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

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2 REPEALED.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

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

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

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

B. "PERIOD OF ENROLLMENT" SHALL MEAN THAT PERIOD COMMENCING ON THE FIRST DAY OF THE SCHOOL YEAR THAT A PUPIL IS ENROLLED IN AND IS PHYSICALLY PRESENT AT, OR LEGALLY ABSENT FROM, AN EDUCATIONAL PROGRAM OR SERVICE OF A CHARTER SCHOOL AND ENDING ON THE LAST DAY OF THE SCHOOL YEAR THAT SUCH PUPIL IS SO ENROLLED AND PHYSICALLY PRESENT AT, OR LEGALLY ABSENT FROM, SUCH PROGRAM OR SERVICE.

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

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

E. "WEIGHTED PUPIL WITH A DISABILITY" SHALL MEAN THE PRODUCT OF THE ENROLLMENT FOR EACH CHARTER SCHOOL STUDENT WITH A DISABILITY MULTIPLIED BY THE SPECIAL SERVICES WEIGHTING WHERE THE SPECIAL SERVICES WEIGHTING FOR ANY PUPIL WITH A LEVEL OF SERVICE SPECIFIED IN CLAUSE (I) OF SUBPARAGRAPH THREE OF PARAGRAPH I OF SUBDIVISION ONE OF SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER SHALL BE ONE HUNDRED SIXTY-FIVE PERCENT, AND FOR ANY PUPIL WITH A LEVEL OF SERVICE SPECIFIED IN CLAUSE (II) OF SUBPARAGRAPH THREE OF PARAGRAPH I OF SUBDIVISION ONE OF SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER SHALL BE NINETY PERCENT. THE WEIGHTING FOR A PUPIL WITH A LEVEL OF SERVICE THAT MEETS THE DEFINITION OF AN INTEGRATED SETTINGS WEIGHTED PUPILS WITH DISABILITIES AS DEFINED PURSUANT TO SUBPARAGRAPH SIX OF PARAGRAPH I OF SUBDIVISION ONE OF SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER SHALL BE INCREASED BY AN ADDITIONAL FIFTY PERCENT.

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

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

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

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

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

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

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

(VI) THE STATE AID ATTRIBUTABLE TO A STUDENT WITH A DISABILITY SHALL EQUAL THE SUM OF THE FOUNDATION AID ATTRIBUTABLE TO A PUPIL WITH A DISABILITY, THE HIGH COST AID ATTRIBUTABLE TO THE PUPIL, AND THE SUPPLEMENTAL PUBLIC COST AID ATTRIBUTABLE TO THE PUPIL.

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

a. "Services" shall mean instruction in the areas of gifted pupils, career education and education for students with disabilities, and counseling, psychological and social work services related to such instruction provided during the regular school year for pupils enrolled in a nonpublic school located in a school district, provided that such instruction is given to pupils enrolled in the public schools of such district. SUCH TERM SHALL ALSO INCLUDE EDUCATION FOR STUDENTS WITH DISABILITIES PROVIDED IN JULY AND AUGUST IN ACCORDANCE WITH PARAGRAPH E OF SUBDIVISION TWO OF THIS SECTION.

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

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

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

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

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

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

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

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

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

D. THE COMMISSIONER SHALL ESTABLISH REGIONAL RATE METHODOLOGIES FOR COMPUTING REGIONAL RATES TO DETERMINE ACTUAL COSTS FOR EACH OF THE FOLLOWING CATEGORIES OF COSTS: (I) COSTS OF SERVICES, (II) EVALUATIONS AND (III) SPECIAL EDUCATION ADMINISTRATION. THE SCHOOL DISTRICT OF LOCATION MAY ELECT TO USE ANY SUCH REGIONAL RATE METHODOLOGIES IN EFFECT FOR THE CURRENT SCHOOL YEAR FOR ALL NONRESIDENT STUDENTS RECEIVING SERVICES PURSUANT TO SUBDIVISION TWO OF THIS SECTION IN SUCH SCHOOL YEAR OR MAY OPT TO COMPUTE ACTUAL COSTS ON AN INDIVIDUAL STUDENT BASIS. IF SUCH SCHOOL DISTRICT ELECTS TO USE REGIONAL RATES FOR SERVICES, IT SHALL USE ALL REGIONAL RATES THEN IN EFFECT FOR BILLING SERVICES FOR ALL SUCH NONRESIDENT STUDENTS AND IF SUCH SCHOOL DISTRICT ELECTS TO USE REGIONAL RATES FOR BILLING EVALUATION OR SPECIAL EDUCATION ADMINISTRATION COSTS, IT SHALL USE SUCH RATES FOR BILLING FOR SUCH COSTS FOR ALL SUCH NONRESIDENT STUDENTS. THE SCHOOL DISTRICT OF LOCATION MAY, HOWEVER, ELECT TO USE REGIONAL RATES FOR ONE OR MORE CATEGORIES OF COSTS, AND NOT FOR THE OTHER CATEGORIES.

