

STATE OF NEW YORK

4901

2017-2018 Regular Sessions

IN SENATE

March 3, 2017

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:

ARTICLE 107

STUDENTS WITH DISABILITIES SCHOOL CHOICE ACT

Section 5300. Short title.

5301. Definitions.

5302. General provisions.

5303. Responsibilities of the resident school district.

5304. Responsibilities of the department.

5305. Accountability for participating schools.

5306. Responsibilities of the scholarship students and their parents.

13 § 5300. Short title. This article shall be known and may be cited as
14 the "students with disabilities school choice act".

15 § 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.

24 3. "Parent" includes a guardian, custodian or other person with
25 authority to act on behalf of the child.

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

LBD07335-01-7

1 4. "Resident school district" means the public school district in
2 which the student resides.

3 5. "Department" means the education department of the state of New
4 York.

5 6. "Participating school" means either a public school outside of the
6 resident school district or any non-public school that provides educa-
7 tion to elementary and/or secondary students that has notified the
8 department of their intention to participate in the program and comply
9 with its requirements. Participating school shall also include out-of-
10 state private schools that offer innovative services unavailable in the
11 state.

12 § 5302. General provisions. 1. Any parent of a public school special
13 needs student who is dissatisfied with the student's progress shall
14 qualify for a scholarship from the state for the child to enroll in and
15 attend a non-public school if:

16 (a) the special needs student has had an individual education plan
17 written in accordance with the rules of the department; and

18 (b) the student has been accepted for admission at a participating
19 school; and

20 (c) the parent has requested a scholarship from the state before the
21 deadline established by the department.

22 2. The department shall inform the resident school district that a
23 special needs student has requested a special needs scholarship. The
24 resident school district shall within three business days provide the
25 department with a copy of the student's most current individual educa-
26 tion plan.

27 3. Upon receipt of the special needs student's request for a scholar-
28 ship, the department shall review the individual education plan drafted
29 by the student's public school to determine the amount of the scholar-
30 ship. The department shall provide the student's parent with a timely
31 written explanation of their determination for the amount of the schol-
32 arship.

33 4. The maximum scholarship granted an eligible student shall be an
34 amount equivalent to the cost of the educational program that would have
35 been provided for the student in the resident school district. Although
36 the scholarship amount is a function of a student's individual education
37 plan, the participating school is not required to abide by the individ-
38 ual education plan. The parent and the participating school will mutual-
39 ly determine the best services and educational plan for the student.

40 5. The amount of the special needs scholarship shall be the lesser of
41 the amount calculated in subdivisions three and four of this section, or
42 the amount of the participating school's estimated costs for serving the
43 student. The costs of any assessment by the participating school of the
44 student's special needs may be included in the scholarship amount.

45 6. Participating students shall be counted in the enrollment of their
46 resident school district. The funds needed to provide a scholarship
47 shall be subtracted from the state school aid payable to the student's
48 resident school district.

49 7. The special needs scholarship shall remain in force until the
50 student returns to a public school or graduates from high school or
51 reaches their twenty-first birthday, whichever comes first.

52 8. At any time, the student's parent may remove the student from the
53 participating school and place the student in another participating
54 school or in a public school.

55 § 5303. Responsibilities of the resident school district. 1. A resi-
56 dent school district shall annually notify the parents of a special

1 needs student of the special needs scholarship program and offer that
2 student's parent an opportunity to enroll the student in a participating
3 school of their choice.

4 2. The resident school district shall provide a participating school
5 that has admitted an eligible student with a complete copy of the
6 student's school records while complying with the family educational
7 rights and privacy act of 1974.

8 3. The resident school district shall provide transportation for an
9 eligible student to and from the participating school under the same
10 conditions as the resident school district is required to provide trans-
11 portation for other resident students to non-public schools as per
12 current law. The resident school district will qualify for state trans-
13 portation aid for each student so transported.

14 4. If the parent of an eligible student participating in this program
15 requests that the student take the statewide assessments, the resident
16 school district shall provide locations and times for the student to
17 take all statewide assessments if they are not offered at the student's
18 participating school.

