

S. 2880

A. 4202

2015-2016 Regular Sessions

S E N A T E - A S S E M B L Y

January 29, 2015

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IN SENATE -- Introduced by Sens. ADDABBO, ESPAILLAT, SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Education

IN ASSEMBLY -- Introduced by M. of A. THIELE, JAFFEE, MILLER -- Multi-Sponsored by -- M. of A. MAGNARELLI, McDONOUGH -- 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:

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

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1 a. "Services" shall mean instruction in the areas of gifted pupils,  
2 TWICE-EXCEPTIONAL PUPILS, career education and education for students  
3 with disabilities, and counseling, psychological and social work  
4 services related to such instruction provided during the regular school  
5 year for pupils enrolled in a nonpublic school located in a school  
6 district, provided that such instruction is given to pupils enrolled in  
7 the public schools of such district.

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

10 S 4451. Powers of the department with respect to gifted pupils.  
11 [Subject to the availability of funds, the] THE state education depart-  
12 ment is hereby authorized [and], empowered AND DIRECTED to assist  
13 districts in meeting the educational needs EQUALLY of BOTH GENERAL  
14 EDUCATION AND DISABLED gifted pupils, WHO ARE COMMONLY REFERRED TO AS  
15 TWICE-EXCEPTIONAL STUDENTS, through the following:

16 1. provide information to school districts concerning development of  
17 programs, curriculum resources, instructional procedures and strategies  
18 to identify and encourage EQUALLY BOTH GENERAL EDUCATION AND DISABLED  
19 gifted pupils, WHO ARE COMMONLY REFERRED TO AS TWICE-EXCEPTIONAL  
20 STUDENTS;

21 2. provide technical assistance and [inservice] IN-SERVICE education,  
22 PROFESSIONAL DEVELOPMENT AND PROGRAM EVALUATION for teachers and admin-  
23 istrators;

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

26 4. develop, maintain, and distribute a handbook for parents of BOTH  
27 GENERAL EDUCATION AND DISABLED gifted pupils, WHO ARE COMMONLY REFERRED  
28 TO AS TWICE-EXCEPTIONAL STUDENTS.

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

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

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

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

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

54 A. WITH HEARING IMPAIRMENTS (INCLUDING DEAFNESS), SPEECH OR LANGUAGE  
55 IMPAIRMENTS, VISUAL IMPAIRMENTS (INCLUDING BLINDNESS), EMOTIONAL

1 DISTURBANCE, ORTHOPEDIC IMPAIRMENTS, OTHER HEALTH IMPAIRMENTS, OR  
2 SPECIFIC LEARNING DISABILITIES; AND

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

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

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

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

18 D. UPON ACCEPTANCE BY A LOCAL SCHOOL DISTRICT OF THE APPORTIONMENTS  
19 MADE UNDER SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER SUCH DISTRICT  
20 SHALL USE SUCH FUNDING IN ACCORDANCE WITH GUIDELINES TO BE ESTABLISHED  
21 BY THE COMMISSIONER FOR SERVICES TO GIFTED PUPILS AND TWICE-EXCEPTIONAL  
22 PUPILS. SUCH SERVICES SHALL INCLUDE BUT NOT BE LIMITED TO IDENTIFICA-  
23 TION, INSTRUCTIONAL PROGRAMS, GIFTED IEPS (GIEPS) DEVELOPED BY CERTIFIED  
24 GIFTED AND TALENTED LEARNING SPECIALISTS, COUNSELING, PLANNING, IN-SER-  
25 VICE EDUCATION AND PROGRAM EVALUATION. A BOARD OF EDUCATION MAY CONTRACT  
26 WITH ANOTHER DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES TO  
27 PROVIDE THE PROGRAM AND/OR SERVICES WITH THE APPROVAL OF THE COMMISSION-  
28 ER UNDER GUIDELINES ESTABLISHED BY THE COMMISSIONER.

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

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

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

46 S 7. Section 4453 of the education law is REPEALED and a new section  
47 4453 is added to read as follows:

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

54 2. SUCH ADVISORY COUNCIL APPOINTED BY THE COMMISSIONER SHALL CONSIST  
55 OF AT LEAST TEN MEMBERS, WHO ARE DIRECTLY CONCERNED WITH GENERAL EDUCA-  
56 TION AND DISABLED GIFTED PUPILS OR WHO HAVE SPECIALIZED IN THE EDUCATION

1 OF SUCH PUPILS, PROVIDED, HOWEVER THAT SUCH ADVISORY COUNCIL SHALL  
2 INCLUDE AT LEAST A PLURALITY OF PARENTS OF SUCH PUPILS, INCLUDING  
3 PARENTS OF THOSE TWICE-EXCEPTIONAL PUPILS. THE MEMBERS SHALL BE RESI-  
4 DENTS OF THIS STATE AND SHALL BE SELECTED ON THE BASIS OF THEIR COMPE-  
5 TENCE, CONCERN, AND PROFESSIONAL ACTIVITY IN THE EDUCATION OF GIFTED AND  
6 TWICE-EXCEPTIONAL PUPILS.

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

10 S 8. This act shall take effect April 1, 2016; provided, however, that  
11 effective immediately, the addition, amendment and/or repeal of any rule  
12 or regulation necessary for the implementation of this act on its effec-  
13 tive date is authorized to be made and completed on or before such date.