§ 3602-c. Apportionment of moneys to school districts for the provision of services to pupils attending nonpublic schools. 1. Definitions. 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 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 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.

* NB Repealed June 30, 2027

* 2. a. Boards of education of all school districts of 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 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 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.

b. (1) For the purpose of obtaining education for students with disabilities, as defined in paragraph d of subdivision one of this section, such request shall be reviewed by the committee on special education of the school district of location, which shall develop an individualized education service program for the student based on the student's individual needs in the same manner and with the same contents as an individualized education program. The committee on special education shall assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or nonpublic schools located within the school district. Review of the recommendation of the committee on special education may be obtained by the parent or person in parental relation of the pupil pursuant to the provisions of section forty-four hundred four of this chapter.

(2) In the event an individualized education program for the two thousand seven--two thousand eight school year is developed pursuant to this section by the committee on special education of the student's school district of residence prior to the effective date of this subparagraph, with the consent of the parent or person in parental relation, such school district shall forward such individualized education program to the committee on special education of the school district of location. Such individualized education program shall be deemed to be an individualized educational services program for purposes of this subdivision, and the school district of location shall provide the services recommended in such individualized education program, unless and until it is amended by its committee on special education in the manner prescribed by law. If, prior to the effective date of this subparagraph, a student suspected of having a disability has been referred to the committee on special education of the student's school district of residence the results of such evaluation, with the consent

of the parent or person in parental relation of the student, shall be shared with the committee on special education of the school district of location, which may adopt such evaluation as its own or conduct a new evaluation in whole or in part.

(3) Notwithstanding any other provision of this section to the contrary, an individualized education program developed for the two thousand six--two thousand seven school year shall continue to be in full force and effect and binding on the school districts through the end of such school year. Such individualized education program shall be deemed an individualized educational services program for purposes of dispute resolution.

c. Due process complaints relating to compliance of the school district of location with child find requirements, including evaluation requirements, may be brought by the parent or person in parental relation of the student pursuant to section forty-four hundred four of this chapter.

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.

* NB Effective until June 30, 2027

* 2. Boards of education of all school districts of the state shall furnish services to pupils who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent, guardian or persons legally having custody of any such pupil. Such a request shall be filed with the board of education of the school district in which the parent, guardian or persons legally having custody of the pupil resides on or before the first day of June preceding the school year for which the request is made; provided that, in the case of education for students with disabilities, 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 and prior to the first day of April of such current school year or when a student with a disability establishes residence in the school district after June first of the preceding year

and prior to April first of the current school year, such request shall be submitted within thirty days after such student is first identified or establishes residence in the district, as applicable. For students first identified or establishing residence 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. For the purpose of obtaining education for students with disabilities, as defined in paragraph d of subdivision one of this section, such request shall be reviewed by the committee on special education in accordance with the provisions of section forty-four hundred two of this chapter. Review of the recommendation of the committee on special education may be obtained by the parent, guardian or persons legally having custody of the pupil pursuant to the provisions of section forty-four hundred four of this chapter. Such school district 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, except that in the case of education for students with disabilities, the school district of residence may provide such services directly or by contract with the school district of location.

* NB Effective June 30, 2027

* 2-a. For the education for students with disabilities provided in the two thousand seven--two thousand eight school year and thereafter, to the extent required by federal law, the school district of location of a student with a disability shall be responsible for compliance with the requirements of paragraph ten of subsection (a) of section fourteen hundred twelve of title twenty of the United States code, including but not limited to, equitable provision of services, child find and consultation requirements. The committee on special education of the school district of location shall be responsible for evaluation and possible identification as a student with a disability of all students attending nonpublic schools located within the school district, including students who are not New York residents. The school district of location shall expend a proportionate amount of its federal funds made available under part B of the individuals with disabilities education act for the provision of services to students with

disabilities attending such nonpublic schools, including students who are not New York residents, provided that such federal funds may not be used for the cost of carrying out the child find requirement. School districts shall obtain parental consent prior to the release of personally identifiable information concerning a student attending a nonpublic school from records collected or maintained pursuant to part B of the individuals with disabilities education act between such student's school district of residence and school district of location.

