STATE OF NEW YORK

5247--A

2017-2018 Regular Sessions

IN SENATE

March 16, 2017

Introduced by Sen. MARCELLINO -- (at request of the State Education Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to establishing Earth day; in relation to mandate relief for school districts and certain other educational entities; in relation to the provision of special education programs and services to students parentally placed in non-public schools through dual enrollment in the public schools; in relation to eliminating the requirement that the commissioner of education make appointments to state-supported schools; in relation to the committee on special education membership requirements; in relation to transportation of students with disabilities parentally placed in a private school; in relation to the statute of limitations for special education due process hearings; in relation to the selection of a preschool evaluator; in relation to giving school districts or boards of cooperative educational services the option of advertising procurement bids in the state's opportunities newsletter; in relation to authorize capital outlays for a school construction project less than $250,000; in relation to state aid adjustments for prior years; and in relation to payment schedules for multi-year recoveries for state aid and providing extensions for late filings of transportation contracts in extenuating circumstances; to amend the environmental conservation law, in relation to state smart growth public infrastructure criteria; to amend the vehicle and traffic law, in relation to school omnibus signs complying with federal motor vehicle safety standards; to authorize the commissioner of education to conduct a study of the feasibility and desirability of authorizing school districts and boards of cooperative educational services to enter national credit card contracts; to repeal subdivision 15 of section 353 of the executive law relating to the duties of the state director of the division of veterans' affairs; and to repeal clause

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

LBD09871-04-8

(h) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law relating to reports on certain children of Vietnam veterans

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

Section 1. Section 810 of the education law, as amended by chapter 616 of the laws of 1969 and subdivision 1 as amended by chapter 96 of the laws of 1978, is amended to read as follows:

§ 810. [~~Conservation~~] **Earth** day. [~~1. The last Friday in April each year is hereby made and declared to be known as Conservation day, and observed in accordance with the provisions of this chapter, except that for the year nineteen hundred seventy-eight, Conservation day shall be May third.~~

~~2. It shall be the duty of the authorities of every public school in this state to assemble the pupils in their charge on that day in the school building, or elsewhere, as they may deem proper, and to provide for and conduct (1) such exercises as shall tend to encourage the planting, protection and preservation of trees and shrubs, and an acquaintance with the best methods to be adopted to accomplish such results, and (2) such lectures, pictures or tours, as shall tend to increase the interest and knowledge of such pupils in the fish and wild life, soil and water of the state.~~

~~3. The commissioner of education may prescribe from time to time a course of exercises and instruction in the subjects hereinbefore mentioned, which shall be adopted and observed by the public school authorities on Conservation day. Upon receipt of copies of such course sufficient in number to supply all the schools under their supervision, the school authorities aforesaid shall promptly provide each of the schools under their charge with a copy, and cause it to be observed~~] **Annually, it shall be the duty of the authorities of every public school in this state to observe Earth day as they may deem proper and to encourage instruction on the earth's natural environment as appropriate**.

§ 2. Paragraph a of subdivision 14 of section 305 of the education law, as amended by chapter 273 of the laws of 1999, is amended to read as follows:

a. All contracts for the transportation of school children, all contracts to maintain school buses owned or leased by a school district that are used for the transportation of school children, all contracts for mobile instructional units, and all contracts to provide, maintain and operate cafeteria or restaurant service by a private food service management company shall be subject to the approval of the commissioner, who may disapprove a proposed contract if, in his **or her** opinion, the best interests of the district will be promoted thereby. Except as provided in paragraph e of this subdivision, all such contracts involving an annual expenditure in excess of the amount specified for purchase contracts in the bidding requirements of the general municipal law shall be awarded to the lowest responsible bidder, which responsibility shall be determined by the board of education or the trustee of a district, with power hereby vested in the commissioner to reject any or all bids if, in his **or her** opinion, the best interests of the district will be promoted thereby and, upon such rejection of all bids, the commissioner shall order the board of education or trustee of the district to seek, obtain and consider new proposals. All proposals for such transporta-

