

# STATE OF NEW YORK

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5867--A

2017-2018 Regular Sessions

## IN SENATE

May 3, 2017

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Introduced by Sens. MARCELLINO, AMEDORE -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to the definition of a student with a disability

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 4401 of the education law, as  
2 amended by chapter 378 of the laws of 2007, is amended to read as  
3 follows:

4 1. A "child with a disability" or "student with a disability" means a  
5 person under the age of twenty-one who is entitled to attend public  
6 schools pursuant to section thirty-two hundred two of this chapter and  
7 who, because of mental, physical or emotional reasons can only receive  
8 appropriate educational opportunities from a program of special educa-  
9 tion. Such term does not include a child whose educational needs are due  
10 primarily to unfamiliarity with the English language, environmental,  
11 cultural or economic factors. Lack of appropriate instruction in read-  
12 ing, including in the essential components of reading instruction as  
13 defined in subsection three of section twelve hundred eight of the  
14 elementary and secondary education act of nineteen hundred sixty-five,  
15 or lack of appropriate instruction in mathematics or limited English  
16 proficiency shall not be the determinant factor in identifying a student  
17 as a student with a disability. Such disabilities shall include but not  
18 be limited to:

19 (a) Autism means a developmental disability significantly affecting  
20 verbal and nonverbal communication and social interaction, generally  
21 evident before age three, that adversely affects a student's educational  
22 performance. Other characteristics often associated with autism are

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

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1 engagement in repetitive activities and stereotyped movements, resist-  
2 ance to environmental change or change in daily routines, and unusual  
3 responses to sensory experiences. The term does not apply if a student's  
4 educational performance is adversely affected primarily because the  
5 student has an emotional disturbance as defined in paragraph (d) of this  
6 subdivision. A student who manifests the characteristics of autism after  
7 age three could be diagnosed as having autism if the criteria in this  
8 paragraph are otherwise satisfied.

9 (b) Deafness means a hearing impairment that is so severe that the  
10 student is impaired in processing linguistic information through hear-  
11 ing, with or without amplification, that adversely affects a student's  
12 educational performance.

13 (c) Deaf-blindness means concomitant hearing and visual impairments,  
14 the combination of which causes such severe communication and other  
15 developmental and educational needs that they cannot be accommodated in  
16 special education programs solely for students with deafness or students  
17 with blindness.

18 (d) Emotional disturbance means a condition exhibiting one or more of  
19 the following characteristics over a long period of time and to a marked  
20 degree that adversely affects a student's educational performance:

21 (1) an inability to learn that cannot be explained by intellectual,  
22 sensory, or health factors;

23 (2) an inability to build or maintain satisfactory interpersonal  
24 relationships with peers and teachers;

25 (3) inappropriate types of behavior or feelings under normal circum-  
26 stances;

27 (4) a generally pervasive mood of unhappiness or depression; or

28 (5) a tendency to develop physical symptoms or fears associated with  
29 personal or school problems. The term includes schizophrenia. The term  
30 does not apply to students who are socially maladjusted, unless it is  
31 determined that they have an emotional disturbance.

32 (e) Hearing impairment means an impairment in hearing, whether perma-  
33 nent or fluctuating, that adversely affects the child's educational  
34 performance but that is not included under the definition of deafness in  
35 this section.

36 (f) Learning disability means a disorder in one or more of the basic  
37 psychological processes involved in understanding or in using language,  
38 spoken or written, which manifests itself in an imperfect ability to  
39 listen, think, speak, read, write, spell, or to do mathematical calcu-  
40 lations. The term includes such conditions as perceptual disabilities,  
41 brain injury, minimal brain dysfunction, and developmental aphasia. The  
42 term does not include learning problems that are primarily the result of  
43 visual, hearing or motor disabilities, of an intellectual disability, of  
44 emotional disturbance, or of environmental, cultural or economic disad-  
45 vantage.

46 (g) Intellectual disability means significantly subaverage general  
47 intellectual functioning, existing concurrently with deficits in adap-  
48 tive behavior and manifested during the developmental period, that  
49 adversely affects a student's educational performance.

50 (h) Multiple disabilities means concomitant impairments (such as  
51 intellectual disability-blindness, intellectual disability-orthopedic  
52 impairment, etc.), the combination of which cause such severe educa-  
53 tional needs that they cannot be accommodated in a special education  
54 program solely for one of the impairments. The term does not include  
55 deaf-blindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputation, and fractures or burns which cause contractures).