* NB Repealed June 30, 2027

* 2-b. The school district of location shall provide special education programs and services to students with disabilities attending nonpublic schools in the school district who are not New York residents to the extent required under federal law and regulations and such students shall not have an individual right to receive special education programs and services pursuant to this section. The committee on special education shall develop services plans for such students in accordance with federal law and regulations. The provisions of subdivision two of this section shall not apply to such students, except that due process complaints relating to compliance of the school district of location with child find requirements, including evaluation requirements, may be brought by the parent or person in parental relation of the student pursuant to section forty-four hundred four of this chapter.

* NB Repealed June 30, 2027

2-c. Solely for the purpose of the provision of education for students with disabilities pursuant to this section and the computation of state aid for such education pursuant to section thirty-six hundred two of this article, a student in a home instruction program submitted by his or her parent or person in parental relation for review pursuant to the regulations of the commissioner shall be deemed to be a student enrolled in and attending a nonpublic school eligible to receive services pursuant to subdivision two of this section; provided that such student is entitled to attend the public schools without payment of tuition pursuant to subdivision one of section thirty-two hundred two of this chapter and has an individualized home instruction plan that has been determined by the superintendent of schools of the school district in which the home school is located to be in compliance with the

regulations of the commissioner. The deadlines for submission of written requests for the education of students with disabilities set forth in subdivision two of this section shall apply to students in a home instruction program, except that such request may be submitted within thirty days of a change in the student's school district of residence; provided that for services in the two thousand eight--two thousand nine school year only such written requests for students in a home instruction program shall be submitted by June thirtieth, two thousand eight, or within thirty days after the effective date of this subdivision, whichever is later, except where subdivision two of this section or this subdivision authorizes submission at a later date. Except as provided in this subdivision, a home school shall not be considered a nonpublic school for any other purpose under this chapter.

3. Boards of education, with the consent of the commissioner of education, are authorized to contract with 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 shall provide transportation for pupils receiving gifted or career education between 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 percent of the actual cost of such transportation.

5. Boards of education, teachers and other employees of public schools shall not be liable for harm to pupils caused by others while such pupils are walking between public and nonpublic schools.

6. Boards of education 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.

* 7. a. Boards of education of districts providing career education and gifted education services to non-resident students shall be entitled to recover tuition from the district of residence of such students in accordance with a formula promulgated by the commissioner by regulation.

b. In the case of the education for students with disabilities who are residents of New York, a school district of location providing services to non-resident students shall be entitled to recover costs of services, costs of evaluation, and costs of committee on special education administration directly from the district of residence of the student if consent of the parent or person in parental relation is obtained to release of personally identifiable information concerning their child. If such consent is not obtained, the school district of location shall submit to the commissioner, in a form prescribed by the commissioner, a claim for costs of services, evaluation costs, and committee on special education administrative costs that includes the address of the student's permanent residence, including the school district of residence, and a certification by officials of the nonpublic school attended by the student that such address is the address of record of such student. Upon certification by the commissioner of the amount of such claim, the state comptroller shall deduct such amount from any state funds which become due to such school district of residence.

c. The amount charged by the school district of location for services, evaluation, eligible due process costs and committee on special education administrative costs shall not exceed the actual cost to the school district of location, after deducting any costs paid with federal or state funds. The commissioner shall adopt regulations prescribing a

dispute resolution mechanism that will be available to a school district of residence where such district disagrees with the amount of tuition or costs charged by the school district of location.

* NB Effective until June 30, 2027

* 7. Boards of education of districts providing services to non-resident pupils shall be entitled to recover tuition from the district of residence of such pupils in accordance with a formula promulgated by the commissioner of education by regulation.

* NB Effective June 30, 2027

8. Average daily attendance, as computed under the provisions of this section, shall be included in the average daily attendance and average daily membership of the school district furnishing services for all purposes under the provisions of section thirty-six hundred two of this chapter, except that it shall not be used in the computation of resident weighted average daily attendance or total wealth pupil units or total wealth foundation pupil units or of aid ratios.

9. Pupils enrolled in nonpublic schools for whom services are provided pursuant to the provisions of this section shall receive such services in regular classes of the public school and shall not be provided such services separately from pupils regularly attending the public schools.

* 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.

* NB Repealed June 30, 2027