

5524

2011-2012 Regular Sessions

I N   S E N A T E

May 31, 2011

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Introduced by Sen. FLANAGAN -- (at request of the State Education Department) -- 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 special education services, programs for preschool children with disabilities, waivers for certain special education schools and early intervention agencies; and to repeal certain provisions of such law relating thereto

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

1     Section 1. Subdivision 6 of section 4410 of the education law is  
2 REPEALED and a new subdivision 6 is added to read as follows:  
3     6. PROFESSIONAL PRACTICE ISSUES. A. NOTWITHSTANDING ANY PROVISIONS OF  
4 LAW TO THE CONTRARY, APPROVED PROGRAMS OPERATED BY PRIVATE PROVIDERS  
5 SHALL BE AUTHORIZED TO EMPLOY LICENSED PROFESSIONALS OR CONTRACT WITH  
6 LICENSED PROFESSIONALS OR ENTITIES LEGALLY AUTHORIZED TO PROVIDE PROFES-  
7 SIONAL SERVICES IN ACCORDANCE WITH SECTION SIXTY-FIVE HUNDRED THREE-B OF  
8 THIS CHAPTER.  
9     B. AN APPROVED PROGRAM MAY BE FORMED AS AN EDUCATION CORPORATION, OR  
10 WITH THE CONSENT OF THE COMMISSIONER AS: (I) A NOT-FOR-PROFIT CORPO-  
11 RATION; (II) A BUSINESS CORPORATION THAT HAS THE OPERATION OF AN  
12 APPROVED PROGRAM OR ANOTHER SPECIAL EDUCATION SCHOOL AS A PRIMARY  
13 PURPOSE; (III) A LIMITED LIABILITY COMPANY; (IV) A PROFESSIONAL SERVICE  
14 LIMITED LIABILITY COMPANY OR A FOREIGN PROFESSIONAL SERVICE LIMITED  
15 LIABILITY COMPANY IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF ARTI-  
16 CLE TWELVE OR THIRTEEN OF THE LIMITED LIABILITY COMPANY LAW; (V) A  
17 REGISTERED LIMITED LIABILITY PARTNERSHIP OR REGISTERED FOREIGN LIMITED  
18 LIABILITY PARTNERSHIP IN ACCORDANCE WITH ARTICLE EIGHT-B OF THE PARTNER-  
19 SHIP LAW. IN ADDITION, A GROUP OF APPROPRIATELY LICENSED OR CERTIFIED  
20 PROFESSIONALS MAY BE FORMED AS A PROFESSIONAL SERVICES CORPORATION  
21 ESTABLISHED PURSUANT TO ARTICLE FIFTEEN OF THE BUSINESS CORPORATION LAW  
22 OR AS A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY, FOREIGN PROFES-

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

LBD11513-01-1

1 SIONAL SERVICE LIMITED LIABILITY COMPANY OR REGISTERED LIMITED LIABILITY  
2 PARTNERSHIP OR REGISTERED FOREIGN LIMITED LIABILITY PARTNERSHIP IN  
3 ACCORDANCE WITH ARTICLE EIGHT-B OF THE PARTNERSHIP LAW. AN APPROVED  
4 PROGRAM FORMED AS SUCH A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY  
5 OR REGISTERED LIMITED LIABILITY PARTNERSHIP MAY BE AUTHORIZED TO PROVIDE  
6 SPECIAL EDUCATION ITINERANT SERVICES OR OTHER EDUCATIONAL SERVICES NOT  
7 INVOLVING THE PRACTICE OF A PROFESSION UNDER TITLE EIGHT OF THIS CHAP-  
8 TER, AND, UPON GRANT OF A WAIVER PURSUANT TO SECTION SIXTY-FIVE HUNDRED  
9 THREE-B OF THIS CHAPTER, MAY EMPLOY OR CONTRACT WITH INDIVIDUALS  
10 LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE, OR WITH A PROFESSIONAL  
11 SERVICE CORPORATION, PARTNERSHIP OR OTHER ENTITY LEGALLY AUTHORIZED TO  
12 PRACTICE ANY PROFESSION UNDER TITLE EIGHT OF THIS CHAPTER IN WHICH THE  
13 ENTITY WOULD NOT BE AUTHORIZED TO PROVIDE PROFESSIONAL SERVICES UNDER  
14 THE APPLICABLE PROVISIONS OF SECTION TWELVE HUNDRED THREE OR SUBDIVISION  
15 (A) OF SECTION THIRTEEN HUNDRED ONE OF THE LIMITED LIABILITY COMPANY LAW  
16 OR SECTIONS 121-1500 OR 121-1502 OF THE PARTNERSHIP LAW, PROVIDED THAT  
17 SUCH CONTRACT IS WITHIN THE SCOPE OF THE DEPARTMENT'S APPROVAL AND IS  
18 ONLY FOR THE PURPOSE OF CONDUCTING A MULTI-DISCIPLINARY EVALUATION OF A  
19 PRESCHOOL CHILD SUSPECTED OF HAVING A DISABILITY OR A PRESCHOOL CHILD  
20 WITH A DISABILITY OR PROVIDING RELATED SERVICES SPECIFIED IN THE INDI-  
21 VIDUALIZED EDUCATION PROGRAM OF A PRESCHOOL CHILD WITH A DISABILITY.