tion, maintenance, mobile instructional units, or cafeteria and restaurant service shall be in such form as the commissioner may prescribe. Advertisement for bids shall be published in a newspaper or newspapers designated by the board of education or trustee of the district having general circulation within the district for such purpose **or in the state's procurement opportunities newsletter in accordance with article four-C of the economic development law**. Such advertisement shall contain a statement of the time when and place where all bids received pursuant to such advertisement will be publicly opened and read either by the school authorities or by a person or persons designated by them. All bids received shall be publicly opened and read at the time and place so specified. At least five days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of bids. The requirement for competitive bidding shall not apply to an award of a contract for the transportation of pupils or a contract for mobile instructional units **or the provision, maintenance and operation of cafeteria or restaurant service**, if such award is based on an evaluation of proposals in response to a request for proposals pursuant to paragraph e of this subdivision. The requirement for competitive bidding shall not apply to annual, biennial, or triennial extensions of a contract nor shall the requirement for competitive bidding apply to quadrennial or quinquennial year extensions of a contract involving transportation of pupils, maintenance of school buses or mobile instructional units secured either through competitive bidding or through evaluation of proposals in response to a request for proposals pursuant to paragraph e of this subdivision, when such extensions (1) are made by the board of education or the trustee of a district, under rules and regulations prescribed by the commissioner, and, (2) do not extend the original contract period beyond five years from the date cafeteria and restaurant service commenced thereunder and in the case of contracts for the transportation of pupils, for the maintenance of school buses or for mobile instructional units, that such contracts may be extended, except that power is hereby vested in the commissioner, in addition to his **or her** existing statutory authority to approve or disapprove transportation or maintenance contracts, (i) to reject any extension of a contract beyond the initial term thereof if he **or she** finds that amount to be paid by the district to the contractor in any year of such proposed extension fails to reflect any decrease in the regional consumer price index for the N.Y., N.Y.-Northeastern, N.J. area, based upon the index for all urban consumers (CPI-U) during the preceding twelve month period; and (ii) to reject any extension of a contract after ten years from the date transportation or maintenance service commenced thereunder, or mobile instructional units were first provided, if in his **or her** opinion, the best interests of the district will be promoted thereby. Upon such rejection of any proposed extension, the commissioner may order the board of education or trustee of the district to seek, obtain and consider bids pursuant to the provisions of this section. The board of education or the trustee of a school district electing to extend a contract as provided herein, may, in its discretion, increase the amount to be paid in each year of the contract extension by an amount not to exceed the regional consumer price index increase for the N.Y., N.Y.-Northeastern, N.J. area, based upon the index for all urban consumers (CPI-U), during the preceding twelve month period, provided it has been satisfactorily established by the contractor that there has been at least an equivalent increase in the amount of his **or her** cost of operation, during the period of the contract.

§ 3. Paragraph e of subdivision 14 of section 305 of the education law, as amended by chapter 464 of the laws of 1997, is amended to read as follows:

e. Notwithstanding the provisions of any general, special or local law or charter, a board of education or a trustee of a district, pursuant to rules and regulations promulgated by the commissioner, may award a contract for the transportation of pupils or a contract for mobile instructional units **or for the provision, maintenance and operation of cafeteria or restaurant service by a private food service management company** involving an annual expenditure in excess of the amount specified for purchase contracts in the bidding requirements of the general municipal law in compliance with the provisions of paragraph a of this subdivision or subsequent to an evaluation of proposals submitted in response to a request for proposals prepared by or for the board of education or trustee of a district. **A contract awarded through a request for proposals shall be awarded based on best value in accordance with section one hundred three of the general municipal law.** The commissioner, in addition to his **or her** existing statutory authority to approve or disapprove transportation contracts, may reject any award of a transportation contract or a contract for mobile instructional units that is based on an evaluation of proposals submitted in response to a request for proposals if he **or she** finds that (1) the contractor is not the most responsive to the request for proposals, or (2) that the best interests of the district will be promoted thereby.

§ 4. Subdivision 14 of section 305 of the education law is amended by adding a new paragraph g to read as follows:

g. Notwithstanding the provisions of this subdivision, section one hundred three of the general municipal law, or any other provision of law to the contrary, the board of education shall be authorized to enter into a piggyback contract with another school district that transports students pursuant to a contract with a private transportation contractor, provided that the board finds that the contract cost is appropriate and entry into a piggyback contract will result in a cost savings to the school district. For purposes of this paragraph, a "piggyback contract" means a contract for the transportation of students that: (1) provides transportation to a location outside the students' school district of residence to which another school district is already providing transportation to its own students through an existing contract with a private transportation contractor, other than a cooperatively bid contract; (2) is entered into by the private transportation contractor and each school district involved; and (3) provides for transportation in accordance with the terms and conditions of such existing transportation contract.

§ 5. Subdivision 1 of section 6-0107 of the environmental conservation law, as added by chapter 433 of the laws of 2010, is amended to read as follows:

1. In addition to meeting other criteria and requirements of law governing approval, development, financing and state aid for the construction of new or expanded public infrastructure or the reconstruction thereof, no state infrastructure agency shall approve, undertake, support or finance a public infrastructure project, including providing grants, awards, loans or assistance programs, unless, to the extent practicable, it is consistent with the relevant criteria specified in subdivision two of this section. **Notwithstanding the provisions of this subdivision or any other provision of this article to the contrary, projects for the reconstruction, renovation, repair or**

improvement of existing public school facilities or existing library facilities, and projects for the construction of new or expanded public school or library facilities in cities having a population of one hundred twenty-five thousand inhabitants or more, shall not be deemed public infrastructure projects subject to the requirements of this article.

