

S T A T E O F N E W Y O R K

9209--A

2009-2010 Regular Sessions

I N A S S E M B L Y

October 21, 2009

Introduced by M. of A. THIELE -- read once and referred to the Committee on Education -- recommitted to the Committee on Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to gifted and talented pupils with special needs, and to repeal certain provisions of such law related thereto

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

1 Section 1. Subdivision 1 of section 3602-c of the education law is
2 amended by adding a new paragraph g to read as follows:
3 G. "TWICE-EXCEPTIONAL" SHALL MEAN THOSE PUPILS WHO GIVE EVIDENCE OF
4 THE POTENTIAL FOR HIGH COGNITIVE PROCESSING CAPABILITIES COMMENSURATE
5 WITH OR CONTRARY TO COGNITIVE PROCESSING TAKEN AS NORMS OF REGULAR
6 EDUCATION IN AREAS SUCH AS, BUT NOT LIMITED TO: SPECIFIC ACADEMICS,
7 GENERAL INTELLECTUAL ABILITY, CREATIVITY, LEADERSHIP, AND/OR VISUAL,
8 SPATIAL OR PERFORMING ARTS; AND ALSO GIVE EVIDENCE OF ONE OR MORE DISA-
9 BILITIES AS DEFINED BY FEDERAL OR STATE ELIGIBILITY CRITERIA SUCH AS,
10 BUT NOT LIMITED TO, SPECIFIC LEARNING DISABILITIES, SPEECH AND LANGUAGE
11 DISORDERS, EMOTIONAL/BEHAVIORAL DISORDERS, PHYSICAL DISABILITIES, AUTISM
12 SPECTRUM, OR OTHER HEALTH IMPAIRMENTS, SUCH AS ADHD. SUCH TERM SHALL
13 INCLUDE THOSE PUPILS WHO REQUIRE EDUCATIONAL PROGRAMS OR SERVICES BEYOND
14 THOSE NORMALLY PROVIDED BY THE REGULAR SCHOOL PROGRAM IN ORDER TO REAL-
15 IZE THEIR FULL POTENTIAL.
16 S 2. Paragraph a of subdivision 1 of section 3602-c of the education
17 law, as amended by chapter 474 of the laws of 2004, is amended to read
18 as follows:
19 a. "Services" shall mean instruction in the areas of gifted pupils,
20 TWICE-EXCEPTIONAL PUPILS, career education and education for students
21 with disabilities, and counseling, psychological and social work

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

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1 services related to such instruction provided during the regular school
2 year for pupils enrolled in a nonpublic school located in a school
3 district, provided that such instruction is given to pupils enrolled in
4 the public schools of such district.

5 S 3. Section 4451 of the education law, as added by chapter 740 of the
6 laws of 1982, is amended to read as follows:

7 S 4451. Powers of the department with respect to gifted pupils.
8 [Subject to the availability of funds, the] THE state education depart-
9 ment is hereby authorized [and], empowered AND DIRECTED to assist
10 districts in meeting the educational needs EQUALLY of BOTH GENERAL
11 EDUCATION AND DISABLED gifted pupils through the following:

12 1. provide information to school districts concerning development of
13 programs, curriculum resources, instructional procedures and strategies
14 to identify and encourage EQUALLY BOTH GENERAL EDUCATION AND DISABLED
15 gifted pupils;

16 2. provide technical assistance and [inservice] IN-SERVICE education
17 for teachers and administrators;

18 3. maintain a record of programs available, and make this record
19 available for public inspection;

20 4. develop, maintain, and distribute a handbook for parents of BOTH
21 GENERAL EDUCATION AND DISABLED gifted pupils.

22 S 4. The opening paragraph of subdivision 1 of section 4452 of the
23 education law, as added by chapter 740 of the laws of 1982, is amended
24 to read as follows:

25 In order to provide for educational programs to meet special needs of
26 gifted pupils, the commissioner is hereby authorized AND DIRECTED to
27 make recommendations to school districts in accordance with the
28 provisions of this subdivision and section thirty-six hundred two of
29 this chapter.

