

Legislative Bill Drafting Commission
10855-05-5

S. -----
 Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

EDUCLA

(Relates to creating safe harbors
and a phase-in period for compliance
with certain sections of the educa-
tion law)

Ed L. nonpublic schools

AN ACT

to amend the education law, in
relation to creating safe harbors
and a phase-in period for compliance
with certain sections of such law

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s15 Addabbo	s46 Fahy	s28 Krueger	s21 Parker	s42 Skoufis
s43 Ashby	s34 Fernandez	s24 Lanza	s19 Persaud	s11 Stavisky
s36 Bailey	s60 Gallivan	s16 Liu	s13 Ramos	s45 Stec
s63 Baskin	s12 Gianaris	s04 Martinez	s05 Rhoads	s35 Stewart-
s57 Borrello	s59 Gonzalez	s07 Martins	s33 Rivera	Cousins
s25 Brisport	s26 Gounardes	s02 Mattera	s39 Rolison	s44 Tedisco
s55 Brouk	s53 Griffo	s48 May	s50 Ryan, C.	s49 Walczyk
s06 Bynoe	s40 Harckham	s37 Mayer	s61 Ryan, S.	s52 Webb
s09 Canzoneri-	s54 Helming	s03 Murray	s18 Salazar	s38 Weber
Fitzpatrick	s41 Hinchey	s20 Myrie	s10 Sanders	s08 Weik
s17 Chan	s47 Hoylman-	s51 Oberacker	s23 Scarcella-	s22
s30 Cleare	Sigal	s58 O'Mara	Spanton	
s14 Comrie	s31 Jackson	s62 Ortt	s32 Sepulveda	
s56 Cooney	s27 Kavanagh	s01 Palumbo	s29 Serrano	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a078 Alvarez	a136 Clark	a083 Heastie	a150 Molitor	a052 Simon
a031 Anderson	a047 Colton	a028 Hevesi	a145 Morinello	a075 Simone
a121 Angelino	a140 Conrad	a035 Hooks	a016 Norber	a114 Simpson
a133 Bailey	a032 Cook	a128 Hunter	a045 Novakhov	a094 Slater
a120 Barclay	a039 Cruz	a029 Hyndman	a011 O'Pharrow	a005 Smith
a106 Barrett	a043 Cunningham	a079 Jackson	a091 Otis	a118 Smullen
a105 Beephan	a077 Dais	a104 Jacobson	a132 Palmesano	a022 Solages
a107 Bendett	a053 Davila	a134 Jensen	a088 Paulin	a110 Steck
a082 Benedetto	a072 De Los Santos	a115 Jones	a141 Peoples-	a010 Stern
a027 Berger	a003 DeStefano	a004 Kassay	Stokes	a127 Stirpe
a042 Bichotte	a054 Dilan	a100 Kay	a023 Pheffer	a102 Tague
Hermelyn	a081 Dinowitz	a125 Kelles	Amato	a064 Tannousis
a117 Blankenbush	a147 DiPietro	a040 Kim	a063 Pirozzolo	a086 Tapia
a015 Blumencranz	a009 Durso	a069 Lasher	a089 Pretlow	a071 Taylor
a144 Bologna	a099 Eachus	a013 Lavine	a019 Ra	a085 Torres
a073 Bores	a048 Eichenstein	a065 Lee	a030 Raga	a037 Valdez
a098 Brabenec	a074 Epstein	a126 Lemondes	a038 Rajkumar	a033 Vanel
a026 Braunstein	a061 Fall	a095 Levenberg	a006 Ramos	a055 Walker
a138 Bronson	a008 Fitzpatrick	a060 Lucas	a062 Reilly	a112 Walsh
a046 Brook-Krasny	a057 Forrest	a135 Lunsford	a087 Reyes	a024 Weprin
a020 Brown, E.	a124 Friend	a123 Lupardo	a149 Rivera	a097 Wieder
a012 Brown, K.	a050 Gallagher	a129 Magnarelli	a109 Romero	a059 Williams
a093 Burdick	a131 Gallahan	a101 Maher	a067 Rosenthal	a113 Woerner
a142 Burke	a007 Gandolfo	a036 Mamdani	a025 Rozic	a070 Wright
a018 Burroughs	a068 Gibbs	a130 Manktelow	a111 Santabarbara	a041 Yeger
a119 Buttenschon	a002 Giglio	a108 McDonald	a090 Sayegh	a080 Zaccaro
a096 Carroll, P.	a066 Glick	a014 McDonough	a001 Schiavoni	a056 Zinerman
a044 Carroll, R.	a034 Gonzalez-	a146 McMahon	a076 Seawright	
a058 Chandler-	Rojas	a137 Meeks	a148 Sempolinski	
Waterman	a116 Gray	a017 Mikulin	a084 Septimo	
a049 Chang	a021 Griffin	a122 Miller	a092 Shimsky	
a143 Chludzinski	a139 Hawley	a051 Mitaynes	a103 Shrestha	

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 1
signed copy of bill and 1 copy of memorandum in support (single house);
or 2 signed copies of bill and 2 copies of memorandum in support (uni-bill).