§ 6. Subparagraph 1 of paragraph (b) and paragraphs (c) and (d) of subdivision 20 of section 375 of the vehicle and traffic law, subparagraph 1 of paragraph (b) as amended by chapter 242 of the laws of 1992, paragraph (c) as amended by chapter 96 of the laws of 1973 and paragraph (d) as amended by chapter 567 of the laws of 1985, are amended to read as follows:

(1) In addition to such signal lamps, two signs shall be conspicuously displayed on the exterior of every such omnibus designating it as a school omnibus by the use of the words "SCHOOL BUS" which shall be painted or otherwise inscribed thereon in black letters. Such letters shall be of uniform size, at least eight inches in height, and each stroke of each letter shall be not less than one inch in width. The background of each such sign shall be painted [~~the color known as "national school bus chrome"~~] on a background of retro reflective national school bus yellow material. The material shall be the same quality and type as federal motor vehicle safety standards require for the marking of emergency exits. For each such omnibus having a seating capacity in excess of fifteen children, such signs shall be securely mounted on top of such vehicle, one of which shall be affixed on the front and one on the rear thereof. For each such omnibus having a seating capacity of not more than fifteen children, such signs shall be securely mounted on top of such vehicle, one of which shall face the front and one of which shall face the rear thereof. Each such sign shall be visible and readable from a point at least two hundred feet distant.

(c) [~~In the event such vehicle is operated on a public highway during the period between one-half hour after sunset and one-half hour before sunrise, the signs required by paragraph (b) of this subdivision shall be illuminated as to be visible from a point at least five hundred feet distant.~~

~~(d)~~] Every such omnibus shall be equipped as provided in paragraphs (a) and (b) of this subdivision, [~~and such signs shall be displayed and illuminated in accordance with paragraphs (b) and (c) of this subdivision,~~] and such signal lamps shall be operated as provided in paragraph (a) of this subdivision at all times when such omnibus shall be engaged in transporting pupils to and from school or school activities or in transporting children to and from child care centers maintained for children of migrant farm and food processing laborers, or in transporting children to and from camp or camp activities or transporting children to and from religious services or instruction or transporting persons with disabilities on any such omnibus used by any state facility or not-for-profit agency licensed by the state.

§ 7. Subdivision 15 of section 353 of the executive law is REPEALED.

§ 8. The commissioner of education, in consultation with the office of the state comptroller, shall conduct a study of the feasibility and desirability of authorizing school districts and boards of cooperative educational services to enter national credit card contracts as a cost-saving measure, with appropriate safeguards. The commissioner of education shall submit a report to the board of regents, the governor and the legislature by no later than January 15, 2019, with recommendations on whether and under what conditions such credit card contracts should be

authorized and identifying any legislative or regulatory changes that would be needed to authorize such credit card contracts.

§ 9. Paragraph a of subdivision 1 and paragraph a and subparagraph 1 of paragraph b of subdivision 2 of section 3602-c of the education law, paragraph a of subdivision 1 as amended by chapter 474 of the laws of 2004, paragraph a and subparagraph 1 of paragraph b of subdivision 2 as amended by chapter 378 of the laws of 2007, are amended and a new paragraph e is added to subdivision 2 to read 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**, including special education programs and related services as defined in subdivision two of section forty-four hundred one of this chapter other than an approved private residential or non-residential school for the education of students with disabilities**, provided that such instruction is given to pupils enrolled in the public schools of such district. **Such term shall also include education for students with disabilities enrolled in such a nonpublic school which is provided in July and August in accordance with paragraph e of subdivision two of this section.**

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~~] **April** 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,~~] **for those students for whom an individualized education service program was developed and implemented pursuant to this section prior to such date, and on or before the first of June preceding the school year for which the request is made for those students who will be first receiving education for students with disabilities pursuant to this section in the school year for which the request is made or for whom an individualized education service program is first developed and implemented on or after April first and on or before June first;** 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 **an individualized education service program is developed for** 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~~].

(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**, except that such services shall not include the provision of a special class or integrated co-teaching services, as such terms are defined in the regulations of the commissioner, by the school district of location for all or part of the school day**. 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**; provided that a due process complaint, other than a due process complaint relating to child find requirements brought pursuant to paragraph c of this subdivision, submitted on or after September first may be submitted to mediation pursuant to section forty-four hundred four-a of this chapter**.

e. A nonpublic school student whose disability is severe enough to exhibit the need for a structured learning environment of twelve months duration to maintain developmental levels shall be eligible to receive special education programs and services in July and August in accordance with the individualized education service program developed by the committee on special education of the school district of location and the provisions of section forty-four hundred eight of this chapter. Provided, however, that during a July/August special education program, such services shall not include placement in a special class or integrated co-teaching services, as such terms are defined in the regulations of the commissioner. Notwithstanding any other provision of law to the contrary, the school district of location shall be eligible for state aid for such services exclusively pursuant to section forty-four hundred eight of this chapter.