(j) Other health-impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems, including but not limited to a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, attention deficit disorder or attention deficit hyperactivity disorder or tourette syndrome, which adversely affects a student's educational performance.

(k) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment or a voice impairment, that adversely affects a student's educational performance.

(l) Traumatic brain injury means an acquired injury to the brain caused by an external physical force or by certain medical conditions such as stroke, encephalitis, aneurysm, and anoxia or brain tumors with resulting impairments that adversely affect educational performance. The term includes open or closed head injuries or brain injuries from certain medical conditions resulting in mild, moderate or severe impairments in one or more areas, including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not include injuries that are congenital or caused by birth trauma.

(m) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

(n) Dyslexia means a specific learning disability that is neurobiological in origin. It is characterized at the level of a keen observer as frustration, withdrawal, anxiety, aversion to homework and schoolwork, underperformance, and an undoing of the personal sense of ability, psycho-somatic symptoms that are triggered by school-failure to read or perform well at spelling, written expression or other language tasks, or mixing up right and left hands. Other observable characteristics include difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

(o) "Special education" means specially designed instruction which includes special services or programs as delineated in subdivision two of this section, and transportation, provided at no cost to the parents to meet the unique needs of a child with a disability. A "child with a handicapping condition" means a child with a disability.

§ 2. Subdivision 1 of section 4401 of the education law, as amended by chapter 311 of the laws of 1999, is amended to read as follows:

1. A "child with a disability" or "student with a disability" means a person under the age of twenty-one who is entitled to attend public

1 schools pursuant to section thirty-two hundred two of this chapter and  
2 who, because of mental, physical or emotional reasons can only receive  
3 appropriate educational opportunities from a program of special educa-  
4 tion. Such term does not include a child whose educational needs are due  
5 primarily to unfamiliarity with the English language, environmental,  
6 cultural or economic factors. Lack of instruction in reading or math-  
7 ematics or limited English proficiency shall not be the determinat  
8 factor in identifying a student as a student with a disability. Such  
9 disabilities shall include but not be limited to:

10 (a) Autism means a developmental disability significantly affecting  
11 verbal and nonverbal communication and social interaction, generally  
12 evident before age three, that adversely affects a student's educational  
13 performance. Other characteristics often associated with autism are  
14 engagement in repetitive activities and stereotyped movements, resist-  
15 ance to environmental change or change in daily routines, and unusual  
16 responses to sensory experiences. The term does not apply if a student's  
17 educational performance is adversely affected primarily because the  
18 student has an emotional disturbance as defined in paragraph (d) of this  
19 subdivision. A student who manifests the characteristics of autism after  
20 age three could be diagnosed as having autism if the criteria in this  
21 paragraph are otherwise satisfied.

22 (b) Deafness means a hearing impairment that is so severe that the  
23 student is impaired in processing linguistic information through hear-  
24 ing, with or without amplification, that adversely affects a student's  
25 educational performance.

26 (c) Deaf-blindness means concomitant hearing and visual impairments,  
27 the combination of which causes such severe communication and other  
28 developmental and educational needs that they cannot be accommodated in  
29 special education programs solely for students with deafness or students  
30 with blindness.

31 (d) Emotional disturbance means a condition exhibiting one or more of  
32 the following characteristics over a long period of time and to a marked  
33 degree that adversely affects a student's educational performance:

34 (1) an inability to learn that cannot be explained by intellectual,  
35 sensory, or health factors;

36 (2) an inability to build or maintain satisfactory interpersonal  
37 relationships with peers and teachers;

38 (3) inappropriate types of behavior or feelings under normal circum-  
39 stances;

40 (4) a generally pervasive mood of unhappiness or depression; or

41 (5) a tendency to develop physical symptoms or fears associated with  
42 personal or school problems. The term includes schizophrenia. The term  
43 does not apply to students who are socially maladjusted, unless it is  
44 determined that they have an emotional disturbance.

45 (e) Hearing impairment means an impairment in hearing, whether perma-  
46 nent or fluctuating, that adversely affects the child's educational  
47 performance but that is not included under the definition of deafness in  
48 this section.

