

# STATE OF NEW YORK

S. 4281

A. 3711

2023-2024 Regular Sessions

## SENATE - ASSEMBLY

February 7, 2023

IN SENATE -- Introduced by Sen. WEBER -- read twice and ordered printed,  
and when printed to be committed to the Committee on Education

IN ASSEMBLY -- Introduced by M. of A. BRABENEC -- 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 Assem-  
bly, 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 fifty-  
16 one, nine hundred twelve, thirty-six hundred two-c and thirty-six  
17 hundred thirty-five of this chapter. All costs pertaining to the  
18 services provided by nonpublic schools shall be approved by the commis-  
19 sioner and shall be borne by the state.

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

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

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

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

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

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

3 4. No school district shall be required to purchase or otherwise  
4 acquire textbooks, the cost of which shall exceed an amount equal to the  
5 apportionment pursuant to subdivision six of this section plus a minimum  
6 lottery grant determined pursuant to subdivision four of section nine-  
7 ty-two-c of the state finance law multiplied by the number of children  
8 residing in such district and so enrolled in the base year[~~, and no~~  
9 ~~school district shall be required to loan textbooks in excess of the~~  
10 ~~textbooks owned or acquired by such district, provided, however that all~~  
11 ~~textbooks owned or acquired by such district shall be loaned to children~~  
12 ~~residing in the district and so enrolled in public and nonpublic schools~~  
13 ~~on an equitable basis].~~

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

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

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

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

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

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

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

45 1. Children attending a nonpublic school shall be provided by the  
46 nonpublic school with the same computer software that is made available  
47 to children attending the public school of where such nonpublic school  
48 is located. All costs associated with this subdivision shall be borne by  
49 the state in a similar apportionment pursuant to subdivision four of  
50 section seven hundred fifty-one of this article.

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

54 1. In addition to any other apportionment under this chapter, a school  
55 district shall be eligible for an apportionment under the provisions of  
56 this section for approved expenses for (i) the purchase or lease of

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

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

38 1. Notwithstanding any law, rule or regulation to the contrary, chil-  
39 children attending a nonpublic school shall be provided by the nonpublic  
40 school with the same computer hardware that is made available to chil-  
41 dren attending the public school of where such nonpublic school is  
42 located as provided by section seven hundred fifty-three of this arti-  
43 cle. All costs associated with this subdivision shall be borne by the  
44 state in a similar apportionment pursuant to subdivision four of section  
45 seven hundred fifty-three of this article.

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

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

50 3. No school district shall be required to purchase or otherwise  
51 acquire school library materials, the cost of which shall exceed an  
52 amount equal to the library materials factor multiplied by the sum of  
53 the public school district enrollment [~~and the nonpublic school enroll-~~  
54 ~~ment~~] in the base year as defined in subparagraphs two and three of  
55 paragraph n of subdivision one of section thirty-six hundred two of this  
56 chapter. For aid payable in the nineteen hundred ninety-eight--nineteen

1 hundred ninety-nine school year, the library materials factor shall be  
2 four dollars. For aid payable in the two thousand seven--two thousand  
3 eight school year and thereafter, the library materials factor shall be  
4 six dollars and twenty-five cents.

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

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

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

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

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

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

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

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

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

44 § 20. The section heading, subdivision 1, paragraphs a and d of subdi-  
45 vision 2, subdivisions 3, 4, 6 and 10 of section 3602-c of the education  
46 law, the section heading and subdivisions 3 and 6 as added by chapter  
47 593 of the laws of 1974, subdivision 1 as amended by chapter 740 of the  
48 laws of 1982, paragraphs a and d of subdivision 1 and subdivision 4 as  
49 amended by chapter 474 of the laws of 2004, paragraph c of subdivision 1  
50 as amended by chapter 301 of the laws of 1996, paragraph f of subdivi-  
51 sion 1 as added by chapter 378 of the laws of 2007, paragraphs a and d  
52 of subdivision 2 as amended by chapter 378 of the laws of 2007, and  
53 subdivision 10 as added by chapter 352 of the laws of 2005, are amended  
54 to read as follows:

55 Apportionment of moneys to [~~school districts~~] nonpublic schools for  
56 the provision of services to pupils attending nonpublic schools partic-

1 ipating in specialized educational services. 1. Definitions. [~~As~~]  
2 Notwithstanding any law, rule or regulation to the contrary, as used in  
3 this section the following terms are defined as follows:

4 a. "Services" shall mean instruction in the areas of gifted pupils,  
5 career education and education for students with disabilities, and coun-  
6 seling, psychological and social work services related to such instruc-  
7 tion provided during the regular school year for pupils enrolled in a  
8 nonpublic school [~~located in a school district, provided that such~~  
9 ~~instruction is given to pupils enrolled in the public schools of such~~  
10 ~~district~~].

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

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

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

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

44 f. "School district of location" means the school district in which  
45 the nonpublic elementary or secondary school attended by the student is  
46 located.

47 a. [~~Boards of education of all school districts of~~] Notwithstanding  
48 any law, rule or regulation to the contrary, every certified nonpublic  
49 school in the state shall furnish services to students who are residents  
50 of this state and who attend nonpublic schools [~~located in such school~~  
51 ~~districts~~], upon the written request of the parent or person in parental  
52 relation of any such student. Such a request for career education or  
53 services to gifted students shall be filed with the [~~board of education~~  
54 ~~of the school district~~] nonpublic school in which the parent or person  
55 in parental relation of the student resides on or before the first day  
56 of June preceding the school year for which the request is made. In the

1 case of education for students with disabilities, such a request shall  
2 be filed with the [~~trustees or board of education of the school district~~  
3 ~~of location~~] nonpublic school on or before the first of June preceding  
4 the school year for which the request is made, or by July first, two  
5 thousand seven for the two thousand seven--two thousand eight school  
6 year only, provided that where a student is first identified as a  
7 student with a disability after the first day of June preceding the  
8 school year for which the request is made, or thirty days after the  
9 chapter of the laws of two thousand seven which amended this paragraph,  
10 takes effect where applicable, and prior to the first day of April of  
11 such current school year, such request shall be submitted within thirty  
12 days after such student is first identified. For students first identi-  
13 fied after March first of the current school year, any such request for  
14 education for students with disabilities in the current school year that  
15 is submitted on or after April first of such current school year, shall  
16 be deemed a timely request for such services in the following school  
17 year.

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

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

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

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

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

55 § 21. This act shall take effect immediately; provided, however, that  
56 the amendments to paragraph f of subdivision 1, paragraphs a and d of

1 subdivision 2 and subdivision 10 of section 3602-c of the education law  
2 made by section twenty of this act shall not affect the repeal of such  
3 paragraphs and subdivisions, respectively, and shall be deemed repealed  
4 therewith.