22 C. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE  
23 EXEMPTION IN SUBDIVISION TWO OF SECTION EIGHTY-TWO HUNDRED SEVEN OF THIS  
24 CHAPTER SHALL APPLY TO PERSONS EMPLOYED BY A CENTER-BASED PROGRAM  
25 APPROVED PURSUANT TO SUBDIVISION NINE OF THIS SECTION TO PERFORM THE  
26 DUTIES OF A SPEECH-LANGUAGE PATHOLOGIST, AUDIOLOGIST, TEACHER OF THE  
27 SPEECH AND HEARING IMPAIRED OR TEACHER OF THE DEAF TO STUDENTS ENROLLED  
28 IN SUCH APPROVED CENTER-BASED PROGRAM IN THE COURSE OF THEIR EMPLOYMENT.

29 D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE  
30 EXEMPTION IN SUBDIVISION ONE OF SECTION SEVENTY-SIX HUNDRED FIVE OF THIS  
31 CHAPTER SHALL APPLY TO PERSONS EMPLOYED BY A CENTER-BASED PROGRAM  
32 APPROVED PURSUANT TO SUBDIVISION NINE OF THIS SECTION AS A SCHOOL  
33 PSYCHOLOGIST TO PROVIDE ACTIVITIES, SERVICES AND USE OF THE TITLE  
34 PSYCHOLOGIST TO STUDENTS ENROLLED IN SUCH APPROVED CENTER-BASED PROGRAM  
35 IN THE COURSE OF THEIR EMPLOYMENT.

36 S 2. Paragraphs b and d of subdivision 9 of section 4410 of the educa-  
37 tion law, as amended by chapter 705 of the laws of 1992, are amended to  
38 read as follows:

39 b. As part of an application submitted pursuant to paragraph a of this  
40 subdivision, a provider of special services or programs shall submit a  
41 description of its multi-disciplinary evaluation component, if any,  
42 which shall be subject to the approval of the commissioner in accordance  
43 with regulations adopted for such purpose after consultation with the  
44 appropriate advisory committee. Such components or program may rely in  
45 part on formal written agreements or affiliations with appropriately  
46 certified or licensed professionals, or agencies employing such profes-  
47 sionals, provided that such professionals or agencies perform their  
48 responsibilities in conformance with regulations of the commissioner and  
49 that providers fully disclose any such arrangements on all applications  
50 for program approval, AND PROVIDED FURTHER THAT THE PROVIDER CERTIFIES  
51 THAT IT SHALL APPLY FOR AND OBTAIN A WAIVER PURSUANT TO SECTION  
52 SIXTY-FIVE HUNDRED THREE-B OF THIS CHAPTER PRIOR TO PROVIDING EVALUATION  
53 SERVICES PURSUANT TO SUCH WRITTEN AGREEMENTS OR AFFILIATIONS. Nothing  
54 herein shall require a provider of special services or programs to have  
55 a multidisciplinary evaluation program.

d. Providers may make application to conduct a program that relies on formal written agreements or affiliations with other approved programs or appropriately certified or licensed professionals, provided that such arrangements are fully disclosed on all applications to the commissioner for program approval, AND PROVIDED FURTHER THAT THE PROVIDER CERTIFIES IT SHALL APPLY FOR AND OBTAIN A WAIVER PURSUANT TO SECTION SIXTY-FIVE HUNDRED THREE-B OF THIS CHAPTER PRIOR TO PROVIDING RELATED SERVICES PURSUANT TO ANY SUCH WRITTEN AGREEMENTS OR AFFILIATIONS INVOLVING LICENSED PROFESSIONALS.

S 3. Paragraph (a) of subdivision 9-a of section 4410 of the education law, as added by chapter 82 of the laws of 1995, is amended to read as follows:

(a) A school district or a group of appropriately licensed and/or certified professionals associated with a public or private agency may apply to the commissioner for approval as an evaluator on a form prescribed by the commissioner. The commissioner shall approve evaluators pursuant to this subdivision consistent with the approval process for the multi-disciplinary evaluation component of programs approved pursuant to subdivision nine of this section consistent with regulations adopted pursuant to such subdivision.

Such application shall include, but not be limited to, a description of the multi-disciplinary evaluation services proposed to be provided and a demonstration that all agency employees and staff who provide such evaluation services shall have appropriate licensure and/or certification and that the individual who shall have direct supervision responsibilities over such staff shall have an appropriate level of experience in providing evaluation or services to preschool or kindergarten-aged children with [handicapping conditions] DISABILITIES. TO BE ELIGIBLE FOR APPROVAL AS AN EVALUATOR UNDER THIS SUBDIVISION ON AND AFTER JULY FIRST, TWO THOUSAND ELEVEN, A GROUP OF APPROPRIATELY LICENSED OR CERTIFIED PROFESSIONALS SHALL BE FORMED AS A LIMITED LIABILITY COMPANY OR PROFESSIONAL SERVICES CORPORATION ESTABLISHED PURSUANT TO ARTICLE FIFTEEN OF THE BUSINESS CORPORATION LAW, ARTICLE TWELVE OR THIRTEEN OF THE LIMITED LIABILITY COMPANY LAW OR ARTICLE EIGHT-B OF THE PARTNERSHIP LAW. THE APPROVAL OF ANY GROUPS OF LICENSED OR CERTIFIED PROFESSIONALS THAT ARE IN EXISTENCE ON JULY FIRST, TWO THOUSAND ELEVEN AND WOULD NOT BE ELIGIBLE FOR APPROVAL THEREAFTER SHALL TERMINATE ON JULY FIRST, TWO THOUSAND THIRTEEN.