49 (f) Learning disability means a disorder in one or more of the basic  
50 psychological processes involved in understanding or in using language,  
51 spoken or written, which manifests itself in an imperfect ability to  
52 listen, think, speak, read, write, spell, or to do mathematical calcu-  
53 lations. The term includes such conditions as perceptual disabilities,  
54 brain injury, minimal brain dysfunction, and developmental aphasia. The  
55 term does not include learning problems that are primarily the result of  
56 visual, hearing or motor disabilities, of an intellectual disability, of

1 emotional disturbance, or of environmental, cultural or economic disad-  
2 vantage.

3 (g) Intellectual disability means significantly subaverage general  
4 intellectual functioning, existing concurrently with deficits in adap-  
5 tive behavior and manifested during the developmental period, that  
6 adversely affects a student's educational performance.

7 (h) Multiple disabilities means concomitant impairments (such as  
8 intellectual disability-blindness, intellectual disability-orthopedic  
9 impairment, etc.), the combination of which cause such severe educa-  
10 tional needs that they cannot be accommodated in a special education  
11 program solely for one of the impairments. The term does not include  
12 deaf-blindness.

13 (i) Orthopedic impairment means a severe orthopedic impairment that  
14 adversely affects a student's educational performance. The term includes  
15 impairments caused by congenital anomaly (e.g., clubfoot, absence of  
16 some member, etc.), impairments caused by disease (e.g., poliomyelitis,  
17 bone tuberculosis, etc.), and impairments from other causes (e.g., cere-  
18 bral palsy, amputation, and fractures or burns which cause contrac-  
19 tures).

20 (j) Other health-impairment means having limited strength, vitality or  
21 alertness, including a heightened alertness to environmental stimuli,  
22 that results in limited alertness with respect to the educational envi-  
23 ronment, that is due to chronic or acute health problems, including but  
24 not limited to a heart condition, tuberculosis, rheumatic fever, nephri-  
25 tis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning,  
26 leukemia, diabetes, attention deficit disorder or attention deficit  
27 hyperactivity disorder or tourette syndrome, which adversely affects a  
28 student's educational performance.

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30 as stuttering, impaired articulation, a language impairment or a voice  
31 impairment, that adversely affects a student's educational performance.

32 (l) Traumatic brain injury means an acquired injury to the brain  
33 caused by an external physical force or by certain medical conditions  
34 such as stroke, encephalitis, aneurysm, and anoxia or brain tumors with  
35 resulting impairments that adversely affect educational performance. The  
36 term includes open or closed head injuries or brain injuries from  
37 certain medical conditions resulting in mild, moderate or severe impair-  
38 ments in one or more areas, including cognition, language, memory,  
39 attention, reasoning, abstract thinking, judgment, problem solving,  
40 sensory, perceptual and motor abilities, psychosocial behavior, physical  
41 functions, information processing, and speech. The term does not include  
42 injuries that are congenital or caused by birth trauma.

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44 vision that, even with correction, adversely affects a student's educa-  
45 tional performance. The term includes both partial sight and blindness.

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47 ical in origin. It is characterized at the level of a keen observer as  
48 frustration, withdrawal, anxiety, aversion to homework and schoolwork,  
49 underperformance, and an undoing of the personal sense of ability,  
50 psycho-somatic symptoms that are triggered by school-failure to read or  
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52 mixing up right and left hands. Other observable characteristics  
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54 poor spelling and decoding abilities. These difficulties typically  
55 result from a deficit in the phonological component of language that is  
56 often unexpected in relation to other cognitive abilities and the

1 provision of effective classroom instruction. Secondary consequences may  
2 include problems in reading comprehension and reduced reading experience  
3 that can impede growth of vocabulary and background knowledge.

4 (o) "Special education" means specially designed instruction which  
5 includes special services or programs as delineated in subdivision two  
6 of this section, and transportation, provided at no cost to the parents  
7 to meet the unique needs of a child with a disability. A "child with a  
8 handicapping condition" means a child with a disability.

9 § 3. This act shall take effect immediately; provided, however, that  
10 it shall not affect any student's individualized education program that  
11 has been approved for the 2018--2019 school year; provided, further,  
12 that the amendments to subdivision 1 of section 4401 of the education  
13 law made by section one of this act shall be subject to the expiration  
14 and reversion of such subdivision pursuant to section 22 of chapter 352  
15 of the laws of 2005, as amended, when upon such date the provisions of  
16 section two of this act shall take effect.