

8412

2011-2012 Regular Sessions

I N A S S E M B L Y

June 15, 2011

Introduced by M. of A. NOLAN -- read once and referred to the Committee
on Education

AN ACT to amend the education law, in relation to transportation of
children receiving special education services

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

1 Section 1. Subdivision 4 of section 4402 of the education law, as
2 added by chapter 853 of the laws of 1976, paragraph a as amended by
3 chapter 470 of the laws of 1977, and paragraph d as amended by chapter
4 646 of the laws of 1992, is amended to read as follows:
5 4. a. The board of education or the board of trustees of each school
6 district shall provide suitable transportation to and from special
7 classes or programs, with the exception of residential facilities for
8 the care and treatment of children with handicapping conditions under
9 the jurisdiction of an agency of the state other than the state depart-
10 ment of education, as specified in subdivisions two and four of section
11 forty-four hundred one of this article.
12 b. (1) Such board may permit any adult, willing to serve without
13 compensation, to act as an attendant for such children. NOTWITHSTANDING
14 ANY STATE OR LOCAL LAW TO THE CONTRARY, AN ESCORT SHALL NOT BE REQUIRED
15 TO ACCOMPANY A CHILD BEING TRANSPORTED IN A VEHICLE WITH FEWER THAN FOUR
16 OTHER CHILDREN UNLESS THE COMMITTEE HAS RECOMMENDED AN ESCORT IN THE
17 CHILD'S INDIVIDUALIZED EDUCATION PROGRAM OR THE CHILD IS REQUIRED TO BE
18 ACCOMPANIED PURSUANT TO SUBPARAGRAPH TWO OF THIS PARAGRAPH.
19 (2) SUCH BOARD MAY REQUEST AND ENCOURAGE PARENTS AND PERSONS IN
20 PARENTAL RELATION TO TRANSPORT THEIR CHILDREN, INCLUDING CHILDREN TO BE
21 TRANSPORTED TO NONPUBLIC SCHOOL PURSUANT TO PARAGRAPH D OF THIS SUBDIVI-
22 SION, AT PUBLIC EXPENSE, WHERE COST-EFFECTIVE, AT A RATE PER MILE OR A
23 PUBLIC SERVICE FARE ESTABLISHED BY THE SCHOOL DISTRICT AND APPROVED BY
24 THE COMMISSIONER. A PROPOSED RATE PER MILE OR PUBLIC SERVICE FARE
25 SUBMITTED TO THE COMMISSIONER SHALL BE EFFECTIVE IMMEDIATELY UPON

