 by chapter 378 of the laws of 2007, is amended to read as follows:

11 7. a. Boards of education of districts providing career education and
12 gifted education services to non-resident students shall be entitled to
13 recover tuition from the district of residence of such students in
14 accordance with a formula promulgated by the commissioner by regulation.

15 b. In the case of the education for students with disabilities who are
16 residents of New York, a school district of location providing services
17 to non-resident students shall be entitled to recover costs of services,
18 costs of evaluation, and costs of committee on special education admin-
19 istration directly from the district of residence of the student if
20 consent of the parent or person in parental relation is obtained to
21 release of personally identifiable information concerning their child.
22 If such consent is not obtained, the school district of location shall
23 submit to the commissioner, in a form prescribed by the commissioner, a
24 claim for costs of services, evaluation costs, and committee on special
25 education administrative costs that includes the address of the
26 student's permanent residence, including the school district of resi-
27 dence, and a certification by officials of the nonpublic school attended
28 by the student that such address is the address of record of such
29 student. Upon certification by the commissioner of the amount of such
30 claim, the state comptroller shall deduct such amount from any state
31 funds which become due to such school district of residence.

32 c. The amount charged by the school district of location for services,
33 evaluation[, eligible due process costs] and committee on special educa-
34 tion administrative costs shall not exceed the actual cost to the school
35 district of location, after deducting any costs paid with federal or
36 state funds. The commissioner shall adopt regulations prescribing a
37 dispute resolution mechanism that will be available to a school district
38 of residence where such district disagrees with the amount of tuition or
39 costs charged by the school district of location.

40 D. THE COMMISSIONER SHALL ESTABLISH REGIONAL RATE METHODOLOGIES FOR
41 COMPUTING REGIONAL RATES TO DETERMINE ACTUAL COSTS FOR EACH OF THE
42 FOLLOWING CATEGORIES OF COSTS: (I) COSTS OF SERVICES, (II) EVALUATIONS
43 AND (III) SPECIAL EDUCATION ADMINISTRATION. THE SCHOOL DISTRICT OF
44 LOCATION MAY ELECT TO USE ANY SUCH REGIONAL RATE METHODOLOGIES IN EFFECT
45 FOR THE CURRENT SCHOOL YEAR FOR ALL NONRESIDENT STUDENTS RECEIVING
46 SERVICES PURSUANT TO SUBDIVISION TWO OF THIS SECTION IN SUCH SCHOOL YEAR
47 OR MAY OPT TO COMPUTE ACTUAL COSTS ON AN INDIVIDUAL STUDENT BASIS. IF
48 SUCH SCHOOL DISTRICT ELECTS TO USE REGIONAL RATES FOR SERVICES, IT SHALL
49 USE ALL REGIONAL RATES THEN IN EFFECT FOR BILLING SERVICES FOR ALL SUCH
50 NONRESIDENT STUDENTS AND IF SUCH SCHOOL DISTRICT ELECTS TO USE REGIONAL
51 RATES FOR BILLING EVALUATION OR SPECIAL EDUCATION ADMINISTRATION COSTS,
52 IT SHALL USE SUCH RATES FOR BILLING FOR SUCH COSTS FOR ALL SUCH NONRESI-
53 DENT STUDENTS. THE SCHOOL DISTRICT OF LOCATION MAY, HOWEVER, ELECT TO
54 USE REGIONAL RATES FOR ONE OR MORE CATEGORIES OF COSTS, AND NOT FOR THE
55 OTHER CATEGORIES.

1 E. NO CLAIM SHALL BE PAYABLE PURSUANT THIS SUBDIVISION UNLESS IT IS
2 SUBMITTED TO THE SCHOOL DISTRICT OF RESIDENCE, OR THE COMMISSIONER WHERE
3 APPLICABLE, WITHIN ONE YEAR OF THE END OF THE SCHOOL YEAR IN WHICH THE
4 COSTS WERE INCURRED, OR WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS
5 PARAGRAPH, WHICHEVER IS LATER.