S 4. The education law is amended by adding a new section 6503-b to read as follows:

S 6503-B. WAIVER FOR CERTAIN SPECIAL EDUCATION SCHOOLS AND EARLY INTERVENTION AGENCIES. 1. DEFINITIONS. AS USED IN THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "SPECIAL EDUCATION SCHOOL" MEANS AN APPROVED PROGRAM AS DEFINED IN PARAGRAPH B OF SUBDIVISION ONE OF SECTION FORTY-FOUR HUNDRED TEN OF THIS CHAPTER THAT MEETS THE REQUIREMENTS OF PARAGRAPH B OF SUBDIVISION SIX OF SUCH SECTION FORTY-FOUR HUNDRED TEN; AN APPROVED PRIVATE NON-RESIDENTIAL OR RESIDENTIAL SCHOOL FOR THE EDUCATION OF STUDENTS WITH DISABILITIES THAT IS LOCATED WITHIN THE STATE; A CHILD CARE INSTITUTION AS DEFINED IN SECTION FOUR THOUSAND ONE OF THIS CHAPTER THAT OPERATES A PRIVATE SCHOOL FOR THE EDUCATION OF STUDENTS WITH DISABILITIES OR AN INSTITUTION FOR THE DEAF OR BLIND OPERATING PURSUANT TO ARTICLE EIGHTY-FIVE OF THIS CHAPTER THAT EITHER: (1) CONDUCTS A MULTI-DISCIPLINARY EVALUATION FOR PURPOSES OF ARTICLES EIGHTY-ONE OR EIGHTY-NINE OF THIS CHAPTER THAT INVOLVES THE PRACTICE OF ONE OR MORE PROFESSIONS FOR WHICH A LICENSE IS REQUIRED PURSUANT TO THIS TITLE AND NO EXCEPTION FROM CORPORATE PRACTICE

1 RESTRICTIONS APPLIES, OR (2) PROVIDES RELATED SERVICES TO STUDENTS  
2 ENROLLED IN THE SCHOOL OR APPROVED PROGRAM THAT INVOLVES THE PRACTICE OF  
3 ONE OR MORE PROFESSIONS FOR WHICH A LICENSE IS REQUIRED PURSUANT TO THIS  
4 TITLE AND NO EXCEPTION FROM PRACTICE RESTRICTIONS APPLIES. SUCH TERM  
5 SHALL NOT INCLUDE A SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL  
6 SERVICES, MUNICIPALITY, STATE AGENCY OR OTHER PUBLIC ENTITY. NOTHING IN  
7 THIS SECTION SHALL BE CONSTRUED TO REQUIRE A CHILD CARE INSTITUTION THAT  
8 CONDUCTS MULTI-DISCIPLINARY EVALUATIONS OR PROVIDES RELATED SERVICES  
9 THROUGH AN APPROVED PRIVATE NONRESIDENTIAL SCHOOL OPERATED BY SUCH CHILD  
10 CARE INSTITUTION TO OBTAIN A WAIVER, PROVIDED THAT SUCH SCHOOL OBTAINS A  
11 WAIVER PURSUANT TO THIS SECTION.

12 B. "EARLY INTERVENTION AGENCY" MEANS AN AGENCY WHICH IS APPROVED OR IS  
13 SEEKING APPROVAL IN ACCORDANCE WITH TITLE TWO-A OF ARTICLE TWENTY-FIVE  
14 OF THE PUBLIC HEALTH LAW TO DELIVER EARLY INTERVENTION PROGRAM  
15 MULTI-DISCIPLINARY EVALUATIONS, SERVICE COORDINATION SERVICES AND EARLY  
16 INTERVENTION PROGRAM SERVICES, AND IS LAWFULLY OPERATED AS A SOLE  
17 PROPRIETORSHIP OR BY A PARTNERSHIP, NOT-FOR-PROFIT CORPORATION, EDUCA-  
18 TION CORPORATION, BUSINESS CORPORATION, A LIMITED LIABILITY COMPANY OR  
19 PROFESSIONAL SERVICES ORGANIZATION ESTABLISHED PURSUANT TO ARTICLE  
20 FIFTEEN OF THE BUSINESS CORPORATION LAW, ARTICLE TWELVE OR THIRTEEN OF  
21 THE LIMITED LIABILITY COMPANY LAW OR ARTICLE EIGHT-B OF THE PARTNERSHIP  
22 LAW.

