

STATE OF NEW YORK

8116

2021-2022 Regular Sessions

IN ASSEMBLY

June 11, 2021

Introduced by M. of A. LAWLER -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to requiring nonpublic schools to provide the same services that public schools currently provide to nonpublic schools; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "educational equity and choice act".

3 § 2. Section 305 of the education law is amended by adding a new
4 subdivision 60 to read as follows:

5 60. Notwithstanding any law, rule or regulation to the contrary, the
6 commissioner shall provide that no nonpublic school shall provide any
7 service to pupils attending such school without approval from the
8 commissioner. Prior to services being provided by a nonpublic school,
9 nonpublic schools will be required to submit certifications in a system
10 developed by the commissioner of the services provided electronically or
11 in any other media form which the commissioner reasonably determines
12 offers the same degree of accountability and control provided by paper
13 certifications. The commissioner will have the power to review and seek
14 correction of any service provided by nonpublic schools pursuant to
15 sections seven hundred one, seven hundred eleven, seven hundred twelve,
16 seven hundred fifty-one, nine hundred twelve, thirty-six hundred two-c
17 and thirty-six hundred thirty-five of this chapter. All costs pertaining
18 to the services provided by nonpublic schools shall be approved by the
19 commissioner and shall be borne by the state.

20 § 3. Section 912 of the education law, as amended by chapter 477 of
21 the laws of 2004, is amended to read as follows:

22 § 912. Health and welfare services to all children. [~~The voters and/or~~
23 ~~trustees or board of education of every school district shall, upon~~
24 ~~request of the authorities of a school other than public, provide]~~
25 Notwithstanding any law, rule or regulation to the contrary, resident
26 children who attend [~~such~~] a nonpublic school shall be provided with

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

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1 ~~[any or all of the]~~ the same health and welfare services and facilities
2 which are made available by ~~[such]~~ the voters and/or trustees or board
3 of education to or for children attending the public schools of the
4 district. Such services may include, but are not limited to all services
5 performed by a physician, physician assistant, dentist, dental hygien-
6 ist, registered professional nurse, nurse practitioner, school psychol-
7 ogist, school social worker or school speech therapist, and may also
8 include dental prophylaxis, vision and hearing screening examinations,
9 the taking of medical histories and the administration of health screen-
10 ing tests, the maintenance of cumulative health records and the adminis-
11 tration of emergency care programs for ill or injured students. Any such
12 services or facilities shall be so provided notwithstanding any
13 provision of any charter or other provision of law inconsistent here-
14 with. ~~[where children residing in one school district attend a school
15 other than public located in another school district, the school author-
16 ities of the district of residence shall contract with the school
17 authorities of the district where such nonpublic school is located, for
18 the provision of such health and welfare services and facilities to such
19 children by the school district where such nonpublic school is located,
20 for a consideration to be agreed upon between the school authorities of
21 such districts, subject to the approval of the qualified voters of the
22 district of residence when required under the provisions of this chap-
23 ter. Every such contract shall be in writing and in the form prescribed
24 by the commissioner, and before such contract is executed the same shall
25 be submitted for approval to the superintendent of schools having juris-
26 diction over such district of residence and such contract shall not
27 become effective until approved by such superintendent.]~~ All costs asso-
28 ciated with this section shall be borne by the state.

29 § 4. Subdivision 3 of section 701 of the education law, as amended by
30 chapter 391 of the laws of 1989, is amended to read as follows:

31 3. In the several cities and school districts of the state, boards of
32 education, trustees or such body or officers as perform the function of
33 such boards shall have the power and duty to purchase ~~[and to loan upon
34 individual request,]~~ textbooks, to all children residing in such
35 district who are enrolled in a public school including children attend-
36 ing the public schools of the district for whom the district is eligible
37 to receive reimbursement pursuant to paragraph a of subdivision eight of
38 section thirty-two hundred two of this chapter, provided, however, that
39 such children shall not be counted by any other school district~~[, and to
40 all children residing in such district who are enrolled in a nonpublic
41 school. Textbooks loaned to children enrolled in said nonpublic schools
42 shall be textbooks which are designated for use in any public schools of
43 the state or are approved by any boards of education, trustees or other
44 school authorities. Such textbooks are to be loaned free to such chil-
45 dren subject to such rules and regulations as are or may be prescribed
46 by the board of regents and such boards of education, trustees or other
47 school authorities. Enrollment shall be as defined in subdivision one of
48 section thirty-six hundred two of this chapter].~~

