

# STATE OF NEW YORK

1675--A

2023-2024 Regular Sessions

## IN SENATE

January 13, 2023

Introduced by Sens. ADDABBO, BORRELLO, HOYLMAN-SIGAL, LANZA, STAVISKY --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Education -- committee discharged, bill amended,  
ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to gifted and bright  
neurologically diverse pupils with special needs; and to repeal  
certain provisions of such law relating thereto

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

1 Section 1. Subdivision 1 of section 3602-c of the education law is  
2 amended by adding a new paragraph g to read as follows:

3 g. (a) "Bright neurologically diverse", also referred to as "twice  
4 exceptional" shall mean those pupils who:

5 (i) give evidence of a potential for high cognitive processing capa-  
6 bilities in areas such as, but not limited to, specific academics,  
7 general intellectual ability, creativity, leadership, and/or visual,  
8 spatial or performing arts, yet possess substantial discrepancies  
9 between their neurocognitive and psychodynamic foundations and founda-  
10 tions required for comfortable integration with common instructional  
11 settings and demands making psychological wellness and schooling success  
12 in equal measure difficult at best and extremely problematic at worst;

13 (ii) demonstrate a dogged self-determination with strong intrinsic  
14 draws toward and superior internalization of knowledge for which they  
15 have an affinity, whose knowledge engagement is more consumed in a  
16 lengthy, single minded concentration than in a broader general study,  
17 whose progress is at their individual pace rather than in lock-step with  
18 classmates or according to curriculum, syllabus, class period or teacher  
19 timelines and whose individual achievement is to immediate personal  
20 satisfaction regardless of administrator, teacher or parent insistence  
21 otherwise;

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

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1 (iii) exhibit environmental sensitivities, including but not limited  
2 to light, sound and the feel of fabric on skin;

3 (iv) evidence emotional sensitivity simultaneously, being deeply  
4 empathetic, effortlessly discomfited and easily hurt, holding a deep  
5 need for the affirmative companionship of others, however, at times, who  
6 seek to be and to work by themselves; or

7 (v) manifest acute frustration, anxiety and anger when powerful  
8 instincts to achieve fail due to developmental stages having yet to  
9 become ready or when work appears below personal expectations or when  
10 neurocognitive functioning or psychodynamic dispositions throw up barriers  
11 or when demanded they work, counter to their strong, particular  
12 neurocognitive functioning.

13 (b) Pupils may have a diagnosis of a disabling condition as defined by  
14 federal or state eligibility criteria such as, but not limited to,  
15 specific learning disabilities, speech and language disorders,  
16 emotional/behavioral disorders, physical disabilities, autism spectrum,  
17 or other health impairments, such as ADHD, while some pupils may not be  
18 diagnosed but have a disabling condition, and some pupils may present as  
19 atypical but have no disabling condition. Such term shall include those  
20 pupils who require educational programs or services beyond and differing  
21 from those normally provided by the regular school program in order to  
22 realize their full potential.

23 § 2. Paragraph a of subdivision 1 of section 3602-c of the education  
24 law, as amended by chapter 474 of the laws of 2004, is amended to read  
25 as follows:

26 a. "Services" shall mean instruction in the areas of gifted pupils,  
27 bright neurologically diverse pupils, career education and education for  
28 students with disabilities, and counseling, psychological and social  
29 work services related to such instruction provided during the regular  
30 school year for pupils enrolled in a nonpublic school located in a  
31 school district, provided that such instruction is given to pupils  
32 enrolled in the public schools of such district.

33 § 3. Section 4451 of the education law, as added by chapter 740 of the  
34 laws of 1982, is amended to read as follows:

35 § 4451. Powers of the department with respect to gifted and bright  
36 neurologically diverse pupils. [~~Subject to the availability of funds,~~  
37 ~~the~~] The state education department is hereby authorized [~~and~~],  
38 empowered and directed to assist districts in meeting the educational  
39 and mental health needs equally of [~~gifted~~] both general education and  
40 bright neurologically diverse pupils, through the following:

41 1. provide information to school districts concerning development of  
42 programs, curriculum resources, instructional procedures and strategies  
43 to identify and encourage equally general education, gifted [~~pupils~~],  
44 and bright neurologically diverse pupils;

45 2. provide technical assistance and [~~inservice~~] in-service education,  
46 professional development and program evaluation for teachers and admin-  
47 istrators equally of gifted and bright neurologically diverse pupils;

48 3. maintain a record of programs available, and make this record  
49 available for public inspection;

50 4. develop, maintain, and distribute a handbook equally for parents of  
51 gifted [~~pupils~~] and bright neurologically diverse pupils;

52 5. construct learning environments and relational systems within a  
53 school setting to satisfy the psychological needs of relatedness, auton-  
54 omy and competence in pupils and staff;