6 S 6. Paragraph a of subdivision 2 of section 4402 of the education
7 law, as amended by chapter 243 of the laws of 1989, is amended to read
8 as follows:

9 a. The board of education or trustees of each school district shall be
10 required to furnish suitable educational opportunities for [children
11 with handicapping conditions] STUDENTS WITH DISABILITIES by one of the
12 special services or programs listed in subdivision two of section
13 forty-four hundred one. The need of the individual [child] STUDENT shall
14 determine which of such services shall be rendered. Each district shall
15 provide to the maximum extent appropriate such services in a manner
16 which enables [children with handicapping conditions] STUDENTS WITH
17 DISABILITIES to participate in regular education services when appropri-
18 ate. Such services or programs shall be furnished between the months of
19 September and June of each year, except that for the nineteen hundred
20 eighty-seven--eighty-eight school year and thereafter, with respect to
21 the students whose [handicapping conditions] DISABILITIES are severe
22 enough to exhibit the need for a structured learning environment of
23 twelve months duration to maintain developmental levels, the board of
24 education or trustees of each school district upon the recommendation of
25 the committee on special education [and, in the first instance, the
26 consent of the parent] shall also provide, either directly or by
27 contract, for the provision of special services and programs as defined
28 in section forty-four hundred one of this article during the months of
29 July and August as contained in the individualized education program for
30 each eligible [child] STUDENT, and with prior approval by the commis-
31 sioner if required; provided that [(i) a student with a handicapping
32 condition who is first eligible to attend public school in the nineteen
33 hundred eighty-seven--eighty-eight school year shall not be eligible to
34 receive services pursuant to this paragraph during the months of July
35 and August nineteen hundred eighty-seven and (ii) a student with a
36 handicapping condition who is first eligible to attend public school in
37 the nineteen hundred eighty-eight--eighty-nine school year shall not be
38 eligible to receive services pursuant to this paragraph during the
39 months of July and August nineteen hundred eighty-eight and (iii) a
40 student with a handicapping condition who is eligible for services
41 during the months of July and August nineteen hundred eighty-nine pursu-
42 ant to the provisions of subdivision six of section forty-four hundred
43 ten of this article shall not be eligible to receive services pursuant
44 to this paragraph during such months and (iv)] a student with a [handi-
45 capping condition] DISABILITY who is eligible for services, including
46 services during the months of July and August, pursuant to section
47 forty-four hundred ten of this article shall not be eligible to receive
48 services pursuant to this paragraph during the months of July and
49 August.

50 S 7. Paragraph d of subdivision 4 of section 4402 of the education
51 law, as amended by chapter 646 of the laws of 1992, is amended to read
52 as follows:

53 d. Notwithstanding any other provision of law, such board shall
54 provide suitable transportation up to a distance of fifty miles to and
55 from a nonpublic school which a [child] STUDENT with a [handicapping
56 condition] DISABILITY attends if such [child] STUDENT has been so iden-

1 tified by the local committee on special education and such [child]
2 STUDENT attends such school for the purpose of receiving services or
3 programs FROM SUCH NONPUBLIC SCHOOL THAT ARE similar to special [educa-
4 tional] EDUCATION programs AND SERVICES recommended for such [child]
5 STUDENT by the local committee on special education. NOTWITHSTANDING
6 ANY OTHER PROVISION OF LAW TO THE CONTRARY, A NONPUBLIC STUDENT RECEIV-
7 ING TRANSPORTATION PURSUANT TO THIS PARAGRAPH SHALL NOT BE ENTITLED TO
8 SPECIAL EDUCATION PROGRAMS AND SERVICES FROM THE SCHOOL DISTRICT OF
9 LOCATION PURSUANT TO SECTION THIRTY-SIX HUNDRED TWO-C OF THIS CHAPTER.
10 AS A CONDITION OF ELIGIBILITY FOR SUCH TRANSPORTATION, THE PARENT OR
11 PERSON IN PARENTAL RELATION TO THE STUDENT SHALL CONSENT TO THE
12 PROVISION OF NOTICE BY THE SCHOOL DISTRICT OF RESIDENCE TO THE CHAIR-
13 PERSON OF THE COMMITTEE OR SUBCOMMITTEE ON SPECIAL EDUCATION OF THE
14 SCHOOL DISTRICT IN WHICH THE NONPUBLIC SCHOOL IS LOCATED IDENTIFYING
15 SUCH STUDENT, BY NAME, ADDRESS AND SCHOOL OF ATTENDANCE, AS A STUDENT
16 RECEIVING TRANSPORTATION PURSUANT TO THIS PARAGRAPH. THE SCHOOL DISTRICT
17 OF RESIDENCE SHALL PROVIDE SUCH NOTICE NO LATER THAN THIRTY DAYS AFTER
18 COMMENCING SUCH TRANSPORTATION.

