

7113

I N S E N A T E

April 30, 2012

Introduced by Sen. KLEIN -- 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 screening for childhood obesity and instruction in good health and reducing the incidence of obesity

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

1 Section 1. Section 901 of the education law, as amended by chapter 477
2 of the laws of 2004, subdivision 1 as amended by section 57 of part A-1
3 of chapter 58 of the laws of 2006, is amended to read as follows:
4 S 901. School health services to be provided. 1. School health
5 services, as defined in subdivision two of this section, shall be
6 provided by each school district for all students attending the public
7 schools in this state, except in the city school district of the city of
8 New York, as provided in this article. School health services shall
9 include the services of a registered professional nurse, if one is
10 employed, and shall also include such services as may be rendered as
11 provided in this article in examining students for the existence of
12 disease or disability, OR MAY INCLUDE SERVICES RELATED TO EXAMINING FOR
13 CHILDHOOD OBESITY BASED UPON THE CALCULATION OF EACH STUDENT'S BODY MASS
14 INDEX AND WEIGHT STATUS CATEGORY PURSUANT TO SECTION NINE HUNDRED FOUR
15 OF THIS ARTICLE, and in testing the eyes and ears of such students.
16 2. School health services for the purposes of this article shall mean
17 the several procedures, including, but not limited to, medical examina-
18 tions, dental inspection and/or screening, scoliosis screening, vision
19 screening [and], audiometer tests, AND CHILDHOOD OBESITY AS MEASURED BY
20 BODY MASS INDEX AND WEIGHT STATUS CATEGORY, designed to determine the
21 health status of the child; to inform parents or other persons in
22 parental relation to the child, pupils and teachers of the individual
23 child's health condition subject to federal and state confidentiality
24 laws; to guide parents, children and teachers in procedures for prevent-
25 ing and correcting defects [and], diseases AND CHILDHOOD OBESITY CONDI-
26 TIONS; to instruct the school personnel in procedures to take in case of
27 accident or illness; to survey and make necessary recommendations

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

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1 concerning the health and safety aspects of school facilities and the
2 provision of health information.

3 S 2. Subdivisions 1, 3 and 4 of section 903 of the education law, as
4 amended by chapter 281 of the laws of 2007, subdivision 1 as separately
5 amended by section 11 of part B of chapter 58 of the laws of 2007 and
6 paragraph a of subdivision 3 as amended by section 28 of part A of chap-
7 ter 58 of the laws of 2008, are amended to read as follows:

8 1. A health certificate shall be furnished by each student in the
9 public schools upon his or her entrance in such schools and upon his or
10 her entry into the grades prescribed by the commissioner in regulations,
11 provided that such regulations shall require such certificates at least
12 twice during the elementary grades and twice in the secondary grades. An
13 examination and health history of any child may be required by the local
14 school authorities at any time in their discretion to promote the educa-
15 tional interests of such child. Each certificate shall be signed by a
16 duly licensed physician, physician assistant, or nurse practitioner, who
17 is authorized by law to practice in this state, and consistent with any
18 applicable written practice agreement, or by a duly licensed physician,
19 physician assistant, or nurse practitioner, who is authorized to prac-
20 tice in the jurisdiction in which the examination was given, provided
21 that the commissioner has determined that such jurisdiction has stand-
22 ards of licensure and practice comparable to those of New York. Each
23 such certificate shall describe the condition of the student when the
24 examination was made, which shall not be more than twelve months prior
25 to the commencement of the school year in which the examination is
26 required, and shall state whether such student is in a fit condition of
27 health to permit his or her attendance at the public schools. THE EXAM-
28 INATION MAY INCLUDE A DIABETES RISK ANALYSIS AND, IF NECESSARY, CHILDREN
29 WITH RISK FACTORS FOR TYPE 1 DIABETES, OR RISK FACTORS ASSOCIATED WITH
30 TYPE 2 DIABETES SUCH AS OBESITY, A FAMILY HISTORY OF TYPE 2 DIABETES, OR
31 ANY OTHER FACTORS CONSISTENT WITH INCREASED RISK SHALL BE TESTED FOR
32 DIABETES. Each such certificate shall also state the student's body mass
33 index (BMI) and weight status category. For purposes of this section,
34 BMI is computed as the weight in kilograms divided by the square of
35 height in meters or the weight in pounds divided by the square of height
36 in inches multiplied by a conversion factor of 703. Weight status cate-
37 gories for children and adolescents shall be as defined by the commis-
38 sioner of health. In all school districts such physician, physician
39 assistant or nurse practitioner shall determine whether a one-time test
40 for sickle cell anemia is necessary or desirable and he or she shall
41 conduct such a test and the certificate shall state the results.

