

# 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 Assem-  
bly, do enact as follows:

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

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

5 § 4454. Gifted education. 1. For the purposes of this section, the  
6 following terms shall have the following meanings:

7 a. "Gifted" shall mean neurological development which allows one to  
8 exhibit cognitive ability and/or ingenuity significantly more sophisti-  
9 cated than average in one or more areas.

10 b. "Individualized education program" shall mean an educational plan  
11 designed to meet a student's learning needs via the use of various adap-  
12 tations.

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

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

17 2. A board of education shall:

18 a. ensure that sufficient educational services are provided to gifted  
19 students from kindergarten through grade twelve and that proper instruc-  
20 tional adjustments are made in accordance with established standards;

21 b. create the necessary policies for a continuous identification proc-  
22 ess from kindergarten through grade twelve, which shall consist of  
23 multiple measures in order to definitively identify strengths in various  
24 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.

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

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

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

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

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

17 g. actively and consistently provide and support professional develop-  
18 ment for teachers, school leaders, and administrative staff regarding  
19 gifted education.

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

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

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

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

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

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

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

41 (vi) a delineation of any plausible future plans for expanding,  
42 improving, or otherwise altering the gifted education program imple-  
43 mented by the district.

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

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

54 (i) a statement that the school district in question is in a state of  
55 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

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

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

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

14 b. School districts shall develop their own curricula based on stand-  
15 ards approved by the department.

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

20 b. A gifted student's individualized education program shall be devel-  
21 oped by the coordinator of gifted education programs of the school  
22 district, with input from the current teachers of the student and input  
23 from the school psychologist and guidance counselor, if applicable.  
24 Individualized education programs shall involve the use of alternative  
25 teaching methods, such as competency-based education, and/or differen-  
26 tiated content.

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

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

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

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