STATE OF NEW YORK

1912

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. MAGNARELLI, COOK, WOERNER, PEOPLES-STOKES, JEAN-PIERRE, HYNDMAN, ASHBY, TAYLOR, BARRON -- Multi-Sponsored by -- M. of A. LUPARDO, THIELE -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to home instruction

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

Section 1. Paragraph d of subdivision 2 of section 3210 of the education law is amended to read as follows:

d. Exception. In applying the foregoing requirements a minor required to attend upon full time day instruction by the provisions of **this** part [~~one of this article~~] may be permitted to attend for a shorter school day or for a shorter school year or for both, provided, [~~in accordance with the regulations of the state education department,~~] the instruction he **or she** receives has been approved by the school authorities as being substantially equivalent in amount and quality to that required by the provisions of **this** part [~~one of this article~~]. **Home instruction of a minor that is conducted in accordance with section three thousand two hundred twenty-nine of this part shall be deemed to comply with this section and subdivision two of section three thousand two hundred four of this part.**

§ 2. The education law is amended by adding a new section 3229 to read as follows:

§ 3229. Home instruction. The purpose of this section is to establish procedures to assist school authorities in fulfilling their responsibility under subdivision two of section three thousand two hundred four and paragraph d of subdivision two of section three thousand two hundred ten of this part and to assist parents who exercise their right to provide required instruction at home to such students in fulfilling their responsibilities pursuant to subdivision two of section three thousand two hundred twelve of this part. Compliance with this section demon-

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

LBD01726-01-1

strates the competency of the instructor and verifies that the instruction being provided at home to students of compulsory school attendance age is substantially equivalent as required by subdivision two of section three thousand two hundred four of this part. Notwithstanding any other provision of law, to the extent that any provision of this section is inconsistent with any other local law, rule or regulation, the provisions of this section shall govern and be controlling.

1. Notice of intention to instruct at home.

a. Except as otherwise provided in paragraph b of this subdivision, parents or other persons in parental relation to a student of compulsory school attendance age shall annually provide written notice to the superintendent of schools of their school district of residence of their intention to educate their child at home by July first of each school year. The school year begins July first and ends June thirtieth for all purposes within this section. The central office of homeschooling may receive the notice of intent and other such documentation for home instruction students who reside within New York city.

b. Parents who determine to commence home instruction after the start of the school year, or who establish residence in the school district after the start of the school year, shall provide written notice of their intention to educate their child at home within fourteen days following the commencement of home instruction within the school district.

2. Procedures for development and review of an individualized home instruction plan (IHIP).

a. Within ten business days of the receipt of the notice of intention to instruct at home, the school district shall send to the parents a copy of this section and a form on which to submit an individualized home instruction plan (IHIP) for each child of compulsory attendance age who is to be taught at home.

b. Within four weeks of the receipt of such materials, or by August fifteenth, whichever is later, the parent shall submit a completed IHIP to the school district. The district shall provide assistance in preparation of the forms, if requested by the parents. The parents may submit the IHIP on the school district form or on another form that includes the required information.

c. Within ten business days of receipt of the IHIP, or by August thirty-first, whichever is later, the school district shall either notify the parents in writing that the IHIP complies with the requirements of subdivisions three and four of this section or shall give the parents written notice of any deficiency in the IHIP.

d. Within fifteen days of receipt of a notice of a deficiency in the IHIP, or by September fifteenth, whichever is later, the parents shall submit a revised IHIP which corrects any such deficiencies.

e. The superintendent of schools shall review the revised IHIP and shall notify the parents in writing as to whether the revised IHIP complies with subdivisions three and four of this section within fifteen days of receipt of the revised IHIP or by September thirtieth, whichever is later. If the revised IHIP is determined not to be in compliance with subdivisions three and four of this section, then the parents shall be notified in writing of the reasons for such determination. Such notice shall also contain the date of the next regularly scheduled meeting of the board of education that will be held at least ten days after the date of mailing of the notice, and shall indicate that if the parents wish to contest the determination of noncompliance, the parents must so notify the board of education at least three business days prior to such

meeting. At such board meeting, the parents shall have the right to present proof of compliance, and the board of education shall make a final determination of compliance or noncompliance.

f. The parents shall have the right to appeal any such final school district determination of noncompliance to the commissioner within thirty days after receipt of such determination.

g. When administrative review of a school district determination of noncompliance is completed, the parents shall immediately provide for the instruction of their children at a public school or elsewhere in compliance with sections three thousand two hundred four and three thousand two hundred ten of this part. For purposes of this subdivision, such administrative review shall be deemed to be completed when one of the following events has occurred:

(1) the parents have failed to contest a determination of noncompliance by appealing to the board of education;

(2) the parents have failed to appeal a final school district determination of noncompliance to the commissioner; or

(3) the parents have received a decision of the commissioner which upholds a final school district determination of noncompliance.

h. Within ten days after administrative review of the determination of noncompliance is completed, the parents shall furnish the superintendent of schools with written notice of the arrangements they have made to provide their children with the required instruction, except that such notice shall not be required if the parents enroll their children in a public school.