23 C. "EARLY INTERVENTION PROGRAM SERVICES" MEANS EARLY INTERVENTION  
24 SERVICES AS DEFINED IN SUBDIVISION SEVEN OF SECTION TWENTY-FIVE HUNDRED  
25 FORTY-ONE OF THE PUBLIC HEALTH LAW THAT ARE PROVIDED UNDER THE EARLY  
26 INTERVENTION PROGRAM AND AUTHORIZED IN AN ELIGIBLE CHILD'S INDIVIDUAL-  
27 IZED FAMILY SERVICES PLAN.

28 D. "MULTI-DISCIPLINARY EVALUATION" FOR PURPOSES OF A SPECIAL EDUCATION  
29 SCHOOL MEANS A MULTI-DISCIPLINARY EVALUATION OF A PRESCHOOL CHILD  
30 SUSPECTED OF HAVING A DISABILITY OR A PRESCHOOL CHILD WITH A DISABILITY  
31 THAT IS CONDUCTED PURSUANT TO SECTION FORTY-FOUR HUNDRED TEN OF THIS  
32 CHAPTER OR AN EVALUATION OF A SCHOOL-AGE CHILD SUSPECTED OF HAVING A  
33 DISABILITY OR WITH A DISABILITY WHICH IS CONDUCTED BY A CHILD CARE  
34 INSTITUTION THAT OPERATES A SPECIAL EDUCATION SCHOOL OR THE SPECIAL  
35 EDUCATION SCHOOL OPERATED BY SUCH INSTITUTION PURSUANT TO SUBDIVISION  
36 THREE OF SECTION FOUR THOUSAND TWO OF THIS CHAPTER OR BY AN INSTITUTION  
37 FOR THE DEAF OR BLIND OPERATING PURSUANT TO ARTICLE EIGHTY-FIVE OF THIS  
38 CHAPTER OR AN EVALUATION OF A SCHOOL-AGE CHILD SUSPECTED OF HAVING A  
39 DISABILITY OR WITH A DISABILITY THAT IS AUTHORIZED TO BE CONDUCTED BY A  
40 SPECIAL EDUCATION SCHOOL PURSUANT TO ANY OTHER PROVISION OF THIS CHAPTER  
41 AND THE REGULATIONS OF THE COMMISSIONER FOR PURPOSES OF IDENTIFICATION  
42 OF THE CHILD AS A CHILD WITH A DISABILITY OR THE DEVELOPMENT OF AN INDI-  
43 VIDUALIZED EDUCATION PROGRAM FOR THE CHILD.

44 E. "MULTI-DISCIPLINARY EVALUATION" FOR PURPOSES OF THE EARLY INTER-  
45 VENTION PROGRAM MEANS A PROFESSIONAL, OBJECTIVE ASSESSMENT CONDUCTED BY  
46 APPROPRIATELY QUALIFIED PERSONNEL IN ACCORDANCE WITH SECTION TWENTY-FIVE  
47 HUNDRED FORTY-FOUR OF THE PUBLIC HEALTH LAW AND ITS IMPLEMENTING REGU-  
48 LATIONS TO DETERMINE A CHILD'S ELIGIBILITY FOR EARLY INTERVENTION  
49 PROGRAM SERVICES.

50 F. "RELATED SERVICES" MEANS RELATED SERVICES AS DEFINED IN PARAGRAPH G  
51 OF SUBDIVISION TWO OF SECTION FOUR THOUSAND TWO, PARAGRAPH K OF SUBDIVI-  
52 SION TWO OF SECTION FORTY-FOUR HUNDRED ONE, OR PARAGRAPH J OF SUBDIVI-  
53 SION ONE OF SECTION FORTY-FOUR HUNDRED TEN OF THIS CHAPTER PROVIDED TO A  
54 CHILD WITH A DISABILITY PURSUANT TO SUCH CHILD'S INDIVIDUALIZED EDUCA-  
55 TION PROGRAM.

1 2. WAIVER. A. NO SPECIAL EDUCATION SCHOOL MAY EMPLOY INDIVIDUALS  
2 LICENSED PURSUANT TO THIS ARTICLE TO CONDUCT COMPONENTS OF A MULTI-DIS-  
3 CIPLINARY EVALUATION OF A CHILD WITH A DISABILITY OR A CHILD SUSPECTED  
4 OF HAVING A DISABILITY OR TO PROVIDE RELATED SERVICES TO CHILDREN WITH  
5 DISABILITIES ENROLLED IN THE SCHOOL, AND NO SPECIAL EDUCATION SCHOOL MAY  
6 PROVIDE SUCH AN EVALUATION COMPONENT OR RELATED SERVICES BY CONTRACT  
7 WITH AN INDIVIDUAL LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE PURSUANT  
8 TO THIS ARTICLE OR WITH AN ENTITY AUTHORIZED BY LAW TO PROVIDE SUCH  
9 PROFESSIONAL SERVICES, UNLESS SUCH SCHOOL OBTAINS A WAIVER PURSUANT TO  
10 THIS SECTION. ALL SPECIAL EDUCATION SCHOOLS APPROVED BY THE COMMISSIONER  
11 AS OF THE EFFECTIVE DATE OF THIS SECTION SHALL BE DEEMED OPERATING UNDER  
12 A WAIVER PURSUANT TO THIS SECTION FOR A PERIOD COMMENCING ON SUCH EFFEC-  
13 TIVE DATE AND ENDING ON JULY FIRST, TWO THOUSAND THIRTEEN.

