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

1984

2009-2010 Regular Sessions

I N S E N A T E

February 10, 2009

Introduced by Sen. DIAZ -- 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 establishing the students with disabilities school choice act

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

Section 1. The education law is amended by adding a new article 107 to read as follows:

ARTICLE 107

STUDENTS WITH DISABILITIES SCHOOL CHOICE ACT

SECTION 5300. SHORT TITLE.
5301. DEFINITIONS.
5302. GENERAL PROVISIONS.
5303. RESPONSIBILITIES OF THE RESIDENT SCHOOL DISTRICT.
5304. RESPONSIBILITIES OF THE DEPARTMENT.
5305. ACCOUNTABILITY FOR PARTICIPATING SCHOOLS.
5306. RESPONSIBILITIES OF THE SCHOLARSHIP STUDENTS AND THEIR PARENTS.

S 5300. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "STUDENTS WITH DISABILITIES SCHOOL CHOICE ACT".

S 5301. DEFINITIONS. 1. "PROGRAM" MEANS THE SPECIAL NEEDS SCHOLARSHIP PROGRAM.

2. "ELIGIBLE STUDENT" MEANS ANY ELEMENTARY OR SECONDARY STUDENT ATTENDING PUBLIC SCHOOL IN THE STATE WITH AN INDIVIDUAL EDUCATION PLAN, INCLUDING BUT NOT LIMITED TO STUDENTS WHO ARE MENTALLY HANDICAPPED, SPEECH AND LANGUAGE IMPAIRED, DEAF OR HARD OF HEARING, VISUALLY IMPAIRED, DUAL SENSORY IMPAIRED, PHYSICALLY IMPAIRED, EMOTIONALLY HANDICAPPED, SPECIFIC LEARNING DISABLED, AUTISTIC, OR HOSPITALIZED OR HOMEBOUND DUE TO ILLNESS OR DISABILITY.

3. "PARENT" INCLUDES A GUARDIAN, CUSTODIAN OR OTHER PERSON WITH AUTHORITY TO ACT ON BEHALF OF THE CHILD.

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

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4. "RESIDENT SCHOOL DISTRICT" MEANS THE PUBLIC SCHOOL DISTRICT IN WHICH THE STUDENT RESIDES.

5. "DEPARTMENT" MEANS THE EDUCATION DEPARTMENT OF THE STATE OF NEW YORK.

6. "PARTICIPATING SCHOOL" MEANS EITHER A PUBLIC SCHOOL OUTSIDE OF THE RESIDENT SCHOOL DISTRICT OR ANY NON-PUBLIC SCHOOL THAT PROVIDES EDUCATION TO ELEMENTARY AND/OR SECONDARY STUDENTS THAT HAS NOTIFIED THE DEPARTMENT OF THEIR INTENTION TO PARTICIPATE IN THE PROGRAM AND COMPLY WITH ITS REQUIREMENTS. PARTICIPATING SCHOOL SHALL ALSO INCLUDE OUT-OF-STATE PRIVATE SCHOOLS THAT OFFER INNOVATIVE SERVICES UNAVAILABLE IN THE STATE.

S 5302. GENERAL PROVISIONS. 1. ANY PARENT OF A PUBLIC SCHOOL SPECIAL NEEDS STUDENT WHO IS DISSATISFIED WITH THE STUDENT'S PROGRESS SHALL QUALIFY FOR A SCHOLARSHIP FROM THE STATE FOR THE CHILD TO ENROLL IN AND ATTEND A NON-PUBLIC SCHOOL IF:

(A) THE SPECIAL NEEDS STUDENT HAS HAD AN INDIVIDUAL EDUCATION PLAN WRITTEN IN ACCORDANCE WITH THE RULES OF THE DEPARTMENT; AND

(B) THE STUDENT HAS BEEN ACCEPTED FOR ADMISSION AT A PARTICIPATING SCHOOL; AND

(C) THE PARENT HAS REQUESTED A SCHOLARSHIP FROM THE STATE BEFORE THE DEADLINE ESTABLISHED BY THE DEPARTMENT.

2. THE DEPARTMENT SHALL INFORM THE RESIDENT SCHOOL DISTRICT THAT A SPECIAL NEEDS STUDENT HAS REQUESTED A SPECIAL NEEDS SCHOLARSHIP. THE RESIDENT SCHOOL DISTRICT SHALL WITHIN THREE BUSINESS DAYS PROVIDE THE DEPARTMENT WITH A COPY OF THE STUDENT'S MOST CURRENT INDIVIDUAL EDUCATION PLAN.