30 S 5. Subdivision 1 of section 4452 of the education law is amended by
31 adding a new paragraph a-1 to read as follows:

32 A-1. AS USED IN THIS ARTICLE, THE TERM "TWICE-EXCEPTIONAL" SHALL MEAN
33 THOSE PUPILS WHO GIVE EVIDENCE OF THE POTENTIAL FOR HIGH COGNITIVE PROC-
34 ESSING CAPABILITIES COMMENSURATE WITH OR CONTRARY TO COGNITIVE PROCESS-
35 ING TAKEN AS NORMS OF REGULAR EDUCATION IN AREAS SUCH AS, BUT NOT LIMIT-
36 ED TO: SPECIFIC ACADEMICS, GENERAL INTELLECTUAL ABILITY, CREATIVITY,
37 LEADERSHIP, AND/OR VISUAL, SPATIAL OR PERFORMING ARTS; AND ALSO GIVE
38 EVIDENCE OF ONE OR MORE DISABILITIES AS DEFINED BY FEDERAL OR STATE
39 ELIGIBILITY CRITERIA SUCH AS, BUT NOT LIMITED TO, SPECIFIC LEARNING
40 DISABILITIES, SPEECH AND LANGUAGE DISORDERS, EMOTIONAL/BEHAVIORAL DISOR-
41 DERS, PHYSICAL DISABILITIES, AUTISM SPECTRUM, OR OTHER HEALTH IMPAIR-
42 MENTS, SUCH AS ADHD. SUCH DEFINITION SHALL INCLUDE THOSE PUPILS WHO
43 REQUIRE EDUCATIONAL PROGRAMS OR SERVICES BEYOND THOSE NORMALLY PROVIDED
44 BY THE REGULAR SCHOOL PROGRAM IN ORDER TO REALIZE THEIR FULL POTENTIAL.

45 (I) FOR THE PURPOSE OF THIS ARTICLE, THE TERMS "DISABILITY" AND "DISA-
46 BLED" SHALL MEAN A CHILD:

47 A. WITH HEARING IMPAIRMENTS (INCLUDING DEAFNESS), SPEECH OR LANGUAGE
48 IMPAIRMENTS, VISUAL IMPAIRMENTS (INCLUDING BLINDNESS), EMOTIONAL
49 DISTURBANCE, ORTHOPEDIC IMPAIRMENTS, OTHER HEALTH IMPAIRMENTS, OR
50 SPECIFIC LEARNING DISABILITIES; AND

51 B. WHO, BY REASON THEREOF, NEEDS SPECIAL EDUCATION AND RELATED
52 SERVICES WITHIN A GIFTED PROGRAM.

53 (II) FOR PURPOSES OF THIS ARTICLE, THE TERM "SPECIFIC LEARNING DISA-
54 BILITY" MEANS A DISORDER IN ONE OR MORE OF THE BASIC PSYCHOLOGICAL PROC-
55 ESSES INVOLVED IN UNDERSTANDING OR IN USING LANGUAGE, SPOKEN OR WRITTEN,

1 WHICH DISORDER MAY MANIFEST ITSELF IN THE IMPERFECT ABILITY TO LISTEN,
2 THINK, SPEAK, READ, WRITE, SPELL, OR DO MATHEMATICAL CALCULATIONS.

3 S 6. Paragraphs c, d, e and f of subdivision 1 of section 4452 of the
4 education law are REPEALED and five new paragraphs c, d, e, f and g are
5 added to read as follows:

6 C. PRIOR TO PAYMENT OF STATE FUNDS FOR EDUCATION OF GIFTED PUPILS AND
7 TWICE-EXCEPTIONAL PUPILS, A SCHOOL DISTRICT SHALL SUBMIT TO THE COMMIS-
8 SIONER A SUMMARY PLAN FOR THE IDENTIFICATION AND EDUCATION OF GIFTED
9 PUPILS AND TWICE-EXCEPTIONAL PUPILS. THE PLAN SHALL BE IN FORM AND
10 CONTENT AS PRESCRIBED BY THE COMMISSIONER.

11 D. UPON ACCEPTANCE BY A LOCAL SCHOOL DISTRICT OF THE APPORTIONMENTS
12 MADE UNDER SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER SUCH DISTRICT
13 SHALL USE SUCH FUNDING IN ACCORDANCE WITH GUIDELINES TO BE ESTABLISHED
14 BY THE COMMISSIONER FOR SERVICES TO GIFTED PUPILS AND TWICE-EXCEPTIONAL
15 PUPILS. SUCH SERVICES SHALL INCLUDE BUT NOT BE LIMITED TO IDENTIFICA-
16 TION, INSTRUCTIONAL PROGRAMS, COUNSELING PLANNING, IN-SERVICE EDUCATION
17 AND PROGRAM EVALUATION. A BOARD OF EDUCATION MAY CONTRACT WITH ANOTHER
18 DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES TO PROVIDE THE
19 PROGRAM AND/OR SERVICES WITH THE APPROVAL OF THE COMMISSIONER UNDER
20 GUIDELINES ESTABLISHED BY THE COMMISSIONER.

