

STATE OF NEW YORK

4210

2017-2018 Regular Sessions

IN ASSEMBLY

February 1, 2017

Introduced by M. of A. BARRETT, TITONE, GOTTFRIED, MAYER, GUNTHER, BRINDISI, McDONALD, STECK, WALKER -- Multi-Sponsored by -- M. of A. DenDEKKER, SIMON -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to fiscal responsibility for the provision of special education services and programs for preschool children with handicapping conditions

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

1 Section 1. Subdivision 11 of section 4410 of the education law, as
2 added by chapter 243 of the laws of 1989, paragraph a as amended and
3 subparagraphs (iv) and (v) of paragraph b as added by chapter 474 of the
4 laws of 1996, paragraph b as amended by chapter 170 of the laws of 1994,
5 subparagraph (ii) of paragraph b as amended by section 54 of part C of
6 chapter 57 of the laws of 2004, subparagraph (iii) of paragraph b as
7 amended by chapter 205 of the laws of 2009, clause (b) of subparagraph
8 (iii) of paragraph b as amended by section 63 of part A of chapter 58 of
9 the laws of 2011, subparagraph (vi) of paragraph b as added by section 1
10 of part Q-1 of chapter 109 of the laws of 2006, and subparagraphs (i)
11 and (ii) of paragraph c as amended by section 24 of part A of chapter 57
12 of the laws of 2013, is amended to read as follows:

13 11. Financial responsibility for approved costs. a. (i) The approved
14 costs for a preschool child who receives services pursuant to this
15 section shall be a charge upon the municipality wherein such child
16 resides. All approved costs shall be paid in the first instance and at
17 least quarterly by the appropriate governing body or officer of the
18 municipality upon vouchers presented and audited in the same manner as
19 the case of other claims against the municipality. Notwithstanding any
20 inconsistent provisions of this section, upon notification by the
21 commissioner, a municipality may withhold payments due any provider for
22 services rendered to preschool children in a program for which the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 commissioner has been unable to establish a tuition rate due to the
2 failure of the provider to file complete and accurate reports for such
3 purpose, as required by the commissioner.

4 (ii) For school years commencing on or after July first, two thousand
5 seventeen, the approved costs for a five year old child who receives
6 services pursuant to this section shall be a charge upon the local
7 school district within which such child resides. For school years
8 commencing on or after July first, two thousand eighteen, the approved
9 costs for a four year old child who receives services pursuant to this
10 section shall be a charge upon the local school district within which
11 such child resides. All approved costs shall be paid and state aid
12 shall be granted in the same manner as costs of the universal prekindergarten
13 program as established pursuant to thirty-six hundred two-e of
14 this chapter. Notwithstanding any inconsistent provisions of this
15 section, upon notification by the commissioner, a local school district
16 may withhold payments due any provider for services rendered to
17 preschool children in a program for which the commissioner has been
18 unable to establish a tuition rate due to the failure of the provider to
19 file complete and accurate reports for such purpose, as required by the
20 commissioner.

21 b. (i) Commencing with the reimbursement of municipalities for
22 services provided pursuant to this section on or after July first, nine-
23 teen hundred ninety-three, the state shall reimburse fifty-nine and one
24 half percent of the approved costs paid by a municipality for the
25 purposes of this section. Commencing with the reimbursement of munici-
26 palities or local school districts for services provided pursuant to
27 this section on or after July first, nineteen hundred ninety-four, the
28 state shall reimburse sixty-nine and one-half percent of the approved
29 costs paid by a municipality for the purposes of this section. The state
30 shall reimburse fifty percent of the approved costs paid by a munici-
31 pality for the purposes of this section for services provided prior to
32 July first, nineteen hundred ninety-three. Such state reimbursement to
33 the municipality or local school district shall not be paid prior to
34 April first of the school year in which such approved costs are paid by
35 the municipality or local school district.