14 B. NO EARLY INTERVENTION AGENCY MAY EMPLOY OR CONTRACT WITH INDIVID-  
15 UALS LICENSED PURSUANT TO THIS ARTICLE OR WITH A NOT-FOR-PROFIT CORPO-  
16 RATION, EDUCATION CORPORATION, BUSINESS CORPORATION, LIMITED LIABILITY  
17 COMPANY, OR A PROFESSIONAL SERVICES ORGANIZATION ESTABLISHED PURSUANT TO  
18 ARTICLE FIFTEEN OF THE BUSINESS CORPORATION LAW, ARTICLE TWELVE OR THIR-  
19 TEEN OF THE LIMITED LIABILITY COMPANY LAW OR ARTICLE EIGHT-B OF THE  
20 PARTNERSHIP LAW, TO CONDUCT AN EARLY INTERVENTION PROGRAM MULTI-DISCI-  
21 PLINARY EVALUATION, PROVIDE SERVICE COORDINATION SERVICES OR EARLY  
22 INTERVENTION PROGRAM SERVICES UNLESS SUCH AGENCY HAS OBTAINED A WAIVER  
23 PURSUANT TO THIS SECTION AND HAS BEEN APPROVED IN ACCORDANCE WITH TITLE  
24 TWO-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW AS AN EARLY INTER-  
25 VENTION PROGRAM PROVIDER. ALL EARLY INTERVENTION AGENCIES APPROVED AS OF  
26 THE EFFECTIVE DATE OF THIS SECTION SHALL BE DEEMED TO BE OPERATING UNDER  
27 A WAIVER PURSUANT TO THIS SECTION FOR A PERIOD COMMENCING ON SUCH EFFEC-  
28 TIVE DATE AND ENDING ON JULY FIRST, TWO THOUSAND THIRTEEN. NOTHING IN  
29 THIS SECTION SHALL BE CONSTRUED TO REQUIRE AN EARLY INTERVENTION AGENCY  
30 TO OPERATE UNDER A WAIVER IN ACCORDANCE WITH THIS SECTION PROVIDED THAT  
31 IT IS OTHERWISE AUTHORIZED BY LAW TO PROVIDE THE APPLICABLE PROFESSIONAL  
32 SERVICES.

33 3. OBTAINING A WAIVER. A. A SPECIAL EDUCATION SCHOOL AND EARLY INTER-  
34 VENTION AGENCY SHALL OBTAIN AN APPLICATION FOR A WAIVER ON A FORM  
35 PRESCRIBED BY THE DEPARTMENT. THE DEPARTMENT MAY ISSUE A WAIVER ON OR  
36 AFTER JULY FIRST, TWO THOUSAND THIRTEEN TO AN ENTITY WHICH WAS CREATED  
37 BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION IF THERE IS  
38 DEMONSTRATION OF NEED OF THE ENTITY'S SERVICES SATISFACTORY TO THE  
39 DEPARTMENT. THE APPLICATION FOR AN INITIAL WAIVER SHALL BE ACCOMPANIED  
40 BY A FEE OF THREE HUNDRED FORTY-FIVE DOLLARS. WHERE THE APPLICANT SIMUL-  
41 TANEOUSLY APPLIES FOR A WAIVER AS A SPECIAL EDUCATION SCHOOL AND EARLY  
42 INTERVENTION AGENCY THE TOTAL WAIVER FEE SHALL BE THREE HUNDRED  
43 FORTY-FIVE DOLLARS.

44 B. WITHIN ONE HUNDRED TWENTY DAYS AFTER THE COMMISSIONER PRESCRIBES  
45 THE APPLICATION FORM AND POSTS NOTICE OF ITS AVAILABILITY ON THE DEPART-  
46 MENT'S WEBSITE, A SPECIAL EDUCATION SCHOOL OR EARLY INTERVENTION AGENCY  
47 MUST APPLY FOR A WAIVER. UPON SUBMISSION OF SUCH APPLICATION, THE SCHOOL  
48 OR AGENCY MAY CONTINUE TO OPERATE AND PROVIDE SERVICES UNTIL THE DEPART-  
49 MENT SHALL EITHER DENY OR APPROVE THE APPLICATION. AFTER THE DEPARTMENT  
50 RENDERS A TIMELY INITIAL DETERMINATION THAT THE APPLICANT HAS SUBMITTED  
51 THE INFORMATION NECESSARY TO VERIFY THAT THE REQUIREMENTS OF PARAGRAPHS  
52 C, D AND E OF THIS SUBDIVISION ARE SATISFIED, APPLICATIONS FOR WAIVERS  
53 SHALL BE APPROVED OR DENIED WITHIN NINETY DAYS, PROVIDED HOWEVER THAT IF  
54 THE WAIVER APPLICATION IS DENIED THE SCHOOL OR AGENCY SHALL CEASE  
55 PROVIDING SERVICES PURSUANT TO THIS SUBDIVISION IN THE STATE OF NEW  
56 YORK.