3. UPON RECEIPT OF THE SPECIAL NEEDS STUDENT'S REQUEST FOR A SCHOLARSHIP, THE DEPARTMENT SHALL REVIEW THE INDIVIDUAL EDUCATION PLAN DRAFTED BY THE STUDENT'S PUBLIC SCHOOL TO DETERMINE THE AMOUNT OF THE SCHOLARSHIP. THE DEPARTMENT SHALL PROVIDE THE STUDENT'S PARENT WITH A TIMELY WRITTEN EXPLANATION OF THEIR DETERMINATION FOR THE AMOUNT OF THE SCHOLARSHIP.

4. THE MAXIMUM SCHOLARSHIP GRANTED AN ELIGIBLE STUDENT SHALL BE AN AMOUNT EQUIVALENT TO THE COST OF THE EDUCATIONAL PROGRAM THAT WOULD HAVE BEEN PROVIDED FOR THE STUDENT IN THE RESIDENT SCHOOL DISTRICT. ALTHOUGH THE SCHOLARSHIP AMOUNT IS A FUNCTION OF A STUDENT'S INDIVIDUAL EDUCATION PLAN, THE PARTICIPATING SCHOOL IS NOT REQUIRED TO ABIDE BY THE INDIVIDUAL EDUCATION PLAN. THE PARENT AND THE PARTICIPATING SCHOOL WILL MUTUALLY DETERMINE THE BEST SERVICES AND EDUCATIONAL PLAN FOR THE STUDENT.

5. THE AMOUNT OF THE SPECIAL NEEDS SCHOLARSHIP SHALL BE THE LESSER OF THE AMOUNT CALCULATED IN SUBDIVISIONS THREE AND FOUR OF THIS SECTION, OR THE AMOUNT OF THE PARTICIPATING SCHOOL'S ESTIMATED COSTS FOR SERVING THE STUDENT. THE COSTS OF ANY ASSESSMENT BY THE PARTICIPATING SCHOOL OF THE STUDENT'S SPECIAL NEEDS MAY BE INCLUDED IN THE SCHOLARSHIP AMOUNT.

6. PARTICIPATING STUDENTS SHALL BE COUNTED IN THE ENROLLMENT OF THEIR RESIDENT SCHOOL DISTRICT. THE FUNDS NEEDED TO PROVIDE A SCHOLARSHIP SHALL BE SUBTRACTED FROM THE STATE SCHOOL AID PAYABLE TO THE STUDENT'S RESIDENT SCHOOL DISTRICT.

7. THE SPECIAL NEEDS SCHOLARSHIP SHALL REMAIN IN FORCE UNTIL THE STUDENT RETURNS TO A PUBLIC SCHOOL OR GRADUATES FROM HIGH SCHOOL OR REACHES THEIR TWENTY-FIRST BIRTHDAY, WHICHEVER COMES FIRST.

8. AT ANY TIME, THE STUDENT'S PARENT MAY REMOVE THE STUDENT FROM THE PARTICIPATING SCHOOL AND PLACE THE STUDENT IN ANOTHER PARTICIPATING SCHOOL OR IN A PUBLIC SCHOOL.

S 5303. RESPONSIBILITIES OF THE RESIDENT SCHOOL DISTRICT. 1. A RESIDENT SCHOOL DISTRICT SHALL ANNUALLY NOTIFY THE PARENTS OF A SPECIAL

NEEDS STUDENT OF THE SPECIAL NEEDS SCHOLARSHIP PROGRAM AND OFFER THAT STUDENT'S PARENT AN OPPORTUNITY TO ENROLL THE STUDENT IN A PARTICIPATING SCHOOL OF THEIR CHOICE.

2. THE RESIDENT SCHOOL DISTRICT SHALL PROVIDE A PARTICIPATING SCHOOL THAT HAS ADMITTED AN ELIGIBLE STUDENT WITH A COMPLETE COPY OF THE STUDENT'S SCHOOL RECORDS WHILE COMPLYING WITH THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974.

3. THE RESIDENT SCHOOL DISTRICT SHALL PROVIDE TRANSPORTATION FOR AN ELIGIBLE STUDENT TO AND FROM THE PARTICIPATING SCHOOL UNDER THE SAME CONDITIONS AS THE RESIDENT SCHOOL DISTRICT IS REQUIRED TO PROVIDE TRANSPORTATION FOR OTHER RESIDENT STUDENTS TO NON-PUBLIC SCHOOLS AS PER CURRENT LAW. THE RESIDENT SCHOOL DISTRICT WILL QUALIFY FOR STATE TRANSPORTATION AID FOR EACH STUDENT SO TRANSPORTED.