§ 10. Paragraph e of subdivision 2 of section 4002 of the education law, as added by chapter 563 of the laws of 1980, is amended to read as follows:

e. Appointment by the commissioner to a state [~~or state-supported~~] school in accordance with article [~~eighty-five,~~] eighty-seven or eighty-eight of this chapter **or enrollment in a state-supported school in accordance with article eighty-five of this chapter**.

§ 11. Subdivision 2 of section 4201 of the education law is amended to read as follows:

2. It shall be the duty of the commissioner:

a. To inquire into the organization of the several schools and the methods of instruction employed therein.

b. To prescribe courses of study and methods of instruction that will meet the requirements of the state for the education of [~~state~~] pupils **attending such schools**.

c. [~~To make appointments of pupils to the several schools, to transfer such pupils from one school to another as circumstances may require; to cancel appointments for sufficient reason.~~

[~~d.~~] To ascertain by a comparison with other similar institutions whether any improvements in instruction and discipline can be made; and for that purpose to appoint from time to time, suitable persons to visit the schools.

[~~e.~~] d. To suggest to the directors of such institutions and to the legislature such improvements as he shall judge expedient.

[~~f.~~] e. To make an annual report to the legislature on all of the matters enumerated in this subdivision and particularly as to the condition of the schools, the improvement of the pupils, and their treatment in respect to board and lodging.

§ 12. Section 4203 of the education law is amended to read as follows:

§ 4203. Persons eligible for [~~appointment~~] enrollment as pupils to institutions for instruction of the deaf. All deaf children resident in this state, of the age of three years and upwards and of suitable capacity, and who shall have been resident in this state for one year immediately preceding the application, or, if an orphan, whose nearest friend shall have been resident in this state for one year immediately preceding the application, shall be eligible [~~to appointment~~] for enrollment as [~~state~~] pupils in one of the institutions for the instruction of the deaf of this state, authorized by law to receive such pupils; provided, however, the foregoing requirement as to length of residence in this state may be waived in the discretion of the commissioner [~~of education~~]. Placement in such institutions shall be recommended by the committee on special education, or committee on preschool special education where applicable, of the school district responsible for educating such pupil, and such recommendation may include the provision of special education programs and services in July or August in accordance with the provisions of paragraph a of subdivision two of section forty-four hundred two of this chapter.

§ 13. Subdivision 3 of section 4204 of the education law, as amended by section 51 of part A of chapter 58 of the laws of 2011, is amended to read as follows:

3. The regular term of instruction of any such deaf pupil shall be twelve years, or until the pupil shall have attained the age of eighteen years before the expiration of twelve years from the beginning of such term. The [~~commissioner~~] committee on special education may, in [~~his~~] its discretion, [~~extend~~] recommend an extension of the term of any pupil until [~~his~~] the date of the school year in which the pupil's twenty-first birthday occurs and such pupil's eligibility ends pursuant to subdivision five of section forty-four hundred two of this article for the purpose of pursuing or completing academic or vocational courses of study. Such pupils must be recommended by the trustees of the institution in which they are in attendance before the committee recommends that such extension of time [~~is granted~~] be made.

§ 14. Section 4206 of the education law, as amended by chapter 53 of the laws of 1990, is amended to read as follows:

§ 4206. Persons eligible for [~~appointment~~] enrollment as pupils [~~to~~] in institutions for instruction of the blind. 1. All blind persons of suitable age and capacity and who shall have been residents in this state for one year immediately preceding the application or, if a minor, whose parent or parents, or, if an orphan, whose nearest friend, shall have been a resident in this state for one year immediately preceding the application, shall be eligible for [~~appointment~~] enrollment as [~~state~~] pupils to the New York Institute for Special Education in the city of New York or the Lavelle School for the Blind in the city of New York.

2. Blind babies and children of the age of fifteen years and under and possessing the other qualifications prescribed in this article and requiring kindergarten training or other special care and instruction, shall be eligible for [~~appointment~~] enrollment as [~~state~~] pupils [~~by the commissioner of education at his discretion~~] in any incorporated institution furnishing approved care, training and instruction for blind babies and children, and any such child may be transferred to the New York Institute for Special Education in the city of New York or the Lavelle School for the Blind in the city of New York, to which he or she would otherwise be eligible for [~~appointment~~] enrollment, upon arriving at suitable age[~~, in the discretion of the commissioner of education~~].

3. [~~All such appointments shall be made by the commissioner of education.~~] The requirement of this section as to length of residence in this state may be waived in the discretion of the commissioner [~~of education~~].