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

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1 APPROVAL BY THE COMMISSIONER, OR ON THE THIRTIETH DAY AFTER ITS
2 SUBMISSION TO THE COMMISSIONER UNLESS THE COMMISSIONER SHALL SPECIF-
3 ICALLY DISAPPROVE SUCH PROPOSED RATE OR FARE IN WRITING, WITH AN EXPLA-
4 NATION FOR SUCH DISAPPROVAL. SUCH TRANSPORTATION MAY BE PROVIDED BY
5 PUBLIC TRANSPORTATION WHERE THE CHILD IS ACCOMPANIED BY THE PARENT,
6 PERSON IN PARENTAL RELATION OR OTHER ADULT OVER THE AGE OF TWENTY-ONE
7 LIVING IN THE SAME HOUSEHOLD AS THE PARENT OR PERSON IN PARENTAL
8 RELATION; BY A TAXICAB AS DEFINED IN SECTION ONE HUNDRED FORTY-EIGHT-A
9 OF THE VEHICLE AND TRAFFIC LAW OR LIVERY AS DEFINED IN SECTION ONE
10 HUNDRED TWENTY-ONE-E OF THE VEHICLE AND TRAFFIC LAW WHERE THE CHILD IS
11 ACCOMPANIED BY THE PARENT, PERSON IN PARENTAL RELATION OR OTHER ADULT
12 OVER THE AGE OF TWENTY-ONE LIVING IN THE SAME HOUSEHOLD AS THE PARENT OR
13 PERSON IN PARENTAL RELATION; OR BY MOTOR VEHICLE EQUIPPED WITH SEAT
14 BELTS AND SAFETY SEATING TO THE EXTENT REQUIRED BY SECTION TWELVE
15 HUNDRED TWENTY-NINE-C OF THE VEHICLE AND TRAFFIC LAW AND DRIVEN BY THE
16 PARENT, PERSON IN PARENTAL RELATION OR OTHER ADULT OVER THE AGE OF TWEN-
17 TY-ONE LIVING IN THE SAME HOUSEHOLD AS THE PARENT OR PERSON IN PARENTAL
18 RELATION. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, A MOTOR
19 VEHICLE WITH A SEATING CAPACITY OF UP TO NINE PERSONS SHALL NOT BE
20 SUBJECT TO REQUIREMENTS APPLICABLE TO A SCHOOL BUS AS DEFINED IN SECTION
21 ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW MERELY BECAUSE
22 PAYMENT TO ITS DRIVER HAS BEEN MADE WITH FUNDS PROVIDED TO A PARENT OR
23 PERSON IN PARENTAL RELATION PURSUANT TO THIS SUBPARAGRAPH, AND A PERSON
24 PROVIDING TRANSPORTATION SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF
25 ARTICLE NINETEEN-A OF THE VEHICLE AND TRAFFIC LAW MERELY BECAUSE HE OR
26 SHE SHALL HAVE RECEIVED SUCH PAYMENT.

27 c. Such board shall be empowered to contract for transportation
28 services provided pursuant to this subdivision with any municipality,
29 Board of Cooperative Educational Services, public authority or private
30 contractor meeting the school bus provisions outlined in section thir-
31 ty-six hundred twenty-three of this chapter and the standards and spec-
32 ifications relating thereto.

33 d. Notwithstanding any other provision of law, such board shall
34 provide suitable transportation up to a distance of fifty miles to and
35 from a nonpublic school which a child with a handicapping condition
36 attends if such child has been so identified by the local committee on
37 special education and such child attends such school for the purpose of
38 receiving services or programs similar to special educational programs
39 recommended for such child by the local committee on special education.

40 S 2. Subdivision 8 of section 4410 of the education law, as amended by
41 chapter 474 of the laws of 1996, is amended to read as follows:

42 8. Transportation. The municipality in which a preschool child resides
43 shall, beginning with the first day of service, provide either directly
44 or by contract for suitable transportation, as determined by the board,
45 to and from special services or programs; provided, however, that if the
46 municipality is a city with a population of one million or more persons
47 the municipality may delegate the authority to provide such transporta-
48 tion to the board; and provided further, that prior to providing such
49 transportation directly or contracting with another entity to provide
50 such transportation, such municipality or board shall request and
51 encourage the parents to transport their children at public expense,
52 where cost-effective, at a rate per mile or a public service fare estab-
53 lished by the municipality and approved by the commissioner. A PROPOSED
54 RATE PER MILE OR PUBLIC SERVICE FARE SUBMITTED TO THE COMMISSIONER SHALL
55 BE EFFECTIVE IMMEDIATELY UPON APPROVAL BY THE COMMISSIONER, OR ON THE
56 THIRTIETH DAY AFTER ITS SUBMISSION TO THE COMMISSIONER UNLESS THE

