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

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2011-2012 Regular Sessions

I N S E N A T E

January 6, 2011

Introduced by Sen. ADDABBO -- 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 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:

Section 1. Subdivision 1 of section 3602-c of the education law is amended by adding a new paragraph g to read as follows:

G. "TWICE-EXCEPTIONAL" SHALL MEAN THOSE PUPILS WHO GIVE EVIDENCE OF THE POTENTIAL FOR HIGH COGNITIVE PROCESSING CAPABILITIES COMMENSURATE WITH OR CONTRARY TO COGNITIVE PROCESSING TAKEN AS NORMS OF REGULAR EDUCATION IN AREAS SUCH AS, BUT NOT LIMITED TO: SPECIFIC ACADEMICS, GENERAL INTELLECTUAL ABILITY, CREATIVITY, LEADERSHIP, AND/OR VISUAL, SPATIAL OR PERFORMING ARTS; AND ALSO GIVE EVIDENCE OF ONE OR MORE DISABILITIES AS DEFINED BY FEDERAL OR STATE ELIGIBILITY CRITERIA SUCH AS, BUT NOT LIMITED TO, SPECIFIC LEARNING DISABILITIES, SPEECH AND LANGUAGE DISORDERS, EMOTIONAL/BEHAVIORAL DISORDERS, PHYSICAL DISABILITIES, AUTISM SPECTRUM, OR OTHER HEALTH IMPAIRMENTS, SUCH AS ADHD. SUCH TERM SHALL INCLUDE THOSE PUPILS WHO REQUIRE EDUCATIONAL PROGRAMS OR SERVICES BEYOND THOSE NORMALLY PROVIDED BY THE REGULAR SCHOOL PROGRAM IN ORDER TO REALIZE THEIR FULL POTENTIAL.

S 2. Paragraph a of subdivision 1 of section 3602-c of the education law, as amended by chapter 474 of the laws of 2004, is amended to read as follows:

a. "Services" shall mean instruction in the areas of gifted pupils, TWICE-EXCEPTIONAL 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

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

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district, provided that such instruction is given to pupils enrolled in the public schools of such district.

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

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

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

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

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

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

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

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

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

A-1. AS USED IN THIS ARTICLE, THE TERM "TWICE-EXCEPTIONAL" SHALL MEAN THOSE PUPILS WHO GIVE EVIDENCE OF THE POTENTIAL FOR HIGH COGNITIVE PROCESSING CAPABILITIES COMMENSURATE WITH OR CONTRARY TO COGNITIVE PROCESSING TAKEN AS NORMS OF REGULAR EDUCATION IN AREAS SUCH AS, BUT NOT LIMITED TO: SPECIFIC ACADEMICS, GENERAL INTELLECTUAL ABILITY, CREATIVITY, LEADERSHIP, AND/OR VISUAL, SPATIAL OR PERFORMING ARTS; AND ALSO GIVE EVIDENCE OF ONE OR MORE DISABILITIES AS DEFINED BY FEDERAL OR STATE ELIGIBILITY CRITERIA SUCH AS, BUT NOT LIMITED TO, SPECIFIC LEARNING DISABILITIES, SPEECH AND LANGUAGE DISORDERS, EMOTIONAL/BEHAVIORAL DISORDERS, PHYSICAL DISABILITIES, AUTISM SPECTRUM, OR OTHER HEALTH IMPAIRMENTS, SUCH AS ADHD. SUCH DEFINITION SHALL INCLUDE THOSE PUPILS WHO REQUIRE EDUCATIONAL PROGRAMS OR SERVICES BEYOND THOSE NORMALLY PROVIDED BY THE REGULAR SCHOOL PROGRAM IN ORDER TO REALIZE THEIR FULL POTENTIAL.

(I) FOR THE PURPOSE OF THIS ARTICLE, THE TERMS "DISABILITY" AND "DISABLED" SHALL MEAN A CHILD:

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

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

(II) FOR PURPOSES OF THIS ARTICLE, THE TERM "SPECIFIC LEARNING DISABILITY" MEANS A DISORDER IN ONE OR MORE OF THE BASIC PSYCHOLOGICAL PROCESSES INVOLVED IN UNDERSTANDING OR IN USING LANGUAGE, SPOKEN OR WRITTEN, WHICH DISORDER MAY MANIFEST ITSELF IN THE IMPERFECT ABILITY TO LISTEN, THINK, SPEAK, READ, WRITE, SPELL, OR DO MATHEMATICAL CALCULATIONS.

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

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

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

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

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

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

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

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

2. SUCH ADVISORY COUNCIL APPOINTED BY THE COMMISSIONER SHALL CONSIST OF AT LEAST TEN MEMBERS, WHO ARE DIRECTLY CONCERNED WITH GENERAL EDUCATION AND DISABLED GIFTED PUPILS OR WHO HAVE SPECIALIZED IN THE EDUCATION OF SUCH PUPILS, PROVIDED, HOWEVER THAT SUCH ADVISORY COUNCIL SHALL INCLUDE AT LEAST A PLURALITY OF PARENTS OF SUCH PUPILS, INCLUDING PARENTS OF THOSE TWICE-EXCEPTIONAL PUPILS. THE MEMBERS SHALL BE RESIDENTS OF THIS STATE AND SHALL BE SELECTED ON THE BASIS OF THEIR COMPETENCE, CONCERN, AND PROFESSIONAL ACTIVITY IN THE EDUCATION OF GIFTED AND TWICE-EXCEPTIONAL PUPILS.

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

S 8. This act shall take effect April 1, 2012; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made and completed on or before such date.