55 6. cultivate as balanced a developing psychodynamic in each pupil as  
56 possible, given family, economic and cultural impacts on individuals;

1 7. reduce barriers to pupil autonomous self-regulation, self-aware-  
2 ness, self-direction, self-advocacy and self-actualization in the range  
3 of neurocognitive and behavioral issues exhibited through each pupil's  
4 particular expressions of functioning;

5 8. assist districts in aiding all personnel directly working with  
6 gifted and, especially, bright neurologically diverse pupil populations  
7 toward developing individual balanced psychodynamic and neurocognitive  
8 readiness to best serve the mental health and educational needs of  
9 pupils in their care;

10 9. grow individual pupil and staff insight into the way pupils and  
11 educators move through the world;

12 10. assist equally both gifted and bright neurologically diverse  
13 pupils to leverage their individual insights to successfully navigate  
14 the world and move through and beyond their schooling;

15 11. assist pupils and staff to gain a balanced perspective of the  
16 particular expressions of an individual pupil's neuro psychodynamic,  
17 which will lead to realistic expectations with learning and inter-per-  
18 sonal and intra-personal behaviors;

19 12. develop the complex of independent, interdependent and negotiation  
20 behaviors in pupils and staff;

21 13. assist with the exposure of pupils to as much knowledge as possi-  
22 ble without the constant external insistence that pupils demonstrate  
23 that they have sufficiently internalized that to which they have been  
24 exposed but rather to allow the inherent neuro psychodynamic affinity  
25 resonating with specific knowledge to drive engagement, acquisition and  
26 outcome uncovering, cultivating and pursuing interests, passions and  
27 possible adult life directions;

28 14. integrate pupils and staff into a self-governing learning communi-  
29 ty exercising the processes of democratic education; and

30 15. establish and develop programs and schools meeting the educational  
31 and mental health needs of bright neurologically diverse pupils equally  
32 with gifted pupils and as equally as meeting the educational and mental  
33 health needs of general education pupils, beginning with establishing  
34 and developing demonstration programs and schools for bright neurologi-  
35 cally diverse pupils for the purposes of, but not limited to, the clar-  
36 ification of category traits and individual expressions of said traits,  
37 and developing best educational, mental health and behavioral practices.

38 § 4. The opening paragraph of subdivision 1 of section 4452 of the  
39 education law, as added by chapter 740 of the laws of 1982, is amended  
40 to read as follows:

41 In order to provide for educational programs to meet special needs of  
42 gifted pupils, the commissioner is hereby authorized and directed to  
43 make recommendations to school districts in accordance with the  
44 provisions of this subdivision and section thirty-six hundred two of  
45 this chapter.

46 § 5. Subdivision 1 of section 4452 of the education law is amended by  
47 adding a new paragraph a-1 to read as follows:

48 a-1. (a) As used in this article, the term "bright neurologically  
49 diverse", also referred to as "twice exceptional", shall mean those  
50 pupils who: (i) give evidence of a potential for high cognitive proc-  
51 essing capabilities in areas such as, but not limited to, specific  
52 academics, general intellectual ability, creativity, leadership, and/or  
53 visual, spatial or performing arts, yet possess substantial discrepan-  
54 cies between their neurocognitive and psychodynamic foundations and  
55 foundations required for comfortable integration with common instruc-  
56 tional settings and demands making psychological wellness and schooling

1 success in equal measure difficult at best and extremely problematic at  
2 worst;

3 (ii) demonstrate a dogged self-determination with strong intrinsic  
4 draws toward and superior internalization of knowledge for which they  
5 have an affinity, whose knowledge engagement is more consumed in a  
6 lengthy, single minded concentration than in a broader general study,  
7 whose progress is at their individual pace rather than in lock-step with  
8 classmates or according to curriculum, syllabus, class period or teacher  
9 timelines and whose individual achievement is to immediate personal  
10 satisfaction regardless of administrator, teacher or parent insistence  
11 otherwise;

12 (iii) exhibit environmental sensitivities, including but not limited  
13 to light, sound and the feel of fabric on skin;

14 (iv) evidence emotional sensitivity simultaneously, being deeply  
15 empathetic, effortlessly discomfited and easily hurt, holding a deep  
16 need for the affirmative companionship of others, however, at times, who  
17 seek to be and to work by themselves; or

18 (v) manifest acute frustration, anxiety and anger when powerful  
19 instincts to achieve fail due to developmental stages having yet to  
20 become ready or when work appears below personal expectations or when  
21 neurocognitive functioning or psychodynamic dispositions throw up barriers  
22 or when demanded they work, counter to their strong, particular  
23 neurocognitive functioning.

