§ 3208-a. Special proceeding to determine physical capacity of student to participate in athletic programs. 1. Upon a school district's determination that a student shall not be permitted to participate in an athletic program by reason of a physical impairment, based on a medical examination conducted by the school physician, the student may commence a special proceeding in the supreme court pursuant to the provisions of article four of the civil practice law and rules to enjoin the school district from prohibiting his participation. Such special proceeding may be brought in the county in which the student resides or in the county in which the school district is located.

2. The petition in the proceeding shall be a verified petition of a parent or guardian of the student. The petition shall have annexed affidavits of at least two licensed physicians setting forth that in their opinion the student is physically capable of participating in an athletic program, that participation would be reasonably safe, and any special or preventive measures or devices needed to protect the student.

3. The court shall grant such petition if it is satisfied that it is in the best interest of the student to participate in an athletic program and that it is reasonably safe for him to do so.

4. No school district shall be held liable for an injury sustained by a student granted an order under this section provided such injury is incurred during such student's actual participation in an athletic program and, provided further, that such injury is attributable to the physical impairment for which such court order was obtained.

5. Unless specifically prohibited by the court, an order granted pursuant to the provisions of this section shall be considered valid and sufficient for subsequent years, provided that the student has not changed athletic programs and, further, that two licensed physicians set forth current affidavits that, in their opinion, the student's physical impairment has not changed since the time of the original court order.

6. In no event shall a successful petitioner be entitled to costs in any proceeding brought pursuant to this section.

7. The school district shall not be responsible for providing or bear the cost of, any special or preventive measures or devices needed to protect the student unless such special or preventive measures or devices are contained in a student's individual education plan recommended by the school district committee on the handicapped and such student is a child with a handicapping condition, as defined in section forty-four hundred one of this chapter.

8. A physically impaired child eligible to commence a special proceeding as provided by this section shall be defined as any child determined by a school physician as ineligible for participation on the basis of the regulations of the state education department, the American Medical Association Guide for Medical Evaluation for Candidates for School Sports, or by any standard established by the school district involved.

9. An athletic program for the purpose of this section shall include intramural activities, inter-school activities, extramural activities, and organized practice as defined by section 135.1 by the commissioner of education's regulations.