49 § 5. Subdivision 4 of section 701 of the education law, as amended by
50 chapter 82 of the laws of 1995, is amended to read as follows:

51 4. No school district shall be required to purchase or otherwise
52 acquire textbooks, the cost of which shall exceed an amount equal to the
53 apportionment pursuant to subdivision six of this section plus a minimum
54 lottery grant determined pursuant to subdivision four of section nine-
55 ty-two-c of the state finance law multiplied by the number of children
56 residing in such district and so enrolled in the base year~~[- and no~~

~~1 school district shall be required to loan textbooks in excess of the
2 textbooks owned or acquired by such district; provided, however that all
3 textbooks owned or acquired by such district shall be loaned to children
4 residing in the district and so enrolled in public and nonpublic schools
5 on an equitable basis].~~

6 § 6. Subdivision 8 of section 701 of the education law is REPEALED and
7 a new subdivision 8 is added to read as follows:

8 8. Notwithstanding any law, rule or regulation to the contrary, chil-
9 dren attending a nonpublic school shall be provided by the nonpublic
10 school with the same textbooks that are made available to children
11 attending the public school of where such nonpublic school is located.
12 All costs associated with this subdivision shall be borne by the state
13 in a similar apportionment pursuant to subdivision four of this section.

14 § 7. Subdivision 3 of section 751 of the education law, as amended by
15 section 4 of part A of chapter 436 of the laws of 1997, is amended to
16 read as follows:

17 3. No school district shall be required to purchase or otherwise
18 acquire software programs, the cost of which shall exceed an amount
19 equal to the software factor multiplied by the sum of the public school
20 district enrollment [~~and the nonpublic school enrollment~~] in the base
21 year as defined in subparagraphs two and three of paragraph n of subdi-
22 vision one of section thirty-six hundred two of this chapter.

23 § 8. Subdivision 4 of section 751 of the education law, as amended by
24 section 3 of part H of chapter 83 of the laws of 2002, is amended to
25 read as follows:

26 4. The commissioner, in addition to the annual apportionment of public
27 monies pursuant to other articles of this chapter, shall apportion to
28 each school district an amount equal to the cost of the software
29 programs purchased by the district pursuant to this section in the base
30 year, but in no case shall the aid apportioned to the district exceed
31 the product of the software factor and the sum of public school district
32 enrollment, [~~nonpublic school enrollment,~~] and additional public enroll-
33 ment as defined in subparagraphs two, three, and six of paragraph n of
34 subdivision one of section thirty-six hundred two of this chapter.

35 § 9. Subdivision 1 of section 752 of the education law is REPEALED and
36 a new subdivision 1 is added to read as follows:

37 1. Children attending a nonpublic school shall be provided by the
38 nonpublic school with the same computer software that is made available
39 to children attending the public school of where such nonpublic school
40 is located. All costs associated with this subdivision shall be borne by
41 the state in a similar apportionment pursuant to subdivision four of
42 section seven hundred fifty-one of this article.

43 § 10. Subdivision 1 of section 753 of the education law, as amended by
44 section 4 of part A-1 of chapter 58 of the laws of 2011, is amended to
45 read as follows:

46 1. In addition to any other apportionment under this chapter, a school
47 district shall be eligible for an apportionment under the provisions of
48 this section for approved expenses for (i) the purchase or lease of
49 micro and/or mini computer equipment or terminals for instructional
50 purposes or (ii) technology equipment, as defined in paragraph c of
51 subdivision two of this section, used for instructional purposes, or
52 (iii) for the repair of such equipment and training and staff develop-
53 ment for instructional purposes as provided hereinafter, or (iv) for
54 expenses incurred on or after July first, two thousand eleven, any items
55 of expenditure that are eligible for an apportionment pursuant to
56 sections seven hundred one, seven hundred eleven and/or seven hundred