19 S 8. Paragraph a of subdivision 1 of section 4404 of the education
20 law, as amended by chapter 430 of the laws of 2006, is amended to read
21 as follows:

22 a. If the parent or person in parental relation of a student, the
23 board of education or trustees of a school district or a state agency
24 responsible for providing education to students with disabilities
25 presents a complaint with respect to any matter relating to the iden-
26 tification, evaluation or educational placement of the student or the
27 provision of a free appropriate public education to the student or a
28 manifestation determination or other matter relating to placement upon
29 discipline of a student with a disability that may be the subject of an
30 impartial hearing pursuant to subsection (k) of section fourteen hundred
31 fifteen of title twenty of the United States code and the implementing
32 federal regulations, and the party presenting the complaint or their
33 attorney provides a due process complaint notice in accordance with
34 federal law and regulations and such complaint sets forth an alleged
35 violation that occurred not more than two years before the date the
36 parent or public agency knew or should have known about the alleged
37 action that forms the basis for the complaint, OR IN THE CASE OF A
38 COMPLAINT SEEKING TUITION REIMBURSEMENT FOR THE UNILATERAL PARENTAL
39 PLACEMENT OF A STUDENT IN A PRIVATE SCHOOL, SUCH TUITION CLAIM IS
40 PRESENTED NOT MORE THAN ONE HUNDRED EIGHTY DAYS FROM THE PLACEMENT BY
41 THE PARENT OR PERSON IN PARENTAL RELATION IN THE PRIVATE SCHOOL, the
42 board or agency shall appoint an impartial hearing officer to review the
43 due process complaint notice when challenged and, if the matter is not
44 resolved in a resolution session that has been convened as required by
45 federal law, to preside over an impartial due process hearing and make a
46 determination within such period of time as the commissioner by regu-
47 lation shall determine, provided that the board of education or trustees
48 shall offer the parent or person in parental relation the option of
49 mediation pursuant to section forty-four hundred four-a of this article
50 as an alternative to an impartial hearing. Where the parent or person in
51 parental relation or a school district or public agency presents a
52 complaint, the school district or public agency responsible for appoint-
53 ing the impartial hearing officer shall provide the parent or person in
54 parental relation with a procedural safeguards notice as required pursu-
55 ant to subsection (d) of section fourteen hundred fifteen of title twen-
56 ty of the United States code and the implementing federal regulations.

1 Notwithstanding any provision of this subdivision to the contrary, the
2 time limitation on presenting a complaint shall not apply to a parent or
3 person in parental relation to the student if the parent or person in
4 parental relation was prevented from requesting the impartial hearing
5 due to specific misrepresentations by the school district or other
6 public agency that it had resolved the problem forming the basis of the
7 complaint or due to the school district's or other public agency's with-
8 holding of information from the parent or person in parental relation
9 that was required under federal law to be provided. Nothing in this
10 subdivision shall be construed to authorize the board of education or
11 trustees to bring an impartial hearing to override the refusal of a
12 parent or person in parental relation to consent where a local educa-
13 tional agency is prohibited by federal law from initiating such a hear-
14 ing.

15 S 9. Paragraph f of subdivision 1 of section 4410 of the education
16 law, as amended by chapter 705 of the laws of 1992, is amended to read
17 as follows:

18 f. "First eligible for services" means the earliest date on which a
19 child becomes age-eligible for services pursuant to this section, and as
20 defined in regulations of the commissioner in accordance with applicable
21 federal law and regulations, except that a child who is already receiv-
22 ing services under [section two hundred thirty-six of the family court
23 act or its successor] TITLE TWO-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC
24 HEALTH LAW may, if the parent so chooses, continue to be eligible to
25 receive such services through August thirty-first of the calendar year
26 in which the child first becomes age-eligible to receive services pursu-
27 ant to this section OR, AT THE PARENT'S OPTION, UNTIL THE LAST DAY OF
28 THE SCHOOL YEAR IN WHICH THE CHILD TURNS THREE YEARS OF AGE.