1 C. SUCH WAIVER SHALL PROVIDE THAT SERVICES RENDERED PURSUANT TO THIS  
2 SECTION, DIRECTLY OR INDIRECTLY, SHALL BE PROVIDED ONLY BY A PERSON  
3 APPROPRIATELY LICENSED TO PROVIDE SUCH SERVICES, EXCEPT AS OTHERWISE  
4 PROVIDED IN LAW, TO PROVIDE SUCH SERVICES OR BY A PROFESSIONAL SERVICES  
5 ENTITY AUTHORIZED BY LAW TO PROVIDE SUCH SERVICES.

6 D. AN APPLICATION FOR A WAIVER TO PROVIDE PROFESSIONAL SERVICES PURSU-  
7 ANT TO THIS SECTION SHALL BE ON A FORM PRESCRIBED BY THE COMMISSIONER.  
8 SUCH APPLICATION SHALL INCLUDE: (I) THE NAME OF THE SPECIAL EDUCATION  
9 SCHOOL OR EARLY INTERVENTION AGENCY; (II) THE NAMES OF THE DIRECTORS OR  
10 TRUSTEES AND OFFICERS OF SUCH SCHOOL OR AGENCY; (III) A LISTING OF ANY  
11 OTHER JURISDICTIONS WHERE SUCH SCHOOL OR AGENCY MAY PROVIDE SERVICES;  
12 AND (IV) AN ATTESTATION MADE BY AN OFFICER AUTHORIZED BY SUCH SCHOOL OR  
13 AGENCY TO MAKE SUCH ATTESTATION THAT IDENTIFIES THE SCOPE OF SERVICES TO  
14 BE PROVIDED; INCLUDES A LIST OF PROFESSIONS UNDER THIS TITLE IN WHICH  
15 PROFESSIONAL SERVICES WILL BE PROVIDED BY SUCH SCHOOL OR AGENCY;  
16 INCLUDES A STATEMENT THAT, UNLESS OTHERWISE AUTHORIZED BY LAW, THE  
17 SCHOOL OR AGENCY SHALL ONLY PROVIDE SERVICES AUTHORIZED UNDER THIS  
18 SECTION; INCLUDES A STATEMENT THAT ONLY A LICENSED PROFESSIONAL, A  
19 PERSON OTHERWISE AUTHORIZED TO PROVIDE SUCH SERVICES, OR A PROFESSIONAL  
20 SERVICES ENTITY AUTHORIZED BY LAW TO PROVIDE SUCH SERVICES SHALL PROVIDE  
21 SUCH SERVICES AS AUTHORIZED UNDER THIS SECTION; AND ATTESTS TO THE  
22 ADEQUACY OF THE SCHOOL'S OR AGENCY'S FISCAL AND FINANCIAL RESOURCES TO  
23 PROVIDE SUCH SERVICES. SUCH APPLICATION SHALL ALSO INCLUDE ANY OTHER  
24 INFORMATION RELATED TO THE APPLICATION AS MAY BE REQUIRED BY THE DEPART-  
25 MENT. A SCHOOL OR AGENCY WITH AN APPROVED WAIVER MAY APPLY, ON A FORM  
26 PRESCRIBED BY THE COMMISSIONER, TO AMEND THE WAIVER TO ADD ADDITIONAL  
27 PROFESSIONAL SERVICES.

28 E. EACH OFFICER, TRUSTEE AND DIRECTOR OF SUCH SCHOOL OR AGENCY SHALL  
29 PROVIDE AN ATTESTATION REGARDING HIS OR HER GOOD MORAL CHARACTER AS  
30 REQUIRED PURSUANT TO PARAGRAPH G OF THIS SUBDIVISION. THE COMMISSIONER  
31 SHALL BE FURTHER AUTHORIZED TO PROMULGATE RULES OR REGULATIONS RELATING  
32 TO THE STANDARDS OF THE WAIVER FOR SPECIAL EDUCATION SCHOOLS AND EARLY  
33 INTERVENTION AGENCIES PURSUANT TO THIS SECTION. SUCH REGULATIONS SHALL  
34 INCLUDE STANDARDS RELATING TO THE SCHOOL'S OR AGENCY'S ABILITY TO  
35 PROVIDE SERVICES, THE SCHOOL'S OR AGENCY'S MAINTENANCE OF STUDENT OR  
36 CLIENT AND BUSINESS RECORDS, THE SCHOOL'S OR AGENCY'S FISCAL POLICIES,  
37 AND SUCH OTHER STANDARDS AS MAY BE PRESCRIBED BY THE COMMISSIONER.

