

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

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:

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

3 ARTICLE 107

4 STUDENTS WITH DISABILITIES SCHOOL CHOICE ACT

5 SECTION 5300. SHORT TITLE.

6 5301. DEFINITIONS.

7 5302. GENERAL PROVISIONS.

8 5303. RESPONSIBILITIES OF THE RESIDENT SCHOOL DISTRICT.

9 5304. RESPONSIBILITIES OF THE DEPARTMENT.

10 5305. ACCOUNTABILITY FOR PARTICIPATING SCHOOLS.

11 5306. RESPONSIBILITIES OF THE SCHOLARSHIP STUDENTS AND THEIR  
12 PARENTS.

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

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

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

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

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

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

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

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

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

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

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

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

24 2. THE DEPARTMENT SHALL INFORM THE RESIDENT SCHOOL DISTRICT THAT A  
25 SPECIAL NEEDS STUDENT HAS REQUESTED A SPECIAL NEEDS SCHOLARSHIP. THE  
26 RESIDENT SCHOOL DISTRICT SHALL WITHIN THREE BUSINESS DAYS PROVIDE THE  
27 DEPARTMENT WITH A COPY OF THE STUDENT'S MOST CURRENT INDIVIDUAL EDUCA-  
28 TION PLAN.

29 3. UPON RECEIPT OF THE SPECIAL NEEDS STUDENT'S REQUEST FOR A SCHOLAR-  
30 SHIP, THE DEPARTMENT SHALL REVIEW THE INDIVIDUAL EDUCATION PLAN DRAFTED  
31 BY THE STUDENT'S PUBLIC SCHOOL TO DETERMINE THE AMOUNT OF THE SCHOLAR-  
32 SHIP. THE DEPARTMENT SHALL PROVIDE THE STUDENT'S PARENT WITH A TIMELY  
33 WRITTEN EXPLANATION OF THEIR DETERMINATION FOR THE AMOUNT OF THE SCHOL-  
34 ARSHIP.

35 4. THE MAXIMUM SCHOLARSHIP GRANTED AN ELIGIBLE STUDENT SHALL BE AN  
36 AMOUNT EQUIVALENT TO THE COST OF THE EDUCATIONAL PROGRAM THAT WOULD HAVE  
37 BEEN PROVIDED FOR THE STUDENT IN THE RESIDENT SCHOOL DISTRICT. ALTHOUGH  
38 THE SCHOLARSHIP AMOUNT IS A FUNCTION OF A STUDENT'S INDIVIDUAL EDUCATION  
39 PLAN, THE PARTICIPATING SCHOOL IS NOT REQUIRED TO ABIDE BY THE INDIVID-  
40 UAL EDUCATION PLAN. THE PARENT AND THE PARTICIPATING SCHOOL WILL MUTUAL-  
41 LY DETERMINE THE BEST SERVICES AND EDUCATIONAL PLAN FOR THE STUDENT.

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

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

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

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

1 S 5303. RESPONSIBILITIES OF THE RESIDENT SCHOOL DISTRICT. 1. A RESI-  
2 DENT SCHOOL DISTRICT SHALL ANNUALLY NOTIFY THE PARENTS OF A SPECIAL  
3 NEEDS STUDENT OF THE SPECIAL NEEDS SCHOLARSHIP PROGRAM AND OFFER THAT  
4 STUDENT'S PARENT AN OPPORTUNITY TO ENROLL THE STUDENT IN A PARTICIPATING  
5 SCHOOL OF THEIR CHOICE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (A) DEMONSTRATE THEIR FINANCIAL ACCOUNTABILITY BY:

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

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

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

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

18 (II) FILING WITH THE DEPARTMENT PRIOR TO THE START OF THE SCHOOL YEAR  
19 FINANCIAL INFORMATION THAT DEMONSTRATES THE SCHOOL HAS THE ABILITY TO  
20 PAY AN AGGREGATE AMOUNT EQUAL TO THE AMOUNT OF THE SPECIAL NEEDS SCHOL-  
21 ARSHIPS EXPECTED TO BE PAID DURING THE SCHOOL YEAR TO STUDENTS ADMITTED  
22 TO THE PARTICIPATING SCHOOL.

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

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

29 (A) THE DEPARTMENT OR ANY OTHER STATE AGENCY MAY NOT IN ANY WAY REGU-  
30 LATE THE EDUCATIONAL PROGRAM OF A PARTICIPATING SCHOOL THAT ACCEPTS A  
31 SPECIAL NEEDS SCHOLARSHIP; AND

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

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

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

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

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

54 S 2. This act shall take effect on the first of September next  
55 succeeding the date it shall have become a law.