4. IF THE PARENT OF AN ELIGIBLE STUDENT PARTICIPATING IN THIS PROGRAM REQUESTS THAT THE STUDENT TAKE THE STATEWIDE ASSESSMENTS, THE RESIDENT SCHOOL DISTRICT SHALL PROVIDE LOCATIONS AND TIMES FOR THE STUDENT TO TAKE ALL STATEWIDE ASSESSMENTS IF THEY ARE NOT OFFERED AT THE STUDENT'S PARTICIPATING SCHOOL.

S 5304. RESPONSIBILITIES OF THE DEPARTMENT. 1. THE DEPARTMENT SHALL ADOPT RULES AND PROCEDURES REGARDING:

(A) THE ELIGIBILITY AND PARTICIPATION OF NON-PUBLIC SCHOOLS, INCLUDING TIMELINES THAT WILL MAXIMIZE STUDENT AND PUBLIC AND NON-PUBLIC SCHOOL PARTICIPATION;

(B) THE CALCULATION AND DISTRIBUTION OF SCHOLARSHIPS TO ELIGIBLE STUDENTS AND PARTICIPATING SCHOOLS; AND

(C) THE APPLICATION AND APPROVAL PROCEDURES FOR ELIGIBLE STUDENTS AND PARTICIPATING SCHOOLS.

2. NO LIABILITY SHALL ARISE ON THE PART OF THE DEPARTMENT OR THE STATE BASED ON THE AWARD OR USE OF A SPECIAL NEEDS SCHOLARSHIP.

3. THE DEPARTMENT MAY BAR A SCHOOL FROM PARTICIPATION IN THE PROGRAM IF THE DEPARTMENT ESTABLISHES THAT THE PARTICIPATING SCHOOL HAS:

(A) INTENTIONALLY AND SUBSTANTIALLY MISREPRESENTED INFORMATION REQUIRED UNDER SECTION FIVE THOUSAND THREE HUNDRED FIVE OF THIS ARTICLE; OR

(B) FAILED TO REFUND TO THE STATE ANY SCHOLARSHIP OVERPAYMENTS IN A TIMELY MANNER.

4. IF THE DEPARTMENT DECIDES TO BAR A PARTICIPATING SCHOOL FROM THE PROGRAM, IT SHALL NOTIFY ELIGIBLE STUDENTS AND THEIR PARENTS OF THIS DECISION AS QUICKLY AS POSSIBLE.

S 5305. ACCOUNTABILITY FOR PARTICIPATING SCHOOLS. TO BE ELIGIBLE TO PARTICIPATE IN THE SPECIAL NEEDS SCHOLARSHIP PROGRAM, A NON-PUBLIC SCHOOL MUST OPERATE IN THIS STATE AND DEMONSTRATE:

1. ADMINISTRATIVE ACCOUNTABILITY. TO ENSURE THAT STUDENTS ARE TREATED FAIRLY AND KEPT SAFE, ALL PARTICIPATING SCHOOLS SHALL:

(A) COMPLY WITH ALL HEALTH AND SAFETY LAWS OR CODES THAT APPLY TO NON-PUBLIC SCHOOLS; AND

(B) HOLD A VALID OCCUPANCY PERMIT IF REQUIRED BY THEIR MUNICIPALITY; AND

(C) CERTIFY THAT THEY WILL NOT DISCRIMINATE IN ADMISSIONS ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, OR RELIGION; AND

(D) COMPLY WITH ALL STATE LAWS THAT APPLY TO NON-PUBLIC SCHOOLS REGARDING CRIMINAL BACKGROUND CHECKS FOR EMPLOYEES AND EXCLUDE FROM EMPLOYMENT ANY PEOPLE NOT PERMITTED BY STATE LAW TO WORK IN A NON-PUBLIC SCHOOL.

2. FINANCIAL ACCOUNTABILITY. TO ENSURE THAT PUBLIC FUNDS ARE SPENT APPROPRIATELY, ALL PARTICIPATING SCHOOLS SHALL:

(A) DEMONSTRATE THEIR FINANCIAL ACCOUNTABILITY BY:

(I) SUBMITTING A FINANCIAL INFORMATION REPORT FOR THE SCHOOL THAT COMPLIES WITH UNIFORM FINANCIAL ACCOUNTING STANDARDS ESTABLISHED BY THE DEPARTMENT AND CONDUCTED BY A CERTIFIED PUBLIC ACCOUNTANT; AND

(II) HAVING THE AUDITOR CERTIFY THE REPORT IS FREE OF MATERIAL MISSTATEMENTS. THE AUDITOR'S REPORT SHALL BE LIMITED IN SCOPE TO THOSE RECORDS THAT ARE NECESSARY FOR THE DEPARTMENT TO MAKE PAYMENTS TO SCHOOLS FOR SCHOLARSHIPS.