21 E. THE IDENTIFICATION OF PUPILS FOR PARTICIPATION IN EITHER GIFTED
22 PROGRAMS OR TWICE-EXCEPTIONAL PROGRAMS FUNDED UNDER THIS CHAPTER SHALL
23 COMMENCE THROUGH THE REFERRAL OF A PARENT, TEACHER OR ADMINISTRATOR.

24 F. UPON REFERRAL OF A PUPIL FOR PARTICIPATION IN EITHER A GIFTED
25 PROGRAM OR TWICE-EXCEPTIONAL PROGRAM FUNDED UNDER THIS CHAPTER, THE
26 SCHOOL DISTRICT SHALL SO INFORM THE PARENT OR GUARDIAN OF SUCH PUPIL'S
27 REFERRAL AND SHALL SEEK THEIR APPROVAL TO ADMINISTER DIAGNOSTIC TESTS OR
28 OTHER EVALUATION MECHANISMS RELATED TO THE PROGRAM OBJECTIVES OF THE
29 DISTRICT IN ORDER TO DETERMINE ELIGIBILITY FOR PARTICIPATION IN SUCH
30 GIFTED OR TWICE-EXCEPTIONAL PROGRAM. FAILING TO RECEIVE APPROVAL, THE
31 CHILD SHALL NOT BE TESTED, EVALUATED OR PARTICIPATE IN THE PROGRAM. IN
32 NO CASE SHALL THE PARENT, GUARDIAN OR PUPIL BE CHARGED A FEE FOR THE
33 ADMINISTRATION OF SUCH DIAGNOSTIC TESTS OR OTHER EVALUATION MECHANISMS.

34 G. THE PARENT OR GUARDIAN OF A PUPIL DESIGNATED AS GIFTED OR TWICE-EX-
35 CEPTIONAL SHALL BE INFORMED BY THE LOCAL SCHOOL AUTHORITIES OF THE
36 PUPIL'S PLACEMENT IN SUCH GIFTED OR TWICE-EXCEPTIONAL PROGRAM FUNDED
37 UNDER THIS CHAPTER.

38 S 7. Section 4453 of the education law is REPEALED and a new section
39 4453 is added to read as follows:

40 S 4453. ADVISORY COUNCIL ON THE EDUCATION OF GIFTED PUPILS. 1. THE
41 COMMISSIONER SHALL ESTABLISH WITHIN THE DEPARTMENT AN ADVISORY COUNCIL
42 ON THE EDUCATION OF GIFTED AND TWICE-EXCEPTIONAL PUPILS. SUCH COUNCIL
43 SHALL ASSIST AND ADVISE THE COMMISSIONER AND HIS DESIGNEES WITH RESPECT
44 TO POLICIES AND PROCEDURES RELATING TO THE EDUCATION OF GIFTED AND
45 TWICE-EXCEPTIONAL PUPILS AND PROGRAMS ASSOCIATED THEREWITH.

46 2. SUCH ADVISORY COUNCIL APPOINTED BY THE COMMISSIONER SHALL CONSIST
47 OF AT LEAST TEN MEMBERS, WHO ARE DIRECTLY CONCERNED WITH GENERAL EDUCA-
48 TION AND DISABLED GIFTED PUPILS OR WHO HAVE SPECIALIZED IN THE EDUCATION
49 OF SUCH PUPILS, PROVIDED, HOWEVER THAT SUCH ADVISORY COUNCIL SHALL
50 INCLUDE AT LEAST A PLURALITY OF PARENTS OF SUCH PUPILS, INCLUDING
51 PARENTS OF THOSE TWICE-EXCEPTIONAL PUPILS. THE MEMBERS SHALL BE RESI-
52 DENTS OF THIS STATE AND SHALL BE SELECTED ON THE BASIS OF THEIR COMPE-
53 TENCE, CONCERN, AND PROFESSIONAL ACTIVITY IN THE EDUCATION OF GIFTED AND
54 TWICE-EXCEPTIONAL PUPILS.

1 3. THE ADVISORY COUNCIL SHALL MEET AT LEAST THREE TIMES EACH YEAR AT A
2 LOCATION TO BE DETERMINED BY THE COMMISSIONER. THE ADVISORY COUNCIL
3 SHALL REPORT AT LEAST BIANNUALLY TO THE COMMISSIONER.

4 S 8. This act shall take effect April 1, 2011; provided, however, that
5 effective immediately, the addition, amendment and/or repeal of any rule
6 or regulation necessary for the implementation of this act on its effec-
7 tive date is authorized to be made and completed on or before such date.