36 (ii) In accordance with a schedule adopted by the commissioner, each
37 municipality or local school district which has been notified by a board
38 of its obligation to contract for the provision of approved special
39 services or programs for a preschool child shall be provided with a
40 listing of all such children by the commissioner. Such list shall
41 include approved services and costs as prescribed by the commissioner
42 for each such child for whom the municipality or local school district
43 shall certify, on such list, the amount expended for such purposes and
44 the date of expenditure. Upon the receipt of such certified statement,
45 the commissioner shall examine the same, and if such expenditures were
46 made as required by this section, the commissioner shall approve ~~it~~
47 such statement and transmit it to the comptroller for audit. The comp-
48 troller shall thereupon issue his warrant, in the total amount specified
49 in such approved statement for the payment thereof out of moneys appro-
50 priated therefor, to the municipal or local school district treasurer or
51 chief fiscal officer as the case may be.

52 (iii) (a) Notwithstanding the provisions of this paragraph, any monies
53 due municipalities pursuant to this paragraph for services provided
54 during the two thousand eight--two thousand nine and prior school years
55 shall be reduced by an amount equal to the product of the percentage of
56 the approved costs reimbursed by the state pursuant to subparagraph (i)

1 of this paragraph and any federal participation, pursuant to title XIX
2 of the social security act, in special education programs provided
3 pursuant to this section. The commissioner shall deduct such amount, as
4 certified by the commissioner of health as the authorized fiscal agent
5 of the state education department. Such deductions shall be made in
6 accordance with a plan developed by the commissioner and approved by the
7 director of the budget. To the extent that such deductions exceed moneys
8 owed to the municipality pursuant to this paragraph, such excess shall
9 be deducted from any other payments due the municipality.

10 (b) Any moneys due municipalities or local school districts pursuant
11 to this paragraph for services provided during the two thousand nine--
12 two thousand ten school year and thereafter, or for services provided in
13 a prior school year that were not reimbursed by the state on or before
14 April first, two thousand eleven, shall, in the first instance, be
15 designated as the state share of moneys due a municipality or local
16 school district pursuant to title XIX of the social security act, on
17 account of school supportive health services provided to preschool
18 students with disabilities pursuant to this section. Such state share
19 shall be assigned on behalf of municipalities or local school districts
20 to the department of health, as provided herein; the amount designated
21 as such nonfederal share shall be transferred by the commissioner to the
22 department of health based on the monthly report of the commissioner of
23 health to the commissioner; and any remaining moneys to be apportioned
24 to a municipality or local school district pursuant to this section
25 shall be paid in accordance with this section. The amount to be assigned
26 to the department of health, as determined by the commissioner of
27 health, for any municipality or local school district shall not exceed
28 the federal share of any moneys due such municipality or local school
29 district pursuant to title XIX of the social security act. Moneys desig-
30 nated as state share moneys shall be paid to such municipality or local
31 school district by the department of health based on the submission and
32 approval of claims related to such school supportive health services, in
33 the manner provided by law.

34 (iv) Notwithstanding any other provision of law to the contrary, no
35 payments shall be made by the commissioner pursuant to this section on
36 or after July first, nineteen hundred ninety-six based on a claim for
37 services provided during school years nineteen hundred eighty-nine--ni-
38 nety, nineteen hundred ninety--ninety-one, nineteen hundred ninety-one-
39 ninety-two, nineteen hundred ninety-two--ninety-three, nineteen hundred
40 ninety-three--ninety-four, and nineteen hundred ninety-four--ninety-five
41 which is submitted later than two years after the end of the nineteen
42 hundred ninety-five--ninety-six school year; provided, however, that no
43 payment shall be barred or reduced where such payment is required as a
44 result of a court order or judgment or a final audit, and provided
45 further that the commissioner may grant a waiver to a municipality
46 excusing the late filing of such a claim upon a finding that the delay
47 was caused by a party other than the municipality or a board to which
48 the municipality delegated authority pursuant to paragraph f of subdivi-
49 sion five or subdivision eight of this section.