19 § 5304. Responsibilities of the department. 1. The department shall
20 adopt rules and procedures regarding:

21 (a) the eligibility and participation of non-public schools, including
22 timelines that will maximize student and public and non-public school
23 participation;

24 (b) the calculation and distribution of scholarships to eligible
25 students and participating schools; and

26 (c) the application and approval procedures for eligible students and
27 participating schools.

28 2. No liability shall arise on the part of the department or the state
29 based on the award or use of a special needs scholarship.

30 3. The department may bar a school from participation in the program
31 if the department establishes that the participating school has:

32 (a) intentionally and substantially misrepresented information
33 required under section five thousand three hundred five of this article;
34 or

35 (b) failed to refund to the state any scholarship overpayments in a
36 timely manner.

37 4. If the department decides to bar a participating school from the
38 program, it shall notify eligible students and their parents of this
39 decision as quickly as possible.

40 § 5305. Accountability for participating schools. To be eligible to
41 participate in the special needs scholarship program, a non-public
42 school must operate in this state and demonstrate:

43 1. Administrative accountability. To ensure that students are treated
44 fairly and kept safe, all participating schools shall:

45 (a) comply with all health and safety laws or codes that apply to
46 non-public schools; and

47 (b) hold a valid occupancy permit if required by their municipality;
48 and

49 (c) certify that they will not discriminate in admissions on the basis
50 of race, color, national origin, or religion; and

51 (d) comply with all state laws that apply to non-public schools
52 regarding criminal background checks for employees and exclude from
53 employment any people not permitted by state law to work in a non-public
54 school.

55 2. Financial accountability. To ensure that public funds are spent
56 appropriately, all participating schools shall:

1 (a) demonstrate their financial accountability by:

2 (i) submitting a financial information report for the school that
3 complies with uniform financial accounting standards established by the
4 department and conducted by a certified public accountant; and

5 (ii) having the auditor certify the report is free of material
6 misstatements. The auditor's report shall be limited in scope to those
7 records that are necessary for the department to make payments to
8 schools for scholarships.

9 (b) demonstrate their financial viability by showing they can pay any
10 funds owed the state, if they are to receive fifty thousand dollars or
11 more during the school year, by:

12 (i) filing with the department prior to the start of the school year a
13 surety bond payable to the state in an amount equal to the aggregate
14 amount of the special needs scholarships expected to be paid during the
15 school year to students admitted to the participating school; or

16 (ii) filing with the department prior to the start of the school year
17 financial information that demonstrates the school has the ability to
18 pay an aggregate amount equal to the amount of the special needs schol-
19 arships expected to be paid during the school year to students admitted
20 to the participating school.

21 3. Academic accountability. To ensure that schools provide academic
22 accountability to parents of the students in the program, all partic-
23 ipating schools shall regularly report to the parent on the student's
24 progress.

25 4. Participating school autonomy. A participating school is autonomous
26 and not an agent of the state or federal government therefore:

27 (a) the department or any other state agency may not in any way regu-
28 late the educational program of a participating school that accepts a
29 special needs scholarship; and

30 (b) the creation of the special needs scholarship program does not
31 expand the regulatory authority of the state, its officers or any school
32 district to impose any additional regulation of non-public schools
33 beyond those reasonably necessary to enforce the requirements of the
34 program; and

35 (c) participating schools shall be given the maximum freedom to
36 provide for the educational needs of their students without governmental
37 control.

38 § 5306. Responsibilities of the scholarship students and their
39 parents. 1. It shall be the responsibility of a parent to select their
40 child's school, apply for admission, and apply for a special needs scho-
41 larship.

42 2. Any student participating in the program must comply fully with a
43 participating school's written code of conduct and shall remain in
44 attendance throughout the school year, unless excused by the school for
45 illness or other good cause. However, a parent may transfer an eligible
46 student to another participating school at any time. The scholarship
47 amount shall be prorated between participating schools according to the
48 period of attendance at each school.

49 3. A parent's decision for their student to participate in the program
50 constitutes a non-public placement for purposes of the individuals with
51 disabilities education act.

52 § 2. This act shall take effect on the first of September next
53 succeeding the date on which it shall have become a law.