1 COMMISSIONER SHALL SPECIFICALLY DISAPPROVE SUCH PROPOSED RATE OR FARE IN
2 WRITING, WITH AN EXPLANATION FOR SUCH DISAPPROVAL. TRANSPORTATION FOR
3 WHICH A PARENT RECEIVES REIMBURSEMENT MAY BE PROVIDED BY PUBLIC TRANS-
4 PORTATION WHERE THE CHILD IS ACCOMPANIED BY THE PARENT OR OTHER ADULT
5 OVER THE AGE OF TWENTY-ONE LIVING IN THE SAME HOUSEHOLD AS THE PARENT;
6 BY A TAXICAB AS DEFINED IN SECTION ONE HUNDRED FORTY-EIGHT-A OF THE
7 VEHICLE AND TRAFFIC LAW OR LIVERY AS DEFINED IN SECTION ONE HUNDRED
8 TWENTY-ONE-E OF THE VEHICLE AND TRAFFIC LAW WHERE THE CHILD IS ACCOMPA-
9 NIED BY THE PARENT OR OTHER ADULT OVER THE AGE OF TWENTY-ONE LIVING INS
10 THE SAME HOUSEHOLD AS THE PARENT, AND, IF THE CHILD IS UNDER THE AGE OF
11 FOUR, A SAFETY SEAT AS DESCRIBED IN SECTION TWELVE HUNDRED TWENTY-NINE-C
12 OF THE VEHICLE AND TRAFFIC LAW IS USED TO SECURE THE CHILD; OR BY MOTOR
13 VEHICLE EQUIPPED WITH SEAT BELTS AND SAFETY SEATING TO THE EXTENT
14 REQUIRED BY SECTION TWELVE HUNDRED TWENTY-NINE-C OF THE VEHICLE AND
15 TRAFFIC LAW AND DRIVEN BY THE PARENT OR OTHER ADULT OVER THE AGE OF
16 TWENTY-ONE LIVING IN THE SAME HOUSEHOLD AS THE PARENT OR PERSON IN
17 PARENTAL RELATION. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY,
18 A VEHICLE WITH A SEATING CAPACITY OF UP TO NINE PERSONS SHALL NOT BE
19 SUBJECT TO REQUIREMENTS APPLICABLE TO A SCHOOL BUS AS DEFINED IN SECTION
20 ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW MERELY BECAUSE
21 PAYMENT TO ITS DRIVER HAS BEEN MADE WITH FUNDS PROVIDED TO A PARENT
22 PURSUANT TO THIS SUBDIVISION, AND A PERSON PROVIDING TRANSPORTATION
23 SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF ARTICLE NINETEEN-A OF THE
24 VEHICLE AND TRAFFIC LAW MERELY BECAUSE HE OR SHE SHALL HAVE RECEIVED
25 SUCH PAYMENT.

26 Except as otherwise provided in this section, the parents' inability
27 or declination to transport their child shall in no way [effect] AFFECT
28 the municipality's or board's responsibility to provide recommended
29 services. Such transportation shall be provided once daily from the
30 child care location to the special service or program and once daily
31 from the special service or program to the child care location up to
32 fifty miles from the child care location. If the board determines that a
33 child must receive special services and programs at a location greater
34 than fifty miles from the child care location, it shall request approval
35 of the commissioner. For the purposes of this subdivision, the term
36 "child care location" shall mean a child's home or a place where care
37 for less than twenty-four hours a day is provided on a regular basis and
38 includes, but is not limited to, a variety of child care services such
39 as day care centers, family day care homes and in-home care by persons
40 other than parents. All transportation of such children shall be
41 provided pursuant to the procedures set forth in section two hundred
42 thirty-six of the family court act using the date called for in the
43 written notice of determination of the board or the date of the written
44 notice of determination of the board, whichever comes later, in lieu of
45 the date the court order was issued.

46 NOTWITHSTANDING ANY STATE OR LOCAL LAW TO THE CONTRARY, AN ESCORT
47 SHALL NOT BE REQUIRED TO ACCOMPANY A CHILD BEING TRANSPORTED IN A VEHI-
48 CLE WITH FEWER THAN FOUR OTHER CHILDREN UNLESS THE COMMITTEE HAS RECOM-
49 MENDED AN ESCORT IN THE CHILD'S INDIVIDUALIZED EDUCATION PROGRAM OR THE
50 CHILD IS REQUIRED TO BE ACCOMPANIED PURSUANT TO THIS SUBDIVISION.

51 S 3. This act shall take effect immediately.