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 Assembly, do enact as follows:

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

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

60. Notwithstanding any law, rule or regulation to the contrary, the commissioner shall provide that no nonpublic school shall provide any service to pupils attending such school without approval from the commissioner. Prior to services being provided by a nonpublic school, nonpublic schools will be required to submit certifications in a system developed by the commissioner of the services provided electronically or in any other media form which the commissioner reasonably determines offers the same degree of accountability and control provided by paper certifications. The commissioner will have the power to review and seek correction of any service provided by nonpublic schools pursuant to sections seven hundred one, seven hundred eleven, seven hundred fifty-one, nine hundred twelve, thirty-six hundred two-c and thirty-six hundred thirty-five of this chapter. All costs pertaining to the services provided by nonpublic schools shall be approved by the commissioner 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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§ 3. Section 912 of the education law, as amended by chapter 477 of the laws of 2004, is amended to read as follows:

§ 912. Health and welfare services to all children. [~~The voters and/or trustees or board of education of every school district shall, upon request of the authorities of a school other than public, provide~~] **Notwithstanding any law, rule or regulation to the contrary,** resident children who attend [~~such~~] **a nonpublic** school **shall be provided** with [~~any or all of the~~] **the same** health and welfare services and facilities which are made available by [~~such~~] **the** voters and/or trustees or board of education to or for children attending the public schools of the district. Such services may include, but are not limited to all services performed by a physician, physician assistant, dentist, dental hygienist, registered professional nurse, nurse practitioner, school psychologist, school social worker or school speech therapist, and may also include dental prophylaxis, vision and hearing screening examinations, the taking of medical histories and the administration of health screening tests, the maintenance of cumulative health records and the administration of emergency care programs for ill or injured students. Any such services or facilities shall be so provided notwithstanding any provision of any charter or other provision of law inconsistent herewith. [~~Where children residing in one school district attend a school other than public located in another school district, the school authorities of the district of residence shall contract with the school authorities of the district where such nonpublic school is located, for the provision of such health and welfare services and facilities to such children by the school district where such nonpublic school is located, for a consideration to be agreed upon between the school authorities of such districts, subject to the approval of the qualified voters of the district of residence when required under the provisions of this chapter. Every such contract shall be in writing and in the form prescribed by the commissioner, and before such contract is executed the same shall be submitted for approval to the superintendent of schools having jurisdiction over such district of residence and such contract shall not become effective until approved by such superintendent.~~] **All costs associated with this section shall be borne by the state.**

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

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

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

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

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

8. Notwithstanding any law, rule or regulation to the contrary, children attending a nonpublic school shall be provided by the nonpublic school with the same textbooks that are 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 subdivision four of this section.

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

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

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

4. 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 software programs 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 software 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.

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

1. Children attending a nonpublic school shall be provided by the nonpublic school with the same computer software 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 subdivision four of section seven hundred fifty-one of this article.

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

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

micro and/or mini computer equipment or terminals for instructional purposes or (ii) technology equipment, as defined in paragraph c of subdivision two of this section, used for instructional purposes, or (iii) for the repair of such equipment and training and staff development for instructional purposes as provided hereinafter, or (iv) for expenses incurred on or after July first, two thousand eleven, any items of expenditure that are eligible for an apportionment pursuant to sections seven hundred one, seven hundred eleven and/or seven hundred fifty-one of this title, where such items are designated by the school district as eligible for aid pursuant to this section, provided, however, that if aided pursuant to this section, such expenses shall not be aidable pursuant to any other section of law. Such aid shall be provided pursuant to a plan developed by the district which demonstrates to the satisfaction of the commissioner that the instructional computer hardware needs of the district's public school students have been adequately met [~~and that the school district has provided for the loan of instructional computer hardware to students legally attending nonpublic schools pursuant to section seven hundred fifty-four of this article~~]. The apportionment shall equal the lesser of such approved expense in the base year or, the product of (i) the technology factor, (ii) the sum of the public school district enrollment [~~and the nonpublic school enrollment~~] in the base year as defined in subparagraphs two and three of paragraph n of subdivision one of section thirty-six hundred two of this chapter, and (iii) the building aid ratio, as defined in subdivision four of section thirty-six hundred two of this chapter. For aid payable in the two thousand seven--two thousand eight school year and thereafter, the technology factor shall be twenty-four dollars and twenty cents. A school district may use up to twenty percent of the product of (i) the technology factor, (ii) the sum of the public school district enrollment [~~and the nonpublic school enrollment~~] in the base year as defined in subparagraphs two and three of paragraph n of subdivision one of section thirty-six hundred two of this chapter, and (iii) the building aid ratio for the repair of instructional computer hardware and technology equipment and training and staff development for instructional purposes pursuant to a plan submitted to the commissioner.

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

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

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

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

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

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

§ 14. Subdivision 4 of section 711 of the education law, as amended by section 4 of part C of chapter 58 of the laws of 1998, is amended to 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, children 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, children 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 nonpublic 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 subdivision 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 subdivision 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 counseling, psychological and social work services related to such instruction provided during the regular school year for pupils enrolled in a nonpublic school [~~located in a school district, provided that such instruction is given to pupils enrolled in the public schools of such district~~].

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

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

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

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

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

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

case of education for students with disabilities, such a request shall be filed with the [~~trustees or board of education of the school district of location~~] **nonpublic school** on or before the first of June preceding the school year for which the request is made, or by July first, two thousand seven for the two thousand seven--two thousand eight school year only, provided that where a student is first identified as a student with a disability after the first day of June preceding the school year for which the request is made, or thirty days after the chapter of the laws of two thousand seven which amended this paragraph, takes effect where applicable, and prior to the first day of April of such current school year, such request shall be submitted within thirty days after such student is first identified. For students first identified after March first of the current school year, any such request for education for students with disabilities in the current school year that is submitted on or after April first of such current school year, shall be deemed a timely request for such services in the following school year.

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

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

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

6. [~~Boards of education~~] **Nonpublic schools** are authorized to determine by resolution which courses of instruction shall be offered, the eligibility of pupils to participate in specific courses, and the admission of pupils. All pupils in like circumstances shall be treated similarly.

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

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

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