38 F. THE SPECIAL EDUCATION SCHOOL OR EARLY INTERVENTION AGENCY OPERATING  
39 PURSUANT TO A WAIVER SHALL DISPLAY, AT EACH SITE WHERE SERVICES ARE  
40 PROVIDED TO THE PUBLIC, A CERTIFICATE OF SUCH WAIVER ISSUED BY THE  
41 DEPARTMENT PURSUANT TO THIS SECTION, WHICH SHALL CONTAIN THE NAME OF THE  
42 SCHOOL OR AGENCY AND THE ADDRESS OF THE SITE. SUCH SCHOOLS OR AGENCIES  
43 SHALL OBTAIN FROM THE DEPARTMENT ADDITIONAL CERTIFICATES FOR EACH SITE  
44 AT WHICH PROFESSIONAL SERVICES ARE PROVIDED TO THE PUBLIC. EACH SCHOOL  
45 OR AGENCY SHALL BE REQUIRED TO RE-APPLY FOR A WAIVER EVERY THREE YEARS.  
46 AN EARLY INTERVENTION AGENCY'S WAIVER SHALL NOT BE RENEWED UNLESS THE  
47 AGENCY IS APPROVED TO PROVIDE EARLY INTERVENTION PROGRAM MULTI-DISCIPLI-  
48 NARY EVALUATIONS, SERVICE COORDINATION OR EARLY INTERVENTION PROGRAM  
49 SERVICES IN ACCORDANCE WITH TITLE TWO-A OF ARTICLE TWENTY-FIVE OF THE  
50 PUBLIC HEALTH LAW. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION FOUR OF  
51 THIS SECTION, IF ANY INFORMATION SUPPLIED TO THE DEPARTMENT REGARDING  
52 THE SCHOOL OR AGENCY SHALL CHANGE, THE SCHOOL OR AGENCY SHALL BE  
53 REQUIRED TO PROVIDE SUCH UPDATED INFORMATION TO THE DEPARTMENT WITHIN  
54 SIXTY DAYS.

55 G. ALL OFFICERS, TRUSTEES AND DIRECTORS OF SUCH SCHOOLS OR AGENCIES  
56 SHALL BE OF GOOD MORAL CHARACTER. SCHOOLS OR AGENCIES OPERATING PURSUANT

1 TO A WAIVER AND THEIR OFFICERS AND DIRECTORS SHALL BE ENTITLED TO THE  
2 SAME DUE PROCESS PROCEDURES AS ARE PROVIDED TO SUCH INDIVIDUALS AND  
3 PROFESSIONAL SERVICES CORPORATIONS. NO WAIVER ISSUED UNDER THIS SECTION  
4 SHALL BE TRANSFERABLE OR ASSIGNABLE; AS SUCH TERMS ARE DEFINED IN THE  
5 REGULATIONS OF THE COMMISSIONER.

6 4. RENEWAL OF WAIVER. A. ALL SPECIAL EDUCATION SCHOOL AND EARLY INTER-  
7 VENTION AGENCY WAIVERS SHALL BE RENEWED ON DATES SET BY THE DEPARTMENT.  
8 THE TRIENNIAL WAIVER FEE SHALL BE TWO HUNDRED SIXTY DOLLARS OR A  
9 PRO-RATED PORTION THEREOF AS DETERMINED BY THE DEPARTMENT. AN EARLY  
10 INTERVENTION AGENCY'S WAIVER SHALL NOT BE RENEWED UNLESS THE AGENCY IS  
11 APPROVED TO PROVIDE EARLY INTERVENTION PROGRAM MULTI-DISCIPLINARY EVALU-  
12 ATIONS, SERVICE COORDINATION NOR EARLY INTERVENTION PROGRAM SERVICES IN  
13 ACCORDANCE WITH TITLE TWO-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH  
14 LAW.

15 5. CHANGE OF LOCATION. IN THE EVENT THAT A CHANGE IN THE LOCATION OF  
16 THE CHIEF ADMINISTRATIVE OFFICES OF A SPECIAL EDUCATION SCHOOL OR EARLY  
17 INTERVENTION AGENCY IS CONTEMPLATED, THE OWNER SHALL NOTIFY THE OFFICE  
18 OF PROFESSIONS OF THE DEPARTMENT OF THE CHANGE OF LOCATION AT LEAST  
19 THIRTY DAYS PRIOR TO RELOCATION.

20 6. PROFESSIONAL PRACTICE. A. NOTWITHSTANDING ANY OTHER PROVISION OF  
21 LAW TO THE CONTRARY, A SPECIAL EDUCATION SCHOOL OPERATING UNDER A WAIVER  
22 MAY EMPLOY INDIVIDUALS LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE ANY  
23 PROFESSION PURSUANT TO THIS ARTICLE TO CONDUCT COMPONENTS OF A  
24 MULTI-DISCIPLINARY EVALUATION OF A CHILD WITH A DISABILITY OR A CHILD  
25 SUSPECTED OF HAVING A DISABILITY OR TO PROVIDE RELATED SERVICES TO CHIL-  
26 DREN WITH DISABILITIES ENROLLED IN THE SCHOOL OR MAY PROVIDE COMPONENTS  
27 OF SUCH AN EVALUATION OR SUCH RELATED SERVICES BY CONTRACT WITH AN INDI-  
28 VIDUAL LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE PURSUANT TO THIS  
29 ARTICLE OR A NOT-FOR-PROFIT CORPORATION, EDUCATION CORPORATION, BUSINESS  
30 CORPORATION, LIMITED LIABILITY COMPANY OR PROFESSIONAL SERVICES ORGAN-  
31 IZATION ESTABLISHED PURSUANT TO ARTICLE FIFTEEN OF THE BUSINESS CORPO-  
32 RATION LAW, ARTICLE TWELVE OR THIRTEEN OF THE LIMITED LIABILITY COMPANY  
33 LAW OR ARTICLE EIGHT-B OF THE PARTNERSHIP LAW AUTHORIZED BY LAW TO  
34 PROVIDE THE APPLICABLE PROFESSIONAL SERVICES.