1 Section 1. Section 3204 of the education law is amended by adding a
2 new subdivision 6 to read as follows:

3 6. Notwithstanding any law, rule, or regulation to the contrary:

4 (a) Instruction at a nonpublic school satisfies all the requirements
5 of this part applicable to instruction, including subdivision two of
6 this section, subdivision two of section thirty-two hundred ten of this
7 part, and any other requirements in this chapter applicable to instruc-
8 tion, and shall thereby qualify as and be finally recognized to be at
9 least substantially equivalent to the instruction given to minors of
10 like age and attainments at the public schools of the city or district
11 where the minor resides, if such nonpublic school is:

12 (i) a registered high school or nonpublic school serving grades one
13 through eight that has a registered high school;

14 (ii) a state-approved private special education school or state-oper-
15 ated or state-supported school established by the state legislature
16 pursuant to article eighty-five, eighty-seven or eighty-eight of this
17 chapter;

18 (iii) a nonpublic school that is accredited or is awarded provisional
19 status by an accreditation body approved by the commissioner for
20 purposes of demonstrating compliance with the requirements of this
21 section, except that such provisional status shall only apply for the
22 first five years that such nonpublic school has been awarded provisional
23 status. An accreditation body shall have the knowledge and expertise to
24 properly evaluate the entirety of the day's curriculum of those schools
25 that it accredits and shall use a peer review process that includes
26 evaluation by leaders of similar nonpublic schools, appropriately train
27 all staff and peer reviewers who are involved in the accreditation proc-
28 ess, accredit based on publicly accessible documented standards, perform

1 a comprehensive onsite visit of any school seeking accreditation while
2 such school is in session, and periodically conduct a combination of
3 interim and full accreditation reviews of the nonpublic schools which it
4 accredits during at least a ten-year period. Additionally, such accred-
5 itation body shall require nonpublic schools seeking accreditation to
6 have curriculum that is informed by research, document individual
7 student progress, and have mechanisms for monitoring, assessing, and
8 providing feedback on student progress. The commissioner may, at any
9 time, revoke such commissioner's approval of an accreditation body for
10 cause, upon notice and hearing;

11 (iv) a nonpublic school that participates in the international bacca-
12 laureate program;

13 (v) a nonpublic school whose instruction is approved by the United
14 States government for instruction on a military base or service academy;

15 (vi) a nonpublic school in which the percentage of students who score
16 "proficient" on a year-end summative or cumulative assessment and taken
17 in the same subject areas and for the same grade levels as the annual
18 New York state testing program to comply with the federal Every Student
19 Succeeds Act is equal to or greater than one of the following metrics,
20 and such school has declared the intended use of such metric at the
21 beginning of the school year:

22 (1) the percentage of similarly situated public school students scor-
23 ing at the "proficient" level on New York state testing program tests
24 taken in the same subject areas and grade levels in the school district
25 that serves the same geographic area as the nonpublic school is located;
26 or

1 (2) the percentage of similarly situated public school students state-
2 wide scoring at the "proficient" level on New York state testing program
3 tests taken in the same subject areas and grade levels; or

4 (vii) a nonpublic school that administers a year-end summative or
5 cumulative assessment taken in substantially the same subject areas and
6 same grade levels as the annual New York state testing program to comply
7 with the federal Every Student Succeeds Act, has a three-year average
8 participation rate that is equal to or greater than the three-year
9 statewide average participation rate, and uses the results to assess the
10 school's educational program and to seek to improve instruction and its
11 students' performance on such tests.