3. Content of individualized home instruction plan (IHIP). Each child's IHIP shall contain:

a. The child's name, age and grade level;

b. A list of the syllabi, curriculum materials, textbooks or plan of instruction to be used in each of the required subjects listed in subdivision four of this section; and

c. The names of the individuals providing instruction.

If the home instruction student will be meeting the compulsory educational requirements of section three thousand two hundred five of this part through full-time study at a degree-granting institution then the IHIP shall identify the degree-granting institution and the subjects to be covered. For the purpose of this subdivision full-time study at a degree-granting institution shall mean enrollment for at least twelve semester hours in a semester.

4. Required courses. a. For purposes of this subdivision, a unit means the instructional equivalent of sixty-four hundred eighty minutes of instruction per school year.

b. Instruction in the following subjects shall be required:

(1) for grades one through six: arithmetic, reading, spelling, writing, the English language, geography, United States history, science, health education, music, visual arts, physical education, bilingual education and/or English as a second language where the need is indicated.

(2) for grades seven and eight: English (two units); history and geography (two units); science (two units); mathematics (two units); physical education (on a regular basis); health education (on a regular basis); art (one-half unit); music (one-half unit); practical arts (on a regular basis); and library skills (on a regular basis). The units required in this subparagraph are cumulative requirements for both grades seven and eight.

(3) the following courses shall be taught at least once during the first eight grades: United States history, New York state history, and the constitutions of the United States and New York state.

(4) for grades nine through twelve: English (four units); social studies (four units), which includes one unit of American history, one-half unit in participation in government, and one-half unit of economics; mathematics (two units); science (two units); art and/or music (one unit); health education (one-half unit); physical education (two units); and three units of electives. The units required in this subparagraph are cumulative requirements for grades nine through twelve.

(5) the following subjects are to be covered during grades kindergarten through twelve:

(i) patriotism and citizenship;

(ii) health education regarding alcohol, drug and tobacco misuse;

(iii) highway safety and traffic regulations, including bicycle safety; and

(iv) fire and arson prevention and safety.

5. Attendance requirements. Each child shall attend upon instruction as follows: the substantial equivalent of one hundred eighty days of instruction shall be provided each school year. The cumulative hours of instruction for grades one through six shall be nine hundred hours per year. The cumulative hours of instruction for grades seven through twelve shall be nine hundred ninety hours per year. Absences shall be permitted on the same basis as provided in the policy of the school district for its own students. Records of attendance shall be maintained by the parent and shall be made available to the school district upon request. Instruction provided at a site other than the primary residence of the parents shall be provided in a building which has not been determined to be in violation of the local building code.

6. Quarterly reports. On or before the date specified by the parent in the IHIP, a quarterly report for each child shall be furnished by the parent to the school district. The quarterly report shall contain the following:

a. the number of hours of instruction during said quarter;

b. a description of the material covered in each subject listed in the IHIP;

c. either a grade for the child in each subject or a written narrative evaluating the child's progress; and

d. a written explanation in the event that less than eighty percent of the amount of the course materials as set forth in the IHIP planned for that quarter has been covered in any subject.

7. Annual assessment. The parent shall file an annual assessment in accordance with this subdivision by July thirtieth. The annual assessment shall include the results of a commercially published norm-referenced achievement test which meets the requirements of paragraph a of this subdivision, or an alternative form of evaluation which meets the requirements of paragraph b of this subdivision.

a. Commercially published norm-referenced achievement tests.

(1) the test shall be selected by the parent from one of the following: a nationally standardized achievement test, a state education department test, or another test approved by the state education department.

(2) the test shall be administered in accordance with one of the following options, to be selected by the parents:

(i) at the public school, by its professional staff;

(ii) at a registered nonpublic school, by its professional staff, provided that the consent of the chief school officer of the nonpublic school is obtained;

(iii) at a nonregistered nonpublic school, by its professional staff, provided that the consent of the chief school officer of the nonpublic school is obtained; or

(iv) at the parents' home or at any other reasonable location, by a New York state-certified teacher or by another qualified person. A qualified person is anyone who has met the test publisher's criteria to administer the test.

