STATE OF NEW YORK

3954

2023-2024 Regular Sessions

IN ASSEMBLY

February 8, 2023

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

AN ACT to amend the education law, in relation to establishing statewide standards for gifted education programs and requiring school districts to be accountable for providing such gifted education programs

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

Section 1. This act shall be known and may be cited as the "gifted education reinforcement act".

§ 2. The education law is amended by adding a new section 4454 to read as follows:

§ 4454. Gifted education. 1. For the purposes of this section, the following terms shall have the following meanings:

a. "Gifted" shall mean neurological development which allows one to exhibit cognitive ability and/or ingenuity significantly more sophisticated than average in one or more areas.

b. "Individualized education program" shall mean an educational plan designed to meet a student's learning needs via the use of various adaptations.

c. "504 plan" shall have the same meaning as defined in the federal rehabilitation act of 1973.

d. "Competency-based education" shall mean an educational system based on students' demonstration of mastery of a given topic.

2. A board of education shall:

a. ensure that sufficient educational services are provided to gifted students from kindergarten through grade twelve and that proper instructional adjustments are made in accordance with established standards;

b. create the necessary policies for a continuous identification process from kindergarten through grade twelve, which shall consist of multiple measures in order to definitively identify strengths in various academic areas. To ensure equal access to the gifted education program,

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

LBD07301-01-3

the identification process shall include adaptations for certain groups of students, including those who are English language learners and those with individualized education programs or 504 plans;

c. provide ample resources and time to develop, reevaluate, and improve instructional tools for gifted education;

d. develop and document appropriate curricular and instructional adjustments used for gifted students indicating content, process, products, and learning environment, and including additional educational activities such as academic competitions, guest speakers, and lessons with a specialist. Such adjustments shall be included in staff and student schedules, as well as lesson and unit plans, and shall be accounted for in budgets for educational materials;

e. appoint a coordinator who shall oversee the operations and content of the district's gifted education program;

f. create and uphold a list of students identified as gifted in every school within the district; and

g. actively and consistently provide and support professional development for teachers, school leaders, and administrative staff regarding gifted education.

3. a. The commissioner shall appoint a qualified coordinator of gifted education programs who shall be responsible for reviewing the programs implemented in each school district, assessing whether programs comply with the provisions of this section, and approving subsequent proposals in the area of gifted education.

b. Each school district shall file a report with the coordinator of gifted education programs within the duration of the first full school year following the effective date of this section and once every three years thereafter. Such report shall include, but not be limited to:

(i) a thorough explanation of the continuum of policies, curriculum, and services implemented in the district pertaining to gifted education;

(ii) a complete description of the identification process used by the district to determine placement into the gifted education program;

(iii) the total number of students receiving gifted education services and the percentage of the total district student population receiving such services;

(iv) the professional development opportunities and services provided on the topic of gifted education;

(v) the number of staff employed by the school district whose job responsibilities include the identification and instruction of gifted students; and

(vi) a delineation of any plausible future plans for expanding, improving, or otherwise altering the gifted education program implemented by the district.

4. a. The commissioner shall develop a protocol pursuant to which an individual may file a formal complaint asserting that a school district is noncompliant with this section. Such protocol shall require that upon the filing of a formal complaint the department shall lead an investigation into the accused school district's policies. Such protocol shall also include procedures to be followed in the remediation of gifted education programs in noncompliant school districts.

b. A complaint submitted to the department may not assert noncompliance that has occurred in excess of one year prior to the date of the complaint's filing. The complaint shall include:

(i) a statement that the school district in question is in a state of noncompliance with this section;

(ii) facts and circumstances that evince and lend credence to the claim that the district is in a state of noncompliance; and

(iii) the full name, address, and contact information of the complainant.

c. The department shall complete an investigation within ninety days of receipt of a complaint and issue a written decision, including a proposal for remediation if necessary, to the school district and the complainant.

5. Each school district shall make information pertaining to its gifted education program available on the school district's website. Such information shall include the school district's policies, services provided via the program, procedures and measures used to identify gifted students, and timelines relating to the identification process.

6. a. In order to set a uniform standard of entry into gifted programs, the department shall, with the approval of the commissioner and the coordinator of gifted education programs, select a standardized test of intelligence and a standardized test of creativity which shall both be components of the identification process. The criteria to be met by examinations shall consist of the following:

(i) the examinations shall be norm-referenced and recognized by a national authority on gifted education;

(ii) the examinations shall be able to be individually administered; and

(iii) the examinations shall be able to be administered from kindergarten to grade twelve.

b. Every school district shall use the examinations selected by the department pursuant to paragraph a of this subdivision when determining eligibility of students for entry into gifted education programs.

c. The examinations selected pursuant to paragraph a of this subdivision shall be administered by a qualified psychological examiner.

d. Once students are identified as gifted they shall not be obliged to take the examinations selected pursuant to paragraph a of this subdivision again.

7. a. A student is eligible for gifted education programs in one or more subjects if the student meets the following criteria:

(i) the student demonstrates superior neurological development, as evidenced by an intelligence quotient at least two standard deviations above the mean on a standardized test of intelligence or an individual component of the test; and

(ii) the student demonstrates superior creativity, as evidenced by a score in at least the ninetieth percentile on a standardized test of creativity; and

(iii) at least one of the following:

(1) the student demonstrates above-average ingenuity inside and/or outside the classroom, as observed by the student's teachers;

(2) the student demonstrates the need for a special program due to the default educational program in one or more academic areas being insufficiently challenging for the student, as observed by the student's teachers; or

(3) the student demonstrates an intense voracity for knowledge or motivation for learning that cannot be satisfied by the default educational program in one or more academic areas, as observed by the student's teachers.

b. Teachers shall rate students on a scale of one to one hundred in the domains of creativity (criterion 3) and motivation (criterion 5) and recommend all children with scores greater than or equal to ninety to

the school district's panel of three or more qualified evaluators if the student already or has previously satisfied the criteria listed in paragraph a of this subdivision. Teachers shall also provide the panel with additional information regarding the rationale behind the ratings given to recommended students.

c. Following the receipt of teacher recommendations, the panel of three or more qualified evaluators shall examine each case and make decisions regarding students' placement.

8. a. The department shall develop statewide standards, based on the framework of currently existing standards employed in the state, via the addition of markedly more complex, challenging, and thorough material in order to ensure the stimulation of students enrolled in gifted education programs and the most complete comprehension possible.

b. School districts shall develop their own curricula based on standards approved by the department.

9. a. School districts shall utilize a combination of individualized education programs and acceleration in gifted education programs, with either one of the two or both being used in accordance to which course is in the best interest of a particular gifted student.

b. A gifted student's individualized education program shall be developed by the coordinator of gifted education programs of the school district, with input from the current teachers of the student and input from the school psychologist and guidance counselor, if applicable. Individualized education programs shall involve the use of alternative teaching methods, such as competency-based education, and/or differentiated content.

c. A gifted student's acceleration plan, if such a plan is deemed suitable for the student, shall be developed by the coordinator of gifted education programs of the school district, with mandatory input from the current teachers of the student and input from the school psychologist and guidance counselor, if applicable. Acceleration shall involve a student's placement into a higher-level class in one, multiple, or all subjects dependent on the student's level of proficiency in each subject.

10. A student's status of being identified as gifted shall be written in that student's record.

11. Gifted education shall be included as a subsection of special education in the department's budget.

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