

5507

2011-2012 Regular Sessions

I N A S S E M B L Y

February 22, 2011

Introduced by M. of A. THIELE -- Multi-Sponsored by -- M. of A. PHEFFER  
-- read once and referred 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:

1 Section 1. Subdivision 1 of section 3602-c of the education law is  
2 amended by adding a new paragraph g to read as follows:  
3 G. "TWICE-EXCEPTIONAL" SHALL MEAN THOSE PUPILS WHO GIVE EVIDENCE OF  
4 THE POTENTIAL FOR HIGH COGNITIVE PROCESSING CAPABILITIES COMMENSURATE  
5 WITH OR CONTRARY TO COGNITIVE PROCESSING TAKEN AS NORMS OF REGULAR  
6 EDUCATION IN AREAS SUCH AS, BUT NOT LIMITED TO: SPECIFIC ACADEMICS,  
7 GENERAL INTELLECTUAL ABILITY, CREATIVITY, LEADERSHIP, AND/OR VISUAL,  
8 SPATIAL OR PERFORMING ARTS; AND ALSO GIVE EVIDENCE OF ONE OR MORE DISA-  
9 BILITIES AS DEFINED BY FEDERAL OR STATE ELIGIBILITY CRITERIA SUCH AS,  
10 BUT NOT LIMITED TO, SPECIFIC LEARNING DISABILITIES, SPEECH AND LANGUAGE  
11 DISORDERS, EMOTIONAL/BEHAVIORAL DISORDERS, PHYSICAL DISABILITIES, AUTISM  
12 SPECTRUM, OR OTHER HEALTH IMPAIRMENTS, SUCH AS ADHD. SUCH TERM SHALL  
13 INCLUDE THOSE PUPILS WHO REQUIRE EDUCATIONAL PROGRAMS OR SERVICES BEYOND  
14 THOSE NORMALLY PROVIDED BY THE REGULAR SCHOOL PROGRAM IN ORDER TO REAL-  
15 IZE THEIR FULL POTENTIAL.  
16 S 2. Paragraph a of subdivision 1 of section 3602-c of the education  
17 law, as amended by chapter 474 of the laws of 2004, is amended to read  
18 as follows:  
19 a. "Services" shall mean instruction in the areas of gifted pupils,  
20 TWICE-EXCEPTIONAL PUPILS, career education and education for students  
21 with disabilities, and counseling, psychological and social work  
22 services related to such instruction provided during the regular school  
23 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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1 district, provided that such instruction is given to pupils enrolled in  
2 the public schools of such district.

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

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

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

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

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

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

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

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

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

30 A-1. AS USED IN THIS ARTICLE, THE TERM "TWICE-EXCEPTIONAL" SHALL MEAN  
31 THOSE PUPILS WHO GIVE EVIDENCE OF THE POTENTIAL FOR HIGH COGNITIVE PROC-  
32 ESSING CAPABILITIES COMMENSURATE WITH OR CONTRARY TO COGNITIVE PROCES-  
33 SING TAKEN AS NORMS OF REGULAR EDUCATION IN AREAS SUCH AS, BUT NOT LIMIT-  
34 ED TO: SPECIFIC ACADEMICS, GENERAL INTELLECTUAL ABILITY, CREATIVITY,  
35 LEADERSHIP, AND/OR VISUAL, SPATIAL OR PERFORMING ARTS; AND ALSO GIVE  
36 EVIDENCE OF ONE OR MORE DISABILITIES AS DEFINED BY FEDERAL OR STATE  
37 ELIGIBILITY CRITERIA SUCH AS, BUT NOT LIMITED TO, SPECIFIC LEARNING  
38 DISABILITIES, SPEECH AND LANGUAGE DISORDERS, EMOTIONAL/BEHAVIORAL DISOR-  
39 DERS, PHYSICAL DISABILITIES, AUTISM SPECTRUM, OR OTHER HEALTH IMPAIR-  
40 MENTS, SUCH AS ADHD. SUCH DEFINITION SHALL INCLUDE THOSE PUPILS WHO  
41 REQUIRE EDUCATIONAL PROGRAMS OR SERVICES BEYOND THOSE NORMALLY PROVIDED  
42 BY THE REGULAR SCHOOL PROGRAM IN ORDER TO REALIZE THEIR FULL POTENTIAL.

43 (I) FOR THE PURPOSE OF THIS ARTICLE, THE TERMS "DISABILITY" AND "DISA-  
44 BLED" SHALL MEAN A CHILD:

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

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

51 (II) FOR PURPOSES OF THIS ARTICLE, THE TERM "SPECIFIC LEARNING DISA-  
52 BILITY" MEANS A DISORDER IN ONE OR MORE OF THE BASIC PSYCHOLOGICAL PROC-  
53 ESSES INVOLVED IN UNDERSTANDING OR IN USING LANGUAGE, SPOKEN OR WRITTEN,  
54 WHICH DISORDER MAY MANIFEST ITSELF IN THE IMPERFECT ABILITY TO LISTEN,  
55 THINK, SPEAK, READ, WRITE, SPELL, OR DO MATHEMATICAL CALCULATIONS.

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

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

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

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

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

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

36 S 7. Section 4453 of the education law is REPEALED and a new section  
37 4453 is added to read as follows:

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

44 2. SUCH ADVISORY COUNCIL APPOINTED BY THE COMMISSIONER SHALL CONSIST  
45 OF AT LEAST TEN MEMBERS, WHO ARE DIRECTLY CONCERNED WITH GENERAL EDUCA-  
46 TION AND DISABLED GIFTED PUPILS OR WHO HAVE SPECIALIZED IN THE EDUCATION  
47 OF SUCH PUPILS, PROVIDED, HOWEVER THAT SUCH ADVISORY COUNCIL SHALL  
48 INCLUDE AT LEAST A PLURALITY OF PARENTS OF SUCH PUPILS, INCLUDING  
49 PARENTS OF THOSE TWICE-EXCEPTIONAL PUPILS. THE MEMBERS SHALL BE RESI-  
50 DENTS OF THIS STATE AND SHALL BE SELECTED ON THE BASIS OF THEIR COMPE-  
51 TENCE, CONCERN, AND PROFESSIONAL ACTIVITY IN THE EDUCATION OF GIFTED AND  
52 TWICE-EXCEPTIONAL PUPILS.

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

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