42 3. a. Within thirty days after the student's entrance in such schools
43 or grades, the health certificate shall be submitted to the principal or
44 his or her designee and shall be filed in the student's cumulative
45 health record. If such student does not present a health certificate as
46 required in this section, unless he or she has been accommodated on
47 religious grounds, the principal or the principal's designee shall cause
48 a notice to be sent to the parents or person in parental relationship to
49 such student that if the required health certificate is not furnished
50 within thirty days from the date of such notice, an examination will be
51 made of such student, as provided in this article. Each school and
52 school district [chosen as part of an appropriate sampling methodology]
53 shall participate in surveys directed by the commissioner of health
54 pursuant to the public health law in relation to students' BMI and
55 weight status categories as reported on the school health certificate
56 and which shall be subject to audit by the commissioner of health. Such

1 surveys shall contain the information required pursuant to subdivision
2 one of this section in relation to students' BMI and weight status cate-
3 gories in aggregate. Parents or other persons in parental relation to a
4 student may refuse to have the student's BMI and weight status category
5 included in such survey. Each school and school district shall provide
6 the commissioner of health with any information, records and reports he
7 or she may require for the purpose of such audit. The BMI and weight
8 status survey and audit as described in this subdivision shall be
9 conducted consistent with confidentiality requirements imposed by feder-
10 al law.

11 b. Within thirty days after the student's entrance in such schools or
12 grades, the dental health certificate, if obtained, shall be filed in
13 the student's cumulative health record.

14 4. Notwithstanding the provisions of subdivisions one, two and three
15 of this section, no examinations for a health certificate or health
16 history shall be required or dental certificate requested, and no
17 screening examinations for sickle cell anemia OR CHILDHOOD OBESITY shall
18 be required where a student or the parent or person in parental relation
19 to such student objects thereto on the grounds that such examinations or
20 health history conflict with their genuine and sincere religious
21 beliefs.

22 S 3. Subdivision 1 of section 904 of the education law, as amended by
23 section 12 of part B of chapter 58 of the laws of 2007, is amended to
24 read as follows:

25 1. Each principal of a public school, or his or her designee, shall
26 report to the director of school health services having jurisdiction
27 over such school, the names of all students who have not furnished
28 health certificates as provided in section nine hundred three of this
29 article, or who are children with disabilities, as defined by article
30 eighty-nine of this chapter, and the director of school health services
31 shall cause such students to be separately and carefully examined and
32 tested to ascertain whether any student has defective sight or hearing,
33 or any other physical disability which may tend to prevent him or her
34 from receiving the full benefit of school work, or from requiring a
35 modification of such work to prevent injury to the student or from
36 receiving the best educational results. Each examination shall also
37 include a calculation of the student's body mass index (BMI) and weight
38 status category. For purposes of this section, BMI is computed as the
39 weight in kilograms divided by the square of height in meters or the
40 weight in pounds divided by the square of height in inches multiplied by
41 a conversion factor of 703. Weight status categories for children and
42 adolescents shall be as defined by the commissioner of health. In all
43 school districts, such physician, physician assistant or nurse practi-
44 tioner shall determine whether a one-time test for sickle cell anemia is
45 necessary or desirable and he or she shall conduct such tests and the
46 certificate shall state the results. If it should be ascertained, upon
47 such test or examination, that any of such students have defective sight
48 or hearing[,], or other physical disability, including sickle cell
49 anemia, as above described, OR ARE OBESE, the principal or his or her
50 designee shall notify the parents of, or other persons in parental
51 relation to, the child as to the existence of such disability. If the
52 parents or other persons in parental relation are unable or unwilling to
53 provide the necessary relief and treatment for such students, such fact
54 shall be reported by the principal or his or her designee to the direc-
55 tor of school health services, whose duty it shall be to provide relief
56 for such students. Each school and school district [chosen as part of an

1 appropriate sampling methodology] shall participate in surveys directed
2 by the commissioner of health pursuant to the public health law in
3 relation to students' BMI and weight status categories as determined by
4 the examination conducted pursuant to this section and which shall be
5 subject to audit by the commissioner of health. Such surveys shall
6 contain the information required pursuant to this subdivision in
7 relation to students' BMI and weight status categories in aggregate.
8 [Parents or other persons in parental relation to a student may refuse
9 to have the student's BMI and weight status category included in such
10 survey.] Each school and school district shall provide the commissioner
11 of health with any information, records and reports he or she may
12 require for the purpose of such audit. The BMI and weight status survey
13 and audit as described in this section shall be conducted consistent
14 with confidentiality requirements imposed by federal law. [Data
15 collection for such surveys shall commence on a voluntary basis at the
16 beginning of the two thousand seven academic school year, and by all
17 schools chosen as part of the sampling methodology at the beginning of
18 the two thousand eight academic school year.] The department shall also
19 utilize the collected data to develop a report of child obesity and
20 obesity related diseases.