(3) the test shall be scored by a testing service chosen by the parent.

(4) the test shall be provided by the school district upon request by the parent, provided that the cost of any testing facilities, transportation, and/or personnel for testing conducted at a location other than the public school shall be borne by the parent.

(5) if a score on a test is determined to be inadequate, the program shall be placed on probation pursuant to subdivision eight of this section. A student's score shall be deemed adequate if: the student has a composite score above the twenty-third percentile on national norms; or the student's score reflects one academic year of growth as compared to a test administered during or subsequent to the prior school year.

b. Alternative evaluation methods. An alternative form of evaluation shall be permitted to be chosen by the parent only as follows: (1) for grades one through three, a written narrative prepared by a person specified in this paragraph; (2) for grades four through twelve, a written narrative prepared by a person specified in this paragraph. This alternative form of evaluation may be used no more often than every other school year for these grades; (3) for the purposes of this paragraph, the person who prepares the written narrative shall be a New York state-certified teacher, a home instruction peer group review panel, or other person, who has interviewed the child and reviewed a portfolio of the child's work. Such person shall certify either that the child has made adequate academic progress or that the child has failed to make adequate progress. In the event that such child has failed to make adequate progress, the home instruction program shall be placed on probation pursuant to subdivision eight of this section. The certified teacher, peer review panel or other person shall be chosen by the parent. Any resulting cost shall be borne by the parent.

c. If a dispute arises between the parents and the superintendent of schools, including disputes over the administration of the commercially published norm-referenced achievement test or the use of alternative evaluation methods, the parents may appeal to the board of education. If the parents disagree with the determination of the board of education, the parents may appeal to the commissioner within thirty days of receipt of the board's final determination.

8. Probation. a. If a child's annual assessment fails to comply with the requirements of this subdivision, the home instruction program shall be placed on probation for a period of up to two school years. The parent shall be required to submit a plan of remediation which addresses the deficiencies in the child's achievement, and seeks to remedy such deficiencies. The plan shall be reviewed by the school district. The school district may require the parents to make changes in the plan prior to acceptance.

b. If after the end of any semester of the probationary period, the child progresses to the level specified in the remediation plan, then

the home instruction program shall be removed from probation. If the child does not attain at least seventy-five percent of the objectives specified in the remediation plan at the end of any given semester within the period of probation, or if after two years on probation one hundred percent of the objectives of the remediation plan have not been satisfied, the superintendent of schools shall provide the parents with notice and the board of education shall review the determination of noncompliance in accordance with this paragraph, except that consent of the parents to such review shall not be required.

9. Letter of substantial equivalency. The resident school district shall certify in writing when a student taught at home has completed their home instruction program in compliance with this section. This letter shall verify compliance with this section and that the home instruction program was therefore substantially equivalent in compliance with subdivision two of section three thousand two hundred four of this part. Any student who completes a home instruction program before they turn twenty-one can request this letter from their resident school district. Each school district must maintain the documentation necessary to verify completion of the home instruction program for six years.

§ 3. Subdivision 2-c of section 3602-c of the education law, as added by chapter 217 of the laws of 2008, is amended to read as follows:

2-c. Solely for the purpose of the provision of education for students with disabilities pursuant to this section and the computation of state aid for such education pursuant to section thirty-six hundred two of this [~~article~~] part, a student in a home instruction program submitted by his or her parent or person in parental relation for review pursuant to [~~the regulations of the commissioner~~] section thirty-two hundred twenty-nine of this chapter shall be deemed to be a student enrolled in and attending a nonpublic school eligible to receive services pursuant to subdivision two of this section; provided that such student is entitled to attend the public schools without payment of tuition pursuant to subdivision one of section thirty-two hundred two of this chapter and has an individualized home instruction plan that has been determined by the superintendent of schools of the school district in which the home school is located to be in compliance with the regulations of the commissioner. The deadlines for submission of written requests for the education of students with disabilities set forth in subdivision two of this section shall apply to students in a home instruction program, except that such request may be submitted within thirty days of a change in the student's school district of residence; provided that for services in the two thousand eight--two thousand nine school year only such written requests for students in a home instruction program shall be submitted by June thirtieth, two thousand eight, or within thirty days after the effective date of [~~this subdivision~~] chapter two hundred seventeen of the laws of two thousand eight, whichever is later, except where subdivision two of this section or this subdivision authorizes submission at a later date. Except as provided in this subdivision, a home school shall not be considered a nonpublic school for any other purpose under this chapter.

§ 4. This act shall take effect on the first of July next succeeding the date on which it shall have become a law.