

# STATE OF NEW YORK

6576

2021-2022 Regular Sessions

## IN ASSEMBLY

March 19, 2021

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

AN ACT to amend the education law, in relation to the handling of  
appeals regarding recommendations for children with handicapping  
conditions

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 by a court, or by the signing of a settlement agreement between the  
2 parent or person in parental relation and the board of education of the  
3 school district in the city having a population of one million or more  
4 or state agency.

5 § 1-a. Clause (b) of subparagraph 3 of paragraph b of subdivision 1 of  
6 section 4402 of the education law, as amended by chapter 716 of the laws  
7 of 1991, is amended to read as follows:

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

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

34 Notwithstanding any other provision of law, rule or regulation to the  
35 contrary, in a school district in a city having a population of one  
36 million or more, upon the decision of an impartial hearing officer,  
37 state review officer, or by a court finding, or by the signing of a  
38 settlement agreement between the parent or person in parental relation  
39 and the board of education of the school district in the city having a  
40 population of one million or more or a state agency, that a unilateral  
41 parental placement shall be made and that tuition payments shall be  
42 granted for such unilateral placement, then such placement and tuition  
43 payments shall continue with such uninterrupted bimonthly payments being  
44 at the tuition cost as the previous year's payments, unless and until  
45 the committee on special education determines that the child's needs can  
46 be met in another public or approved private school program due to regu-  
47 larly scheduled individualized education program meetings and where such  
48 determination was based upon a significant revision to the child's indi-  
49 vidualized education program that is caused by a substantial change to  
50 the child's disability status that requires the committee to recommend  
51 such new placement; provided, however, that to qualify for such tuition  
52 payments provided pursuant to this paragraph, the family of such child  
53 shall have an income of four times or less than the income eligibility  
54 requirements under the federal National School Lunch Program; and  
55 provided further that where the parent or person in parental relation  
56 brings a due process proceeding to challenge such revised, new place-

1 ment, the unilateral parental placement for which tuition payment was  
2 granted shall be the pendency placement, as provided in subdivision four  
3 of this section. If there is a significant change in a child's individ-  
4 ualized education program during the course of the school year, such  
5 that the child would no longer be entitled to receive all of the  
6 services that the child had been receiving from the non-public school,  
7 the child's parents shall not be required to repay any of the tuition  
8 reimbursement received prior to such change provided the cost of  
9 services that would have been provided by the school district had the  
10 child been attending public school is the same or greater than the cost  
11 of the services that were actually provided to the student by the non-  
12 public school. The requirements of this paragraph shall also apply to  
13 all settlements that have previously been entered into and remain in  
14 effect. If the child's parents fail to attend three IEP meetings sched-  
15 uled on regular school days during the school year, the child shall no  
16 longer be able to receive pendency under this section.

17 § 3. This act shall take effect January 1, 2022; provided, however,  
18 that the amendments to item (i) of clause (b) of subparagraph 3 of para-  
19 graph b of subdivision 1 of section 4402 of the education law made by  
20 section one of this act shall be subject to the expiration and reversion  
21 of such paragraph pursuant to section 22 of chapter 352 of the laws of  
22 2005, as amended, and subdivision d of section 27 of chapter 378 of the  
23 laws of 2007, as amended, when upon such date the provisions of section  
24 one-a of this act shall take effect; and provided further that the  
25 amendments to paragraph a of subdivision 1 of section 4404 of the educa-  
26 tion law made by section two of this act shall be subject to the expira-  
27 tion and reversion of such subdivision and shall expire and be deemed  
28 repealed therewith.