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

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

a. The board of education or trustees of each school district shall be required to furnish suitable educational opportunities for [children with handicapping conditions] STUDENTS WITH DISABILITIES by one of the special services or programs listed in subdivision two of section forty-four hundred one. The need of the individual [child] STUDENT shall determine which of such services shall be rendered. Each district shall provide to the maximum extent appropriate such services in a manner which enables [children with handicapping conditions] STUDENTS WITH DISABILITIES to participate in regular education services when appropriate. Such services or programs shall be furnished between the months of September and June of each year, except that for the nineteen hundred eighty-seven--eighty-eight school year and thereafter, with respect to the students whose [handicapping conditions] DISABILITIES are severe enough to exhibit the need for a structured learning environment of twelve months duration to maintain developmental levels, the board of education or trustees of each school district upon the recommendation of the committee on special education [and, in the first instance, the consent of the parent] shall also provide, either directly or by contract, for the provision of special services and programs as defined in section forty-four hundred one of this article during the months of July and August as contained in the individualized education program for each eligible [child] STUDENT, and with prior approval by the commissioner if required; provided that [(i) a student with a handicapping condition who is first eligible to attend public school in the nineteen hundred eighty-seven--eighty-eight school year shall not be eligible to receive services pursuant to this paragraph during the months of July and August nineteen hundred eighty-seven and (ii) a student with a handicapping condition who is first eligible to attend public school in the nineteen hundred eighty-eight--eighty-nine school year shall not be eligible to receive services pursuant to this paragraph during the months of July and August nineteen hundred eighty-eight and (iii) a student with a handicapping condition who is eligible for services during the months of July and August nineteen hundred eighty-nine pursuant to the provisions of subdivision six of section forty-four hundred ten of this article shall not be eligible to receive services pursuant to this paragraph during such months and (iv)] a student with a [handicapping condition] DISABILITY who is eligible for services, including services during the months of July and August, pursuant to section forty-four hundred ten of this article shall not be eligible to receive services pursuant to this paragraph during the months of July and August.

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

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

tified by the local committee on special education and such [child] STUDENT attends such school for the purpose of receiving services or programs FROM SUCH NONPUBLIC SCHOOL THAT ARE similar to special [educational] EDUCATION programs AND SERVICES recommended for such [child] STUDENT by the local committee on special education. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A NONPUBLIC STUDENT RECEIVING TRANSPORTATION PURSUANT TO THIS PARAGRAPH SHALL NOT BE ENTITLED TO SPECIAL EDUCATION PROGRAMS AND SERVICES FROM THE SCHOOL DISTRICT OF LOCATION PURSUANT TO SECTION THIRTY-SIX HUNDRED TWO-C OF THIS CHAPTER. AS A CONDITION OF ELIGIBILITY FOR SUCH TRANSPORTATION, THE PARENT OR PERSON IN PARENTAL RELATION TO THE STUDENT SHALL CONSENT TO THE PROVISION OF NOTICE BY THE SCHOOL DISTRICT OF RESIDENCE TO THE CHAIRPERSON OF THE COMMITTEE OR SUBCOMMITTEE ON SPECIAL EDUCATION OF THE SCHOOL DISTRICT IN WHICH THE NONPUBLIC SCHOOL IS LOCATED IDENTIFYING SUCH STUDENT, BY NAME, ADDRESS AND SCHOOL OF ATTENDANCE, AS A STUDENT RECEIVING TRANSPORTATION PURSUANT TO THIS PARAGRAPH. THE SCHOOL DISTRICT OF RESIDENCE SHALL PROVIDE SUCH NOTICE NO LATER THAN THIRTY DAYS AFTER COMMENCING SUCH TRANSPORTATION.

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

a. If the parent or person in parental relation of a student, the board of education or trustees of a school district or a state agency responsible for providing education to students with disabilities presents a complaint with respect to any matter relating to the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student or a manifestation determination or other matter relating to placement upon discipline of a student with a disability that may be the subject of an impartial hearing pursuant to subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations, and the party presenting the complaint or their attorney provides a due process complaint notice in accordance with federal law and regulations and such complaint sets forth an alleged violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis for the complaint, OR IN THE CASE OF A COMPLAINT SEEKING TUITION REIMBURSEMENT FOR THE UNILATERAL PARENTAL PLACEMENT OF A STUDENT IN A PRIVATE SCHOOL, SUCH TUITION CLAIM IS PRESENTED NOT MORE THAN ONE HUNDRED EIGHTY DAYS FROM THE PLACEMENT BY THE PARENT OR PERSON IN PARENTAL RELATION IN THE PRIVATE SCHOOL, the board or agency shall appoint an impartial hearing officer to review the due process complaint notice when challenged and, if the matter is not resolved in a resolution session that has been convened as required by federal law, to preside over an impartial due process hearing and make a determination within such period of time as the commissioner by regulation shall determine, provided that the board of education or trustees shall offer the parent or person in parental relation the option of mediation pursuant to section forty-four hundred four-a of this article as an alternative to an impartial hearing. Where the parent or person in parental relation or a school district or public agency presents a complaint, the school district or public agency responsible for appointing the impartial hearing officer shall provide the parent or person in parental relation with a procedural safeguards notice as required pursuant to subsection (d) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations.

Notwithstanding any provision of this subdivision to the contrary, the time limitation on presenting a complaint shall not apply to a parent or person in parental relation to the student if the parent or person in parental relation was prevented from requesting the impartial hearing due to specific misrepresentations by the school district or other public agency that it had resolved the problem forming the basis of the complaint or due to the school district's or other public agency's withholding of information from the parent or person in parental relation that was required under federal law to be provided. Nothing in this subdivision shall be construed to authorize the board of education or trustees to bring an impartial hearing to override the refusal of a parent or person in parental relation to consent where a local educational agency is prohibited by federal law from initiating such a hearing.

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

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

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

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

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

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

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

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

S 11. Section 22 of 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, as amended by chapter 378 of the laws of 2007, is amended to read as follows:

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

S 12. 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, is REPEALED.

S 13. Subdivisions c and d of section 27 of 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, are amended to read as follows:

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

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

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

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

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

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