

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.