4. Placement in such institutions shall be recommended by the committee on special education, or committee on preschool special education where applicable, of the school district responsible for educating such pupil, and such recommendation may include the provision of special education programs and services in July or August in accordance with the provisions of paragraph a of subdivision two of section forty-four hundred two of this title.

§ 15. Subdivisions 3 and 4 of section 4207 of the education law, as amended by section 54 of part A of chapter 58 of the laws of 2011, are amended to read as follows:

3. The regular term of instruction of any such blind pupil in the New York Institute for Special Education shall be eight years. The [~~commissioner~~] committee on special education of the school district responsible for the education of the pupil, with the consent of the trustees of the New York Institute for Special Education, may in [~~his~~] its discretion [~~extend~~] recommend the extension of the term of any pupil for a period not exceeding three years. It shall also be lawful for the [~~commissioner~~] committee to continue such pupils [~~as state pupils~~] for an additional period of three years for the purpose of pursuing or completing a course of high school study[~~; such pupils must be recommended by the trustees of the New York Institute for Special Education before such extension is granted~~].

4. The term of appointment for blind babies and children of the age of fifteen years and under received into any institution in accordance with this article shall be at the discretion of the [~~commissioner~~] committee on special education or preschool committee on special education of the school district responsible for the education of the student and the trustees of the New York Institute for Special Education.

§ 16. Section 4213 of the education law, as added by chapter 496 of the laws of 1986, is amended to read as follows:

§ 4213. Other persons eligible for [~~appointment~~] enrollment. In accordance with the provisions of the charter of the New York Institute for Special Education, and amendments thereto, as issued by the board of regents, children with [~~handicapping conditions~~] disabilities, other than [~~handicapping conditions~~] disabilities which would establish eligibility for [~~appointment~~] enrollment to the schools enumerated in this article, shall be eligible for [~~appointment~~] enrollment to the New York Institute for Special Education as [~~state~~] pupils. The provisions of this article shall apply but not necessarily be limited to the [~~appointment~~] enrollment, education, maintenance and support of such pupils. Such pupils eligible for [~~appointment~~] enrollment, pursuant to this

section, shall be persons over five and under twenty-one years of age who have not received a high school diploma.

§ 17. Paragraph d of subdivision 2 of section 4401 of the education law, as amended by chapter 53 of the laws of 1990, is amended to read as follows:

d. Appointment by the commissioner to a state school in accordance with article eighty-seven or eighty-eight of this chapter or **enrollment in** a state-supported school in accordance with article eighty-five of this chapter.

§ 18. Subparagraph 2 of paragraph b of subdivision 1 of section 4402 of the education law, as amended by chapter 82 of the laws of 1995, is amended to read as follows:

(2) Such committees or subcommittees shall identify, review and evaluate at least annually, the status of each child with a [~~handicapping condition~~] **disability** and each child thought to [~~be handicapped~~] **have a disability** who resides within the school district. Such review shall consider the educational progress and achievement of the child with a [~~handicapping condition~~] **disability** and the child's ability to participate in instructional programs in regular education.

§ 19. Subparagraph 2 of paragraph b of subdivision 2 of section 4402 of the education law, as amended by chapter 391 of the laws of 1989, is amended to read as follows:

(2) The board shall select the most reasonable and appropriate special service or program for such children from those programs specified in paragraphs a, b, c, **paragraph d with respect to state supported schools and paragraphs** e, f, g, h, i, k, l and m of subdivision two of section forty-four hundred one of this article upon receipt of the recommendation of the committee on special education. All contracts with schools pursuant to the provisions of paragraphs d, e, f, g, h, l and m of subdivision two of section forty-four hundred one of this article shall be subject to the approval of the commissioner. All contracts under paragraph c of subdivision two of section forty-four hundred one **of this article** shall be made in accordance with the provisions of subdivision four of section nineteen hundred fifty of this chapter. No child shall be placed in a residential school nor shall a board recommend placement in a residential facility specified in paragraph j of subdivision two of section forty-four hundred one **of this article** unless there is no appropriate nonresidential school available consistent with the needs of the child. The board shall provide written notice of its determination to the parent or legal guardian of such child. If the determination of the board of education is not consistent with the recommendations of the committee on special education, such notice shall include the statement of the reasons for such determination which shall identify the factors considered by the committee on special education in its evaluation.

§ 20. Clause (h) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law is REPEALED.

§ 21. Subdivisions 8 and 9 of section 4403 of the education law, as amended by chapter 273 of the laws of 1986, are amended to read as follows:

8. To develop and distribute a handbook for parents of [~~handicapped~~] children **with disabilities** and the members of committees and subcommittees on special education, which handbook shall explain, in layman terms, the financial and educational obligations of the state, the county or city, the home school district, the committee on special education, and the parent or legal guardian of a [~~handicapped~~] child **with a disability**, the special services or programs available pursuant to this

article, and the legal procedures available to an aggrieved parent or legal guardian of a [~~handicapped~~] child with a disability.