12 (b) (i) For purposes of subparagraphs (vi) and (vii) of paragraph (a)
13 of this subdivision, the following terms shall have the following mean-
14 ings:

15 (1) "Year-end summative or cumulative assessment" shall mean one or
16 more assessments selected by the nonpublic school that qualifies as (A)
17 a New York state testing program test; (B) an assessment approved by the
18 commissioner; or (C) a nationally-recognized, commercially published
19 norm-referenced achievement test which shall include, but not be limited
20 to, the California Achievement Test (CAT5), the Iowa Assessments, the
21 Stanford Achievement Test, the Comprehensive Test of Basic Skills, the
22 i-Ready Diagnostic, the Woodcock Johnson exam (for special ed schools),
23 the Metropolitan achievement test, or any exam or assessment approved by
24 three or more states to comply with the federal Every Student Succeeds
25 Act or for demonstrating proficiency for homeschooling or nonpublic
26 school purposes, taken in the same core subjects areas and in substan-
27 tially the same grade levels as the annual New York state testing
28 program. All assessments and materials used in connection with such

1 assessments shall be culturally competent and respectful of cultural
2 curricula and pedagogy. A nonpublic school shall not need to use the
3 same year-end summative or cumulative assessment across all grades or
4 years and may change assessments used at any time.

5 (2) "Proficient" shall mean, as applicable, (A) a score of "profi-
6 cient" on a New York state testing program test; (B) a score determined
7 by the commissioner for an assessment approved by the commissioner; or
8 (C) a score of at least the thirty-third percentile on a nationally-re-
9 cognized, commercially published norm-referenced achievement test,
10 unless the commissioner approves a lower percentage for such tests.

11 (ii) To rely on subparagraph (vi) of paragraph (a) of this subdivi-
12 sion, a nonpublic school shall demonstrate a student participation rate
13 on its year-end summative or cumulative assessment or assessments equal
14 to or greater than the three-year average statewide participation rate.

15 (iii) To allow for adequate preparation of students in connection with
16 subparagraphs (vi) and (vii) of paragraph (a) of this subdivision, a
17 phase-in period shall be established. During such phase-in period, a
18 nonpublic school and its affiliated schools shall be deemed to have met
19 the criteria in subparagraphs (vi) and (vii) of paragraph (a) of this
20 subdivision, for purposes of all components of this subdivision. Such
21 phase-in status shall commence upon the effective date of this subdivi-
22 sion, including prior to the administration of any year-end summative or
23 cumulative assessment, and shall continue until the first cohort enter-
24 ing second grade at such nonpublic school after such effective date
25 completes the year-end summative or cumulative assessment for the third
26 grade and shall further continue in the subsequent years, as long as
27 such nonpublic school continues administering a year-end summative or
28 cumulative assessment for the third grade and adds one additional, high-

1 er grade each year until such nonpublic school is administering a year-
2 end summative or cumulative assessment for grades three through ten. The
3 phase-in period shall end after the two thousand thirty-two--two thou-
4 sand thirty-three school year. Prior to such cohorts tested using year-
5 end summative or cumulative assessments under subparagraphs (vi) and
6 (vii) of paragraph (a) of this subdivision, such cohorts may be provided
7 with practice and/or sample testing questions to begin familiarizing
8 themselves with standardized testing methodology.

9 (iv) If a nonpublic school has met the criteria in subparagraph (i) of
10 paragraph (a) of this subdivision, or if a nonpublic school has been
11 deemed to have met the criteria in subparagraphs (vi) and (vii) of para-
12 graph (a) of this subdivision during the phase-in period defined in
13 subparagraph (iii) of this paragraph, or if a nonpublic school has met
14 the criteria in subparagraph (iii) of paragraph (a) of this subdivision
15 with respect to provisional status, then all of its affiliated schools
16 shall be deemed to have met such criteria. Affiliated schools are those
17 with one of the following: the same office of religious and independent
18 school support (ORISS) code under a single basic educational data system
19 (BEDS) code; or the same organization with a different BEDS code in the
20 same location; or the same ORISS code and leadership but may have phys-
21 ical buildings in different locations; or a significant number of gradu-
22 ates of one school attend the other school.

23 (c) Nothing in this subdivision shall preclude the commissioner from
24 defining by rule or regulation alternative criteria which may also be
25 used to demonstrate that instruction at a nonpublic school is in compli-
26 ance with this section. Compliance with this section may be demonstrated
27 through any one or more of the criteria established in this subdivision
28 and shall thereby qualify as and be finally recognized to be substan-

1 tially equivalent without any further requirements. A nonpublic
2 school's satisfaction of one or more criteria in one school year shall
3 not automatically be deemed satisfaction of such criteria in later
4 school years. A nonpublic school may elect at any time to select
5 different criteria. A nonpublic school's omission to satisfy one or more
6 criteria shall not affect a nonpublic school's ability to satisfy anoth-
7 er.

8 § 2. This act shall take effect immediately.