21 S 4. Section 912 of the education law, as amended by chapter 477 of
22 the laws of 2004, is amended to read as follows:

23 S 912. Health and welfare services to all children. The voters and/or
24 trustees or board of education of every school district shall, upon
25 request of the authorities of a school other than public, provide resi-
26 dent children who attend such school with any or all of the health and
27 welfare services and facilities which are made available by such voters
28 and/or trustees or board of education to or for children attending the
29 public schools of the district. Such services may include, but are not
30 limited to all services performed by a physician, physician assistant,
31 dentist, dental hygienist, registered professional nurse, nurse practi-
32 tioner, school psychologist, school social worker or school speech ther-
33 apist, and may also include dental prophylaxis, vision and hearing
34 screening examinations, CHILDHOOD OBESITY SCREENING, the taking of
35 medical histories and the administration of health screening tests, the
36 maintenance of cumulative health records and the administration of emer-
37 gency care programs for ill or injured students. Any such services or
38 facilities shall be so provided notwithstanding any provision of any
39 charter or other provision of law inconsistent herewith. Where children
40 residing in one school district attend a school other than public
41 located in another school district, the school authorities of the
42 district of residence shall contract with the school authorities of the
43 district where such nonpublic school is located, for the provision of
44 such health and welfare services and facilities to such children by the
45 school district where such nonpublic school is located, for a consider-
46 ation to be agreed upon between the school authorities of such
47 districts, subject to the approval of the qualified voters of the
48 district of residence when required under the provisions of this chap-
49 ter. Every such contract shall be in writing and in the form prescribed
50 by the commissioner, and before such contract is executed the same shall
51 be submitted for approval to the superintendent of schools having juris-
52 diction over such district of residence and such contract shall not
53 become effective until approved by such superintendent.

54 S 5. Subdivisions 4 and 5 of section 918 of the education law, as
55 added by chapter 493 of the laws of 2004, are amended to read as
56 follows:

1 4. The committee is encouraged to study AND MAKE RECOMMENDATIONS ON
2 all facets of the current nutritional policies of the district includ-
3 ing, but not limited to, the goals of the district to promote health and
4 proper nutrition, REDUCE THE INCIDENCE OF CHILDHOOD OBESITY, vending
5 machine sales, menu criteria, educational curriculum teaching healthy
6 nutrition, AND educational information provided to parents or guardians
7 regarding healthy nutrition and the health risks associated with obesi-
8 ty, ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC RESPIRATORY DISEASES.
9 PROVIDED, FURTHER, THE COMMITTEE MAY PROVIDE INFORMATION TO PERSONS IN
10 PARENTAL RELATION ON opportunities offered to parents or guardians to
11 encourage healthier eating habits to students, and the education
12 provided to teachers and other staff as to the importance of healthy
13 nutrition AND ABOUT THE DANGERS OF CHILDHOOD OBESITY. In addition the
14 committee shall consider recommendations and practices of other
15 districts and nutrition studies.

16 5. The committee is encouraged to report periodically to the district
17 regarding practices that will educate teachers, parents or guardians and
18 children about healthy nutrition and raise awareness of the dangers of
19 CHILDHOOD obesity, ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC RESPIR-
20 ATORY DISEASES. The committee is encouraged also to provide any parent
21 teacher associations in the district with such findings and recommenda-
22 tions.

23 S 6. Subdivisions 1 and 5 of section 803 of the education law, as
24 amended by chapter 118 of the laws of 1957, are amended to read as
25 follows:

26 1. All pupils above the age of eight years in all elementary and
27 secondary schools, shall receive as part of the prescribed courses of
28 instruction therein such physical education under the direction of the
29 commissioner of education as the regents may determine. Such courses
30 shall be designed to aid in the well-rounded education of pupils and in
31 the development of character, citizenship, OVERALL physical fitness,
32 GOOD health [and], the worthy use of leisure AND THE REDUCTION IN THE
33 INCIDENCE OF CHILDHOOD OBESITY. Pupils above such age attending the
34 public schools shall be required to attend upon such prescribed courses
35 of instruction.

36 5. (A) It shall be the duty of the regents to adopt rules determining
37 the subjects to be included in courses of physical education provided
38 for in this section, the period of instruction in each of such courses,
39 the qualifications of teachers, and the attendance upon such courses of
40 instruction.