35 B. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, AN  
36 EARLY INTERVENTION AGENCY OPERATING UNDER A WAIVER THAT IS APPROVED IN  
37 ACCORDANCE WITH TITLE TWO-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH  
38 LAW MAY EMPLOY OR CONTRACT WITH INDIVIDUALS LICENSED OR OTHERWISE  
39 AUTHORIZED TO PRACTICE ANY PROFESSION PURSUANT TO THIS ARTICLE OR WITH A  
40 NOT-FOR-PROFIT CORPORATION, EDUCATION CORPORATION, BUSINESS CORPORATION,  
41 LIMITED LIABILITY COMPANY OR PROFESSIONAL SERVICES ORGANIZATION ESTAB-  
42 LISHED PURSUANT TO ARTICLE FIFTEEN OF THE BUSINESS CORPORATION LAW,  
43 ARTICLE TWELVE OR THIRTEEN OF THE LIMITED LIABILITY COMPANY LAW OR ARTI-  
44 CLE EIGHT-B OF THE PARTNERSHIP LAW AUTHORIZED TO CONDUCT EARLY INTER-  
45 VENTION PROGRAM MULTI-DISCIPLINARY EVALUATIONS, PROVIDE SERVICE COORDI-  
46 NATION SERVICES AND EARLY INTERVENTION PROGRAM SERVICES.

47 C. A SPECIAL EDUCATION SCHOOL OR EARLY INTERVENTION AGENCY OPERATING  
48 UNDER A WAIVER SHALL NOT PRACTICE ANY PROFESSION LICENSED PURSUANT TO  
49 THIS TITLE OR HOLD ITSELF OUT TO THE PUBLIC AS AUTHORIZED TO PROVIDE  
50 PROFESSIONAL SERVICES PURSUANT TO THIS TITLE EXCEPT AS AUTHORIZED BY  
51 THIS SECTION OR OTHERWISE AUTHORIZED BY LAW.

52 7. SUPERVISION OF PROFESSIONAL PRACTICE. A SPECIAL EDUCATION SCHOOL OR  
53 EARLY INTERVENTION AGENCY SHALL BE UNDER THE SUPERVISION OF THE REGENTS  
54 OF THE UNIVERSITY OF THE STATE OF NEW YORK AND BE SUBJECT TO DISCIPLI-  
55 NARY PROCEEDINGS AND PENALTIES. A SPECIAL EDUCATION SCHOOL OR EARLY  
56 INTERVENTION AGENCY OPERATING UNDER A WAIVER SHALL BE SUBJECT TO SUSPEN-

1 SION, REVOCATION OR ANNULMENT OF THE WAIVER FOR CAUSE, IN THE SAME  
2 MANNER AND TO THE SAME EXTENT AS IS PROVIDED WITH RESPECT TO INDIVIDUALS  
3 AND THEIR LICENSES, CERTIFICATES, AND REGISTRATIONS IN THE PROVISIONS OF  
4 THIS TITLE RELATING TO THE APPLICABLE PROFESSION. NOTWITHSTANDING THE  
5 PROVISIONS OF THIS SUBDIVISION, A SPECIAL EDUCATION SCHOOL OR EARLY  
6 INTERVENTION AGENCY THAT CONDUCTS OR CONTRACTS FOR A COMPONENT OF A  
7 MULTI-DISCIPLINARY EVALUATION THAT INVOLVES THE PRACTICE OF MEDICINE  
8 SHALL BE SUBJECT TO THE PRE-HEARING PROCEDURES AND HEARING PROCEDURES AS  
9 IS PROVIDED WITH RESPECT TO INDIVIDUAL PHYSICIANS AND THEIR LICENSES IN  
10 TITLE TWO-A OF ARTICLE TWO OF THE PUBLIC HEALTH LAW. NOTWITHSTANDING  
11 ANY OTHER PROVISION OF LAW TO THE CONTRARY, UPON REVOCATION OR OTHER  
12 TERMINATION BY THE COMMISSIONER OF APPROVAL OF THE SPECIAL EDUCATION  
13 SCHOOL PURSUANT TO ARTICLE EIGHTY-NINE OF THIS CHAPTER AND THE REGU-  
14 LATIONS OF THE COMMISSIONER IMPLEMENTING SUCH ARTICLE OR TERMINATION OF  
15 THE EARLY INTERVENTION AGENCY PURSUANT TO TITLE TWO-A OF ARTICLE TWEN-  
16 TY-FIVE OF THE PUBLIC HEALTH LAW AND IMPLEMENTING REGULATIONS BY THE  
17 COMMISSIONER PURSUANT TO SUBDIVISION EIGHTEEN OF SECTION FORTY-FOUR  
18 HUNDRED THREE OF THIS CHAPTER, THE SCHOOL'S OR EARLY INTERVENTION AGEN-  
19 CY'S WAIVER PURSUANT TO THIS SECTION SHALL BE DEEMED REVOKED AND  
20 ANNULLED.

21 S 5. This act shall take effect immediately, except that if this act  
22 shall have become a law on or after June 30, 2011 this act shall take  
23 effect immediately and shall be deemed to have been in full force and  
24 effect on and after June 30, 2011.