24 (b) Pupils may have a diagnosis of a disabling condition as defined by  
25 federal or state eligibility criteria such as, but not limited to,  
26 specific learning disabilities, speech and language disorders,  
27 emotional/behavioral disorders, physical disabilities, autism spectrum,  
28 or other health impairments, such as ADHD, while some pupils may not be  
29 diagnosed but have a disabling condition, and some pupils may present as  
30 atypical but have no disabling condition. Such definition shall include  
31 those pupils who require educational programs or services beyond and  
32 differing from those normally provided by the regular school program in  
33 order to realize their full potential.

34 (i) For the purpose of this article, the terms "disability" and "disa-  
35 bled" shall mean a child:

36 A. with hearing impairments (including deafness), speech or language  
37 impairments, visual impairments (including blindness), emotional  
38 disturbance, orthopedic impairments, other health impairments, or  
39 specific learning disabilities; and

40 B. who, by reason thereof, needs special education and related  
41 services within a gifted program.

42 (ii) For purposes of this article, the term "specific learning disa-  
43 bility" means a disorder in one or more of the basic psychological proc-  
44 esses involved in understanding or in using language, spoken or written,  
45 which disorder may manifest itself in the imperfect ability to listen,  
46 think, speak, read, write, spell, or do mathematical calculations.

47 § 6. Paragraphs c, d, e and f of subdivision 1 of section 4452 of the  
48 education law are REPEALED and five new paragraphs c, d, e, f and g are  
49 added to read as follows:

50 c. Prior to payment of state funds for education of gifted pupils and  
51 bright neurologically diverse pupils, a school district shall submit to  
52 the commissioner a summary plan for the identification and education of  
53 gifted pupils and bright neurologically diverse pupils. The plan shall  
54 be in a form and content as prescribed by the commissioner.

55 d. Upon acceptance by a local school district of the apportionments  
56 made under section thirty-six hundred two of this chapter such district

1 shall use such funding in accordance with guidelines to be established  
2 by the commissioner for services to gifted pupils and bright neurologi-  
3 cally diverse pupils. Such services shall include but not be limited to  
4 identification, instructional programs, gifted IEPs (GIEPs) developed by  
5 certified gifted and talented learning specialists, counseling, plan-  
6 ning, in-service education and program evaluation. A board of education  
7 may contract with another district or board of cooperative educational  
8 services to provide the program and/or services with the approval of the  
9 commissioner under guidelines established by the commissioner.

10 e. The identification of pupils for participation in either gifted  
11 programs or bright neurologically diverse programs funded under this  
12 chapter shall commence through the referral of a parent, teacher or  
13 administrator.

14 f. Upon referral of a pupil for participation in either a gifted  
15 program or bright neurologically diverse program funded under this chap-  
16 ter, the school district shall so inform the parent or guardian of such  
17 pupil's referral and shall seek their approval to administer diagnostic  
18 tests or other evaluation mechanisms related to the program objectives  
19 of the district in order to determine eligibility for participation in  
20 such gifted or bright neurologically diverse program. Failing to receive  
21 approval, the child shall not be tested, evaluated or participate in the  
22 program. In no case shall the parent, guardian or pupil be charged a fee  
23 for the administration of such diagnostic tests or other evaluation  
24 mechanisms.

25 g. The parent or guardian of a pupil designated as gifted or bright  
26 neurologically diverse shall be informed by the local school authorities  
27 of the pupil's placement in such gifted or bright neurologically diverse  
28 program funded under this chapter.

29 § 7. Section 4453 of the education law is REPEALED and a new section  
30 4453 is added to read as follows:

31 § 4453. Advisory council on the education of gifted pupils. 1. The  
32 commissioner shall establish within the department an advisory council  
33 on the education of gifted and bright neurologically diverse pupils.  
34 Such council shall assist and advise the commissioner and his or her  
35 designees with respect to policies and procedures relating to the educa-  
36 tion of gifted and bright neurologically diverse pupils and programs  
37 associated therewith.

38 2. Such advisory council appointed by the commissioner shall consist  
39 of at least ten members, who are directly concerned with general educa-  
40 tion and disabled gifted pupils or who have specialized in the education  
41 of such pupils, provided, however that such advisory council shall  
42 include at least a plurality of parents of such pupils, including  
43 parents of those bright neurologically diverse pupils. The members shall  
44 be residents of this state and shall be selected on the basis of their  
45 competence, concern, and professional activity in the education of gift-  
46 ed and bright neurologically diverse pupils.

47 3. The advisory council shall meet at least three times each year at a  
48 location to be determined by the commissioner. The advisory council  
49 shall report at least biannually to the commissioner.

50 § 8. This act shall take effect April 1, 2024. Effective immediately,  
51 the addition, amendment and/or repeal of any rule or regulation neces-  
52 sary for the implementation of this act on its effective date are  
53 authorized to be made and completed on or before such effective date.