29 S 10. Subdivision 8 of section 2541 of the public health law, as added
30 by chapter 428 of the laws of 1992, paragraph (a) as amended by section
31 1 of part B3 of chapter 62 of the laws of 2003, is amended to read as
32 follows:

33 8. (a) "Eligible child" means an infant or toddler from birth through
34 age two who has a disability; provided, however, that any toddler with a
35 disability who has been determined to be eligible for program services
36 under section forty-four hundred ten of the education law and:

37 (i) who turns three years of age on or before the thirty-first day of
38 August shall, if requested by the parent, be eligible to receive early
39 intervention services contained in an IFSP until the first day of
40 September of that calendar year OR, AT THE REQUEST OF THE PARENT, UNTIL
41 THE LAST DAY OF THE SCHOOL YEAR IN WHICH THE TODDLER WITH A DISABILITY
42 TURNS THREE YEARS OF AGE WHERE SUCH DATE IS LATER; or

43 (ii) who turns three years of age on or after the first day of Septem-
44 ber shall, if requested by the parent and if already receiving services
45 pursuant to this title, be eligible to continue receiving such services
46 until [the second day of January of the following calendar year] THE
47 LAST DAY OF THE SCHOOL YEAR IN WHICH THE TODDLER WITH A DISABILITY TURNS
48 THREE YEARS OF AGE.

49 (b) Notwithstanding the provisions of paragraph (a) of this subdivi-
50 sion, a child who receives services pursuant to section forty-four
51 hundred ten of the education law shall not be an eligible child.

52 (C) FOR PURPOSES OF THIS SUBDIVISION, "SCHOOL YEAR" MEANS THE PERIOD
53 COMMENCING ON JULY FIRST AND ENDING ON THE THIRTIETH DAY OF JUNE NEXT
54 FOLLOWING.

55 S 11. Section 22 of chapter 352 of the laws of 2005, amending the
56 education law relating to implementation of the federal individuals with

1 disabilities education improvement act of 2004, as amended by chapter
2 378 of the laws of 2007, is amended to read as follows:

3 S 22. This act shall take effect July 1, 2005, provided, however, if
4 this act shall become a law after such date it shall take effect imme-
5 diately and shall be deemed to have been in full force and effect on and
6 after July 1, 2005[; and provided further, however, that sections one
7 through four and six through twenty-one of this act shall expire and be
8 deemed repealed June 30, 2009, and section five of this act shall expire
9 and be deemed repealed June 30, 2009].

10 S 12. Subdivision (a) of section 8 of chapter 430 of the laws of 2006,
11 amending the education law relating to implementation of the federal
12 individuals with disabilities education improvement act of 2004, is
13 REPEALED.

14 S 13. Subdivisions c and d of section 27 of chapter 378 of the laws of
15 2007, amending the education law relating to implementation of the
16 federal individuals with disabilities education improvement act of 2004,
17 are amended to read as follows:

18 c. the amendments to subdivision 7 of section 3602-c of the education
19 law made by section four of this act shall first apply to charges for
20 costs of services, evaluation and committee on special education admin-
21 istration that relate to the provision of special education programs and
22 services to students attending nonpublic schools for the 2007-2008
23 school year and shall be deemed to have been in full force on and after
24 June 30, 2007[; and

25 d. the provisions of this act shall expire and be deemed repealed June
26 30, 2009].

27 S 14. This act shall take effect June 30, 2009, provided that in the
28 event that it shall become a law after such date, this act shall take
29 effect immediately and shall be deemed to have been in full force and
30 effect on and after June 30, 2009; provided, however, that:

31 (a) the amendments to paragraph a of subdivision 1 of section 3602-c
32 made by section four of this act and paragraph e of subdivision 2 of
33 section 3602-c of the education law as added by section four of this act
34 shall first apply to July and August programs for nonpublic students
35 with disabilities in July and August 2010;

36 (b) the amendments to subdivision 7 of section 3602-c of the education
37 law made by section five of this act shall first apply to charges for
38 costs of services, evaluation and committee on special education admin-
39 istration that relate to the provision of special education programs and
40 services to students attending nonpublic schools for the 2009-2010
41 school year; and

42 (c) the amendments to paragraph a of subdivision 1 of section 4404 of
43 the education law made by section eight of this act shall first apply to
44 due process complaints for tuition reimbursement presented on or after
45 September 1, 2009.