50 (v) Notwithstanding any other provision of law to the contrary, no
51 payments shall be made by the commissioner pursuant to this section on
52 or after July first, nineteen hundred ninety-six based on a claim for
53 services provided in the nineteen hundred ninety-five--ninety-six school
54 year or thereafter which is submitted later than three years after the
55 end of the school year in which services were rendered, provided, howev-
56 er, that no payment shall be barred or reduced where such payment is

1 required as a result of a court order or judgment or a final audit, and
2 provided further that the commissioner may grant a waiver to a munici-
3 pality excusing the late filing of such a claim upon a finding that the
4 delay was caused by a party other than the municipality or a board to
5 which the municipality delegates authority pursuant to paragraph f of
6 subdivision five or subdivision eight of this section.

7 (vi) Notwithstanding any other provision of law to the contrary,
8 beginning with state reimbursement otherwise payable in the two thousand
9 six--two thousand seven state fiscal year and in each year thereafter,
10 payments pursuant to this section, subject to county or local school
11 district agreement and in the amounts specified in such agreement, shall
12 be paid no later than June thirtieth of the state fiscal year next
13 following the state fiscal year in which such reimbursement was other-
14 wise eligible for payment and in which the liability to the county or
15 local school district for such state reimbursement accrued, provided
16 that such payments in a subsequent state fiscal year shall be recognized
17 by the state and the applicable county or local school district as
18 satisfying the state reimbursement obligation for the prior state fiscal
19 year. Any unspent amount associated with such county or local school
20 district agreements shall not be available for payments to other coun-
21 ties ~~[or]~~, municipalities or local school districts.

22 c. (i) Each municipality or local school district, or, in addition, in
23 the case of a city of one million or more persons, the board, may
24 perform a fiscal audit of such services or programs for which it bears
25 fiscal responsibility in accordance with audit standards established by
26 the commissioner, which may include site visitation. The department
27 shall provide guidelines on standards and procedures to municipalities,
28 local school districts and boards, for fiscal audits of services or
29 programs pursuant to this section. Prior to commencing a fiscal audit
30 pursuant to this subparagraph, a municipality or local school district
31 shall ascertain that neither the state nor any other municipality or
32 local school district has performed a fiscal audit of the same services
33 or programs within the current fiscal year for such program. If it is
34 determined that no such audit has been performed, the municipality or
35 local school district shall inquire with the department to determine
36 which other municipalities or local school districts, if any, bear
37 financial responsibility for the services or programs to be audited and
38 shall afford such other municipalities or local school districts an
39 opportunity to recommend issues to be examined through the audit. Muni-
40 cipalities and local school districts completing audits pursuant to this
41 subparagraph shall provide copies to the department, the provider of the
42 services and programs and all other municipalities or local school
43 districts previously determined to bear financial responsibility for the
44 audited services and programs. No other municipality or local school
45 district may conduct an additional fiscal audit of the same services or
46 programs during such current fiscal year for such program.

47 (ii) Payments made pursuant to this section by a municipality or local
48 school district shall, upon conclusion of the July first to June thirti-
49 eth school year for which such payment was made, be subject to audit
50 against the actual difference between such audited expenditures and
51 revenues. The municipality or local school district shall submit the
52 results of any such audit to the commissioner and the commissioner of
53 social services, if appropriate, for review and, if warranted, adjust-
54 ment of the tuition and/or maintenance rates. The municipality or local
55 school district is authorized to recover overpayments made to a provider
56 of special services or programs pursuant to this section as determined

1 by the commissioner or the commissioner of health based upon their
2 adjustment of a tuition and/or maintenance rate, provided that for
3 purposes of making such adjustment and recovery, the municipality or
4 local school district shall be deemed to have paid one hundred percent
5 of the disallowed costs. Such recovery may be accomplished by withhold-
6 ing such amount from any moneys due the provider in the current year, or
7 by direct reimbursement. The commissioner shall promulgate rules and
8 regulations necessary to implement the provisions of this paragraph
9 within sixty days of the effective date of [~~the~~] section twenty-four of
10 part A of chapter fifty-seven of the laws of two thousand thirteen
11 [~~which amended this subparagraph~~].
12 § 2. This act shall take effect immediately.