41 (B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE REGENTS
42 MAY PROVIDE IN ITS RULES THAT THE PHYSICAL EDUCATION INSTRUCTION
43 REQUIREMENT FOR ALL STUDENTS ENROLLED IN ELEMENTARY AND SECONDARY SCHOOL
44 GRADES SHALL, WHERE FEASIBLE, INCLUDE DAILY PHYSICAL EXERCISE OR ACTIV-
45 ITY, INCLUDING STUDENTS WITH DISABLING CONDITIONS AND THOSE IN ALTERNA-
46 TIVE EDUCATION PROGRAMS. THE REGENTS MAY INCLUDE IN ITS RULES THAT
47 STUDENTS ENROLLED IN SUCH ELEMENTARY AND SECONDARY SCHOOLS SHALL PARTIC-
48 IPATE IN PHYSICAL EDUCATION, EXERCISE OR ACTIVITY FOR A MINIMUM OF ONE
49 HUNDRED TWENTY MINUTES DURING EACH SCHOOL WEEK. THE REGENTS MAY PROVIDE
50 FOR A TWO-YEAR PHASE-IN SCHEDULE FOR DAILY PHYSICAL EDUCATION IN ELEMEN-
51 TARY SCHOOLS IN ITS RULES.

52 S 7. The section heading and subdivision 1 of section 804 of the
53 education law, the section heading as amended by chapter 401 of the laws
54 of 1998 and subdivision 1 as added by chapter 982 of the laws of 1977,
55 are amended and a new subdivision 3-b is added to read as follows:

1 Health education regarding alcohol, drugs, tobacco abuse, THE
2 REDUCTION IN THE INCIDENCE OF OBESITY, and the prevention and detection
3 of certain cancers. 1. All schools shall include, as an integral part of
4 health, SCIENCE AND PHYSICAL education, instruction so as to discourage
5 the misuse and abuse of alcohol, tobacco[,] and other drugs, TO REDUCE
6 THE INCIDENCE OF OBESITY, and promote attitudes and behavior that
7 enhance health, well being, and human dignity.

8 3-B. INSTRUCTION REGARDING THE LONG TERM HEALTH RISKS ASSOCIATED WITH
9 OBESITY AND METHODS OF PREVENTING AND REDUCING THE INCIDENCE OF OBESITY,
10 INCLUDING GOOD NUTRITION AND REGULAR EXERCISE. SUCH INSTRUCTION MAY BE
11 AN INTEGRAL PART OF REQUIRED HEALTH, SCIENCE AND PHYSICAL EDUCATION
12 COURSES.

13 S 8. Subdivision 1 of section 804-a of the education law, as added by
14 chapter 730 of the laws of 1986, is amended to read as follows:

15 1. Within the amounts appropriated, the commissioner is hereby
16 authorized to establish a demonstration program and to distribute state
17 funds to local school districts, boards of cooperative educational
18 services and in certain instances community school districts, for the
19 development, implementation, evaluation, validation, demonstration and
20 replication of exemplary comprehensive health education programs to
21 assist the public schools in developing curricula, training staff, and
22 addressing local health education needs of students, parents, and staff.
23 SUCH PROGRAMS SHALL SERVE THE PURPOSE OF DEVELOPING AND ENHANCING
24 PUPILS' HEALTH KNOWLEDGE, SKILLS, ATTITUDES AND BEHAVIORS, WHICH IS
25 FUNDAMENTAL TO IMPROVING THEIR HEALTH STATUS AND ACADEMIC PERFORMANCE,
26 AS WELL AS REDUCING THE INCIDENCE OF ADOLESCENT PREGNANCY, ALCOHOL
27 ABUSE, TOBACCO ABUSE, TRUANCY, SUICIDE, SUBSTANCE ABUSE, OBESITY, ASTH-
28 MA, OTHER CHRONIC RESPIRATORY DISEASES, AND OTHER PROBLEMS OF CHILDHOOD
29 AND ADOLESCENCE.

30 S 9. Section 813 of the education law, as added by chapter 296 of the
31 laws of 1994, is amended to read as follows:

32 S 813. School lunch period; scheduling. Each school shall schedule a
33 reasonable time DURING EACH SCHOOL DAY for each full day pupil attending
34 pre-kindergarten through grade twelve WITH AMPLE TIME to consume lunch
35 AND TO ENGAGE IN PHYSICAL EXERCISE OR RECREATION.

36 S 10. This act shall take effect immediately, except that sections
37 one, two, three, four and five of this act shall take effect two years
38 after this act shall have become a law.