9. To make provision by regulation of the commissioner to assure the confidentiality of any personally identifiable data, information, and records collected or maintained by the state department of education or any school district, including a committee or subcommittee on special education, and the officers, employees or members thereof, pursuant to or in furtherance of the purposes of this article, and shall establish procedures upon which any such personally identifiable data, information, or records may be disclosed.

§ 22. Subdivision 16 of section 4403 of the education law, as amended by section 4 of part E of chapter 501 of the laws of 2012, is amended to read as follows:

16. Commencing with the nineteen hundred eighty-seven--eighty-eight school year, to provide for instruction during the months of July and August of students with [~~handicapping conditions~~] disabilities who have received state appointments pursuant to article [~~eighty-five,~~] eighty-seven or eighty-eight of this chapter, and whose [~~handicapping conditions, in the judgment of the commissioner,~~] disabilities are severe enough to exhibit the need for a structured learning environment of twelve months duration to maintain developmental levels, by making such appointments for twelve months; provided that the initial term of appointment of a student with a [~~handicapping condition~~] disability who is the minimum age eligible for such a state appointment shall not commence during the months of July or August.

§ 23. The opening paragraph and clauses (a), (b) and (c) of subparagraph 1 of paragraph b of subdivision 1 of section 4402 of the education law, the opening paragraph and clauses (a) and (c) as amended by chapter 311 of the laws of 1999, subclause (viii) of clause (a) as amended by chapter 194 of the laws of 2004, clause (b) as amended by section 1 of chapter 276 of the laws of 2012 and the closing paragraph of clause (b) as amended by chapter 378 of the laws of 2007, are amended to read as follows:

The board of education or trustees of each school district shall establish committees [~~and/or subcommittees~~] on special education as necessary to ensure timely evaluation and placement of pupils. The board of education of the city school district of the city of New York, shall establish at least one committee on special education in each of its community school districts, provided that appointments to the community school district committees shall be made upon the approval of the community school board except that the board of education of the city school district of the city of New York, may establish one committee to serve more than one community school district, in which case, appointments thereto shall be made upon the joint approval of the affected community school boards; provided, however, that prior to such consolidation, the board shall consider the relative caseload of the committee on special education in each affected community school district, including but not limited to the following factors: the number of students evaluated by such committee; the number of referrals to special education in such community school district; the ability to comply with mandated paperwork and timelines; and other issues which the board deems pertinent.

(a) Such committees shall be composed of at least the following members: (i) the parents or persons in parental relationship to the student; (ii) one regular education teacher of the student whenever the student is or may be participating in the regular education environment; (iii) one special education teacher of the student, or, if appropriate,

a special education provider of the student; (iv) a school psychologist **where the purpose of the meeting is to determine a student's initial eligibility for special education**; (v) a representative of such school district who is qualified to provide or administer or supervise special education and is knowledgeable about the general curriculum and the availability of resources of the school district; (vi) an individual who can interpret the instructional implications of evaluation results; (vii) [~~a school physician; (viii)~~] an additional parent, residing in the school district or a neighboring school district, of a student with a disability, of a student who has been declassified and is no longer eligible for an individualized education program (IEP), or a parent of a disabled child who has graduated, for a period of five years beyond the student's declassification or graduation, provided such parent shall not be employed by or under contract with the school district, and provided further that such additional parent shall not be a required member [~~if~~] **unless** the parents**, the student or a member of the committee on special education** request that such additional parent member [~~not~~] participate **in accordance with clause (b) of this subparagraph**; [~~(ix)~~] **(viii)** such other persons having knowledge or special expertise regarding the student as the school district or the parents or persons in parental relationship to the student shall designate, to the extent required under federal law; and [~~(x)~~] **(ix)** if appropriate, the student.

(b) In determining the composition of such committee pursuant to clause (a) of this subparagraph, a school district may determine that a member appointed pursuant to one of subclause (ii), (iii), (iv), (v) or [~~(ix)~~] **(viii)** of clause (a) of this subparagraph also fulfills the requirement of subclause (vi) of clause (a) of this subparagraph of a member who is an individual who can interpret the instructional implications of evaluation results where such individuals are determined by the school district to have the knowledge and expertise to do so and/or that a member appointed pursuant to subclause (iii) or (iv) of clause (a) of this subparagraph also fulfills the requirement of subclause (v) of clause (a) of this subparagraph of a member who is a representative of the school district. The regular education teacher of the student shall participate in the development, review and revision of the individualized education program for the student, to the extent required under federal law. [~~The school physician need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relation to the student in question, the student, or a member of the committee on special education. The parents or persons in parental relation of the student in question shall receive proper written notice of their right to have the school physician attend the meetings of the committee on special education upon referral of said student to the committee on special education or whenever such committee plans to modify or change the identification, evaluation or educational placement of the student.~~] The additional parent need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relation to the student in question, the student, or a member of the committee on special education. The parents or persons in parental relation of the student in question shall receive proper written notice of their right to have an additional parent attend any meeting of the committee regarding the student along with a statement, prepared by the department, explaining the role of having the additional

parent attend the meeting. The committee shall invite the appropriate professionals most familiar with a student's disability or disabilities to attend any meeting concerning the educational program for such student. Except as otherwise provided in this clause or clause (b-1) or (b-2) of this subparagraph, all members of such committee shall attend meetings of the committee on special education.

Members of such committee shall serve at the pleasure of such board and members who are neither employees of nor under contract with such district shall serve without compensation except that such members shall be entitled to a per diem to defray expenses incurred in such service, provided, however, that any expense incurred shall be deemed an aidable operating expense for purposes of state aid.

(c) Districts not having available personnel may share the services of a local committee on special education with another school district or contract with a board of cooperative educational services for such personnel pursuant to regulations of the commissioner. [~~A district having a subcommittee on special education may share the services of a local committee on special education with another school district, provided that a representative of such school district who is qualified to provide or administer or supervise special education and is knowledgeable about the general curriculum and the availability of resources of the school district shall be a member of such committee when it convenes on behalf of a student who is a resident of such district.~~]

§ 24. Clause (b) of subparagraph 1 of paragraph b of subdivision 1 of section 4402 of the education law, as amended by section 2 of chapter 276 of the laws of 2012, is amended to read as follows:

(b) In determining the composition of such committee pursuant to clause (a) of this subparagraph, a school district may determine that a member appointed pursuant to one of subclause (ii), (iii), (iv), (v) or [~~(ix)~~] **(viii)** of clause (a) of this subparagraph also fulfills the requirement of subclause (vi) of clause (a) of this subparagraph of a member who is an individual who can interpret the instructional implications of evaluation results where such individuals are determined by the school district to have the knowledge and expertise to do so and/or that a member appointed pursuant to subclause (iii) or (iv) of clause (a) of this subparagraph also fulfills the requirement of subclause (v) of clause (a) of this subparagraph of a member who is a representative of the school district. The regular education teacher of the student shall participate in the development, review and revision of the individualized education program for the student, to the extent required under federal law. [~~The school physician need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relationship to the student in question, the student, or a member of the committee on special education. The parents or persons in parental relationship of the student in question shall receive proper written notice of their right to have the school physician attend the meetings of the committee on special education upon referral of said student to the committee on special education or whenever such committee plans to modify or change the identification, evaluation or educational placement of the student.~~] The additional parent need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relation to the student in question, the student, or a member of the committee on special education. The parents or persons in

parental relation of the student in question shall receive proper written notice of their right to have an additional parent attend any meeting of the committee regarding the student along with a statement, prepared by the department, explaining the role of having the additional parent attend the meeting. The committee shall invite the appropriate professionals most familiar with a student's disability or disabilities to attend any meeting concerning the educational program for such student. Members of such committee shall serve at the pleasure of such board and members who are neither employees of nor under contract with such district shall serve without compensation except that such members shall be entitled to a per diem to defray expenses incurred in such service, provided, however, that any expense incurred shall be deemed an aidable operating expense for purposes of state aid.

§ 25. Paragraph d of subdivision 4 of section 4402 of the education law, as amended by chapter 646 of the laws of 1992, is amended to read as follows:

d. Notwithstanding any other provision of law, such board shall provide suitable transportation up to a distance of fifty miles to and from a nonpublic school which a [~~child~~] student with a [~~handicapping condition~~] disability attends if such [~~child~~] student has been so identified by the local committee on special education and such [~~child~~] student attends such school for the purpose of receiving services or programs from such nonpublic school that are similar to special [~~educational programs~~] education programs and services recommended for such [~~child~~] student by the local committee on special education. Notwithstanding any other provision of law to the contrary, a nonpublic student receiving transportation pursuant to this paragraph shall not be entitled to special education programs and services from the school district of location pursuant to section thirty-six hundred two-c of this chapter. As a condition of eligibility for such transportation, the parent or person in parental relation to the student shall consent to the provision of notice by the school district of residence to the chairperson of the committee on special education of the school district in which the nonpublic school is located identifying such student, by name, address and school of attendance, as a student receiving transportation pursuant to this paragraph. The school district of residence shall provide such notice no later than thirty days after commencing such transportation.

§ 26. Paragraph a of subdivision 1 of section 4404 of the education law, as amended by chapter 430 of the laws of 2006, is amended to read as follows:

a. If the parent or person in parental relation of a student, the board of education or trustees of a school district or a state agency responsible for providing education to students with disabilities presents a complaint with respect to any matter relating to the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student or a manifestation determination or other matter relating to placement upon discipline of a student with a disability that may be the subject of an impartial hearing pursuant to subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations, and the party presenting the complaint or their attorney provides a due process complaint notice in accordance with federal law and regulations and such complaint sets forth an alleged violation that occurred not more than [~~two years~~] one year before the date the parent or public agency knew or should have known about the

alleged action that forms the basis for the complaint, **or in the case of a complaint seeking tuition reimbursement for the unilateral parental placement of a student in a private school, such tuition claim is presented not more than one hundred eighty days from the placement by the parent or person in parental relation in the private school, provided that the student shall be deemed placed for such purpose on the first day the student is enrolled in and is liable for tuition in the private school,** the board or agency shall appoint an impartial hearing officer to review the due process complaint notice when challenged and, if the matter is not resolved in a resolution session that has been convened as required by federal law, to preside over an impartial due process hearing and make a determination within such period of time as the commissioner by regulation shall determine, provided that the board of education or trustees shall offer the parent or person in parental relation the option of mediation pursuant to section forty-four hundred four-a of this article as an alternative to an impartial hearing. Where the parent or person in parental relation or a school district or public agency presents a complaint, the school district or public agency responsible for appointing the impartial hearing officer shall provide the parent or person in parental relation with a procedural safeguards notice as required pursuant to subsection (d) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations. Notwithstanding any provision of this subdivision to the contrary, the time limitation on presenting a complaint shall not apply to a parent or person in parental relation to the student if the parent or person in parental relation was prevented from requesting the impartial hearing due to specific misrepresentations by the school district or other public agency that it had resolved the problem forming the basis of the complaint or due to the school district's or other public agency's withholding of information from the parent or person in parental relation that was required under federal law to be provided. Nothing in this subdivision shall be construed to authorize the board of education or trustees to bring an impartial hearing to override the refusal of a parent or person in parental relation to consent where a local educational agency is prohibited by federal law from initiating such a hearing.

§ 27. Paragraph b of subdivision 4 of section 4410 of the education law, as added by chapter 243 of the laws of 1989, is amended to read as follows:

b. Each board shall, within time limits established by the commissioner, be responsible for providing the parent of a preschool child suspected of having a [~~handicapping condition~~] **disability** with a list of approved evaluators in the geographic area. The [~~parent may select the evaluator from such list~~] **school district shall, after providing the parent with a list of approved preschool evaluators and obtaining parent consent to evaluate, arrange for an evaluation by the service provider selected by the district who can provide the evaluation of the student within the timeline required by the department. In selecting the evaluator, the district shall consider the parent's expressed preference, if any, for the evaluator**. Each board shall provide for dissemination of the list and other information to parents at appropriate sites including but not limited to pre-kindergarten, day care, head start programs and early childhood direction centers, pursuant to regulations of the commissioner.

§ 28. Subparagraph (iv) of paragraph b of subdivision 5 of section 4410 of the education law, as added by chapter 630 of the laws of 2008, is amended to read as follows:

(iv) The members of the committee [~~or subcommittee~~] may compile a list of appropriate and/or helpful services that may be available outside of the school setting to provide the parents or person in parental relation of a child with a disability with such information. Such list shall clearly state that these services are in addition to services supplied by the school district and will not be paid for by the school district. Any member of a committee or his or her respective school district who, acting reasonably and in good faith, provides such information shall not be liable for such action.

§ 29. Paragraph c of subdivision 1 of section 4410-b of the education law, as added by chapter 6 of the laws of 2000, is amended to read as follows:

c. "IEP team" means a committee on special education[~~, a subcommittee on special education,~~] **or** a committee on preschool special education [~~or a subcommittee on preschool special education~~].

§ 30. Paragraphs a and c of subdivision 5 of section 3604 of the education law, paragraph a as amended by chapter 161 of the laws of 2005 and paragraph c as added by chapter 82 of the laws of 1995, are amended to read as follows:

a. State aid adjustments. All errors or omissions in the apportionment shall be corrected by the commissioner. Whenever a school district has been apportioned less money than that to which it is entitled, the commissioner may allot to such district the balance to which it is entitled. Whenever a school district has been apportioned more money than that to which it is entitled, the commissioner may, by an order, direct such moneys to be paid back to the state to be credited to the general fund local assistance account for state aid to the schools, or may deduct such amount from the next apportionment to be made to said district, provided, however, that, upon notification of excess payments of aid for which a recovery must be made by the state through deduction of future aid payments, a school district may request that such excess payments be recovered by deducting such excess payments from the payments due to such school district and payable in the month of June in (i) the school year in which such notification was received and (ii) [~~the two succeeding school years, provided further that there shall be no interest penalty assessed against such district or collected by the state. Such request shall be made to the commissioner in such form as the commissioner shall prescribe, and shall be based on documentation that the total amount to be recovered is in excess of one percent