(B) DEMONSTRATE THEIR FINANCIAL VIABILITY BY SHOWING THEY CAN PAY ANY FUNDS OWED THE STATE, IF THEY ARE TO RECEIVE FIFTY THOUSAND DOLLARS OR MORE DURING THE SCHOOL YEAR, BY:

(I) FILING WITH THE DEPARTMENT PRIOR TO THE START OF THE SCHOOL YEAR A SURETY BOND PAYABLE TO THE STATE IN AN AMOUNT EQUAL TO THE AGGREGATE AMOUNT OF THE SPECIAL NEEDS SCHOLARSHIPS EXPECTED TO BE PAID DURING THE SCHOOL YEAR TO STUDENTS ADMITTED TO THE PARTICIPATING SCHOOL; OR

(II) FILING WITH THE DEPARTMENT PRIOR TO THE START OF THE SCHOOL YEAR FINANCIAL INFORMATION THAT DEMONSTRATES THE SCHOOL HAS THE ABILITY TO PAY AN AGGREGATE AMOUNT EQUAL TO THE AMOUNT OF THE SPECIAL NEEDS SCHOLARSHIPS EXPECTED TO BE PAID DURING THE SCHOOL YEAR TO STUDENTS ADMITTED TO THE PARTICIPATING SCHOOL.

3. ACADEMIC ACCOUNTABILITY. TO ENSURE THAT SCHOOLS PROVIDE ACADEMIC ACCOUNTABILITY TO PARENTS OF THE STUDENTS IN THE PROGRAM, ALL PARTICIPATING SCHOOLS SHALL REGULARLY REPORT TO THE PARENT ON THE STUDENT'S PROGRESS.

4. PARTICIPATING SCHOOL AUTONOMY. A PARTICIPATING SCHOOL IS AUTONOMOUS AND NOT AN AGENT OF THE STATE OR FEDERAL GOVERNMENT THEREFORE:

(A) THE DEPARTMENT OR ANY OTHER STATE AGENCY MAY NOT IN ANY WAY REGULATE THE EDUCATIONAL PROGRAM OF A PARTICIPATING SCHOOL THAT ACCEPTS A SPECIAL NEEDS SCHOLARSHIP; AND

(B) THE CREATION OF THE SPECIAL NEEDS SCHOLARSHIP PROGRAM DOES NOT EXPAND THE REGULATORY AUTHORITY OF THE STATE, ITS OFFICERS OR ANY SCHOOL DISTRICT TO IMPOSE ANY ADDITIONAL REGULATION OF NON-PUBLIC SCHOOLS BEYOND THOSE REASONABLY NECESSARY TO ENFORCE THE REQUIREMENTS OF THE PROGRAM; AND

(C) PARTICIPATING SCHOOLS SHALL BE GIVEN THE MAXIMUM FREEDOM TO PROVIDE FOR THE EDUCATIONAL NEEDS OF THEIR STUDENTS WITHOUT GOVERNMENTAL CONTROL.

S 5306. RESPONSIBILITIES OF THE SCHOLARSHIP STUDENTS AND THEIR PARENTS. 1. IT SHALL BE THE RESPONSIBILITY OF A PARENT TO SELECT THEIR CHILD'S SCHOOL, APPLY FOR ADMISSION, AND APPLY FOR A SPECIAL NEEDS SCHOLARSHIP.

2. ANY STUDENT PARTICIPATING IN THE PROGRAM MUST COMPLY FULLY WITH A PARTICIPATING SCHOOL'S WRITTEN CODE OF CONDUCT AND SHALL REMAIN IN ATTENDANCE THROUGHOUT THE SCHOOL YEAR, UNLESS EXCUSED BY THE SCHOOL FOR ILLNESS OR OTHER GOOD CAUSE. HOWEVER, A PARENT MAY TRANSFER AN ELIGIBLE STUDENT TO ANOTHER PARTICIPATING SCHOOL AT ANY TIME. THE SCHOLARSHIP AMOUNT SHALL BE PRORATED BETWEEN PARTICIPATING SCHOOLS ACCORDING TO THE PERIOD OF ATTENDANCE AT EACH SCHOOL.

3. A PARENT'S DECISION FOR THEIR STUDENT TO PARTICIPATE IN THE PROGRAM CONSTITUTES A NON-PUBLIC PLACEMENT FOR PURPOSES OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

S 2. This act shall take effect on the first of September after it shall have become a law.