

# STATE OF NEW YORK

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5110

2021-2022 Regular Sessions

## IN ASSEMBLY

February 11, 2021

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Introduced by M. of A. BENEDETTO -- read once and referred to the  
Committee on Education

AN ACT to amend the education law, in relation to determinations of  
appropriate educational programs for certain students in a school  
district in a city having a population of one million or more

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

1 Section 1. Item (i) of clause (b) of subparagraph 3 of paragraph b of  
2 subdivision 1 of section 4402 of the education law, as amended by chap-  
3 ter 378 of the laws of 2007, is amended to read as follows:

4 (i) Make recommendations based upon a written evaluation setting forth  
5 the reasons for the recommendations, to the child's parent or person in  
6 parental relation and board of education or trustees as to appropriate  
7 educational programs and placement in accordance with the provisions of  
8 subdivision six of section forty-four hundred one-a of this article, and  
9 as to the advisability of continuation, modification, or termination of  
10 special class or program placements which evaluation shall be furnished  
11 to the child's parent or person in parental relation together with the  
12 recommendations provided, however that the committee may recommend a  
13 placement in a school which uses psychotropic drugs only if such school  
14 has a written policy pertaining to such use that is consistent with  
15 subdivision four-a of section thirty-two hundred eight of this chapter  
16 and that the parent or person in parental relation is given such written  
17 policy at the time such recommendation is made. If such recommendation  
18 is not acceptable to the parent or person in parental relation, such  
19 parent or person in parental relation may appeal such recommendation as  
20 provided for in section forty-four hundred four of this [~~chapter~~ arti-  
21 cle. Provided, further, that in a school district in a city having a  
22 population of one million or more a parent's appeal of such recommenda-  
23 tion shall be resolved, either through the granting or denial of the  
24 appeal by an impartial hearing officer, or by a state review officer, or

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

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1 the signing of a settlement agreement between the parent or person in  
2 parental relation and the board of education of the school district in  
3 the city having a population of one million or more or a state agency,  
4 within any applicable time periods prescribed by federal law. Provided,  
5 further, that nothing in this item shall be deemed to prohibit any  
6 parent or the school district from seeking judicial review by any court  
7 of competent jurisdiction.

8 Upon the signing of a written settlement agreement between a child's  
9 parent or person in parental relation and the board of education of the  
10 school district in a city having a population of one million or more or  
11 a state agency, or the decision, order, or judgment of an impartial  
12 hearing officer, state review officer or a court finding that a unilat-  
13 eral parental placement was appropriate and that tuition payment should  
14 be granted for such unilateral placement, as provided by section  
15 1412(a)(10)(c) of title 20 of the United States Code and the implement-  
16 ing federal regulations, the amount of such payment and the timeline or  
17 schedule for making such payment shall be set forth in any such settle-  
18 ment or decision, order, or judgment.

19 § 2. Paragraph a of subdivision 1 of section 4404 of the education law  
20 is amended by adding a new closing paragraph to read as follows:

21 Notwithstanding any other provision of law, rule or regulation to the  
22 contrary, in a school district in a city having a population of one  
23 million or more, upon the decision of an impartial hearing officer,  
24 state review officer or a court finding that a unilateral parental  
25 placement was appropriate and that tuition payment should be granted for  
26 such unilateral placement, such tuition payment shall continue in  
27 future years, at the same percentage of the total tuition cost as the  
28 previous year's payment, until the committee on special education deter-  
29 mines the child's needs can be met in another public or approved private  
30 school program and revises the child's individualized education program  
31 to recommend such placement; provided however that where the parent or  
32 person in parental relation brings a due process proceeding to challenge  
33 such revised placement, the unilateral parental placement for which  
34 tuition payment was granted shall be the pendency placement, as provided  
35 in subdivision four of this section.

36 § 3. This act shall take effect immediately; provided, however, that  
37 the amendments to clause (b) of subparagraph 3 of paragraph b of subdi-  
38 vision 1 of section 4402 of the education law, made by section one of  
39 this act, shall not affect the expiration of such clause and shall  
40 expire therewith; provided, further, that the amendments to subdivision  
41 1 of section 4404 of the education law, made by section two of this act,  
42 shall not affect the expiration of such subdivision and shall expire  
43 therewith.