1 fifty-one of this title, where such items are designated by the school
2 district as eligible for aid pursuant to this section, provided, howev-
3 er, that if aided pursuant to this section, such expenses shall not be
4 aidable pursuant to any other section of law. Such aid shall be provided
5 pursuant to a plan developed by the district which demonstrates to the
6 satisfaction of the commissioner that the instructional computer hard-
7 ware needs of the district's public school students have been adequately
8 met [~~and that the school district has provided for the loan of instruc-~~
9 ~~tional computer hardware to students legally attending nonpublic schools~~
10 ~~pursuant to section seven hundred fifty four of this article~~]. The
11 apportionment shall equal the lesser of such approved expense in the
12 base year or, the product of (i) the technology factor, (ii) the sum of
13 the public school district enrollment [~~and the nonpublic school enroll-~~
14 ~~ment~~] in the base year as defined in subparagraphs two and three of
15 paragraph n of subdivision one of section thirty-six hundred two of this
16 chapter, and (iii) the building aid ratio, as defined in subdivision
17 four of section thirty-six hundred two of this chapter. For aid payable
18 in the two thousand seven--two thousand eight school year and thereaft-
19 er, the technology factor shall be twenty-four dollars and twenty cents.
20 A school district may use up to twenty percent of the product of (i) the
21 technology factor, (ii) the sum of the public school district enrollment
22 [~~and the nonpublic school enrollment~~] in the base year as defined in
23 subparagraphs two and three of paragraph n of subdivision one of section
24 thirty-six hundred two of this chapter, and (iii) the building aid ratio
25 for the repair of instructional computer hardware and technology equip-
26 ment and training and staff development for instructional purposes
27 pursuant to a plan submitted to the commissioner.

28 § 11. Subdivision 1 of section 754 of the education law is REPEALED
29 and a new subdivision 1 is added to read as follows:

30 1. Notwithstanding any law, rule or regulation to the contrary, chil-
31 dren attending a nonpublic school shall be provided by the nonpublic
32 school with the same computer hardware that is made available to chil-
33 dren attending the public school of where such nonpublic school is
34 located as provided by section seven hundred fifty-three of this arti-
35 cle. All costs associated with this subdivision shall be borne by the
36 state in a similar apportionment pursuant to subdivision four of section
37 seven hundred fifty-three of this article.

38 § 12. Section 755 of the education law is REPEALED.

39 § 13. Subdivision 3 of section 711 of the education law, as amended by
40 section 7 of part B of chapter 57 of the laws of 2007, is amended to
41 read as follows:

42 3. No school district shall be required to purchase or otherwise
43 acquire school library materials, the cost of which shall exceed an
44 amount equal to the library materials factor multiplied by the sum of
45 the public school district enrollment [~~and the nonpublic school enroll-~~
46 ~~ment~~] in the base year as defined in subparagraphs two and three of
47 paragraph n of subdivision one of section thirty-six hundred two of this
48 chapter. For aid payable in the nineteen hundred ninety-eight--nineteen
49 hundred ninety-nine school year, the library materials factor shall be
50 four dollars. For aid payable in the two thousand seven--two thousand
51 eight school year and thereafter, the library materials factor shall be
52 six dollars and twenty-five cents.

53 § 14. Subdivision 4 of section 711 of the education law, as amended by
54 section 4 of part C of chapter 58 of the laws of 1998, is amended to
55 read as follows:

4. Commencing July first, nineteen hundred ~~[ninety-eight]~~
ninety-eight, the commissioner, in addition to the annual apportionment
of public monies pursuant to other articles of this chapter, shall
apportion to each school district an amount equal to the cost of the
school library materials purchased by the district pursuant to this
section in the base year, but in no case shall the aid apportioned to
the district exceed the product of the library materials factor and the
sum of public school district enrollment, ~~[nonpublic school enrollment]~~,
and additional public enrollment as defined in subparagraphs two, three,
and six of paragraph n of subdivision one of section thirty-six hundred
two of this chapter. Aid payable pursuant to this section shall be
deemed final and not subject to change after April thirtieth of the
school year for which payment was due.

§ 15. Section 711 of the education law is amended by adding a new
subdivision 5 to read as follows:

5. Notwithstanding any law, rule or regulation to the contrary, chil-
dren attending a nonpublic school shall be provided by the nonpublic
school with the same school library materials that is made available to
children attending the public school of where such nonpublic school is
located. All costs associated with this subdivision shall be borne by
the state in a similar apportionment pursuant to subdivisions three and
four of this section.

§ 16. Section 712 of the education law is REPEALED.

§ 17. Paragraph b of subdivision 1 of section 3635 of the education
law is REPEALED.

§ 18. Subdivision 2-a of section 3635 of the education law is
REPEALED.

§ 19. Section 3635 of the education law is amended by adding a new
subdivision 9 to read as follows:

9. Notwithstanding any law, rule or regulation to the contrary, chil-
dren attending a nonpublic school shall be provided by the nonpublic
school with the same sufficient transportation services that are made
available to children attending the public school of where such nonpub-
lic school is located. All costs associated with this subdivision shall
be borne by the state in a similar apportionment pursuant to subdivision
seven of section thirty-six hundred two of this article.

§ 20. The section heading, subdivision 1, paragraphs a and d of subdivi-
sion 2, subdivisions 3, 4, 6 and 10 of section 3602-c of the education
law, the section heading and subdivisions 3 and 6 as added by chapter
593 of the laws of 1974, subdivision 1 as amended by chapter 740 of the
laws of 1982, paragraphs a and d of subdivision 1 and subdivision 4 as
amended by chapter 474 of the laws of 2004, paragraph c of subdivision 1
as amended by chapter 301 of the laws of 1996, paragraph f of subdivi-
sion 1 as added by chapter 378 of the laws of 2007, paragraphs a and d
of subdivision 2 as amended by chapter 378 of the laws of 2007, and
subdivision 10 as added by chapter 352 of the laws of 2005, are amended
to read as follows:

Apportionment of moneys to ~~[school districts]~~ nonpublic schools for
the provision of services to pupils attending nonpublic schools partic-
ipating in specialized educational services. 1. Definitions. [As]
Notwithstanding any law, rule or regulation to the contrary, as used in
this section the following terms are defined as follows:

a. "Services" shall mean instruction in the areas of gifted pupils,
career education and education for students with disabilities, and coun-
seling, psychological and social work services related to such instruc-
tion provided during the regular school year for pupils enrolled in a

1 nonpublic school ~~[located in a school district, provided that such~~
2 ~~instruction is given to pupils enrolled in the public schools of such~~
3 ~~district]~~.

4 b. "Gifted pupils" shall mean those pupils who show evidence of high
5 performance capability and exceptional potential in areas such as gener-
6 al intellectual ability, special academic aptitude, and outstanding
7 ability in visual and performing arts. Such definition shall include
8 those children who require educational programs or services beyond those
9 normally provided by the regular school program in order to realize
10 their full potential.

11 c. "Career education" shall mean training or retraining designed to
12 prepare individuals ~~[who are entitled to attend the public schools of~~
13 ~~the state]~~ without the payment of tuition pursuant to section thirty-two
14 hundred two of ~~[the education law]~~ this chapter for gainful employment
15 as semi-skilled or skilled workers or technicians or subprofessionals in
16 recognized occupations and in new or emerging occupations or to prepare
17 pupils for enrollment in advanced technical education programs, but
18 excluding any program to prepare pupils for employment in occupations
19 which generally are considered professional or which require a baccalau-
20 reate or higher degree; such training generally being grouped within the
21 occupational fields of agriculture, business, distributive, health, home
22 economics related, trade and technical education.

23 d. "Education for students with disabilities" shall mean special
24 educational programs designed to serve persons who meet the definition
25 of children with disabilities set forth in subdivision one of section
26 forty-four hundred one of this chapter.

27 e. "Average daily attendance" shall mean the total number of attend-
28 ance days of pupils receiving services divided by the number of days the
29 ~~[public school]~~ nonpublic school was in session for each attendance
30 period. For each such attendance period the total number of attendance
31 days for each such pupil shall be determined by multiplying the number
32 of days on which each such pupil was in attendance by the ratio obtained
33 by dividing the number of class periods of each such pupil by the total
34 number of class periods, not to exceed five, operated by the public
35 school during the school day. Only pupils residing in this state shall
36 be included in such computation.

37 f. "School district of location" means the school district in which
38 the nonpublic elementary or secondary school attended by the student is
39 located.

40 a. ~~[Boards of education of all school districts of]~~ Notwithstanding
41 any law, rule or regulation to the contrary, every certified nonpublic
42 school in the state shall furnish services to students who are residents
43 of this state and who attend nonpublic schools ~~[located in such school~~
44 ~~districts]~~, upon the written request of the parent or person in parental
45 relation of any such student. Such a request for career education or
46 services to gifted students shall be filed with the ~~[board of education~~
47 ~~of the school district]~~ nonpublic school in which the parent or person
48 in parental relation of the student resides on or before the first day
49 of June preceding the school year for which the request is made. In the
50 case of education for students with disabilities, such a request shall
51 be filed with the ~~[trustees or board of education of the school district~~
52 ~~of location]~~ nonpublic school on or before the first of June preceding
53 the school year for which the request is made, or by July first, two
54 thousand seven for the two thousand seven--two thousand eight school
55 year only, provided that where a student is first identified as a
56 student with a disability after the first day of June preceding the

1 school year for which the request is made, or thirty days after the
2 chapter of the laws of two thousand seven which amended this paragraph,
3 takes effect where applicable, and prior to the first day of April of
4 such current school year, such request shall be submitted within thirty
5 days after such student is first identified. For students first identi-
6 fied after March first of the current school year, any such request for
7 education for students with disabilities in the current school year that
8 is submitted on or after April first of such current school year, shall
9 be deemed a timely request for such services in the following school
10 year.

11 ~~[d. In the case of career education and education of gifted students,~~
12 ~~the school district of residence shall contract with the school district~~
13 ~~in which the nonpublic school attended by the pupil is located, for the~~
14 ~~provision of services pursuant to this section.]~~

15 3. ~~[Boards of education]~~ Notwithstanding any law, rule or regulation
16 to the contrary, nonpublic schools, with the consent of the commissioner
17 of education, are authorized to ~~[contract with]~~ establish programs simi-
18 lar to boards of cooperative educational services to provide the
19 services required by this act. ~~[Pupils receiving services under the~~
20 ~~provisions of this subdivision shall be deemed public school pupils for~~
21 ~~the purpose of determining aid pursuant to section nineteen hundred~~
22 ~~fifty of the education law.]~~ Any such pupil who attends a program
23 offered by a board of cooperative educational services, and who does not
24 attend classes in the schools of the district furnishing services, shall
25 not be included in computing average daily attendance in such district.

26 4. ~~[Boards of education]~~ Notwithstanding any law, rule or regulation
27 to the contrary, nonpublic schools shall provide transportation for
28 pupils receiving gifted or career education ~~[between]~~ provided by the
29 nonpublic school ~~[attended by such pupils and the public school where~~
30 ~~such services are provided if the distance between the nonpublic school~~
31 ~~and the public school exceeds one fourth of a mile, except that; boards~~
32 ~~of education shall provide transportation for pupils receiving education~~
33 ~~for students with disabilities under the provisions of this section in~~
34 ~~accordance with the needs of each such pupil];~~ and state aid for all
35 such transportation shall be paid as though such transportation were
36 furnished pursuant to the provisions of article eighty-nine of this
37 chapter, except that such aid shall be paid at the rate of ~~[ninety]~~ one
38 hundred percent of the actual cost of such transportation.

39 6. ~~[Boards of education]~~ Nonpublic schools are authorized to determine
40 by resolution which courses of instruction shall be offered, the eligi-
41 bility of pupils to participate in specific courses, and the admission
42 of pupils. All pupils in like circumstances shall be treated similarly.

43 10. State and local funds provided by the district of residence pursu-
44 ant to this section shall supplement and in no case shall supplant the
45 proportionate amount of federal funds required to be expended by the
46 ~~[school district in which the]~~ nonpublic school attended by the student
47 is located pursuant to the individuals with disabilities education act.

48 § 21. This act shall take effect immediately; provided, however, that
49 the amendments to paragraph f of subdivision 1, paragraphs a and d of
50 subdivision 2 and subdivision 10 of section 3602-c of the education law
51 made by section twenty of this act shall not affect the repeal of such
52 paragraphs and subdivisions, respectively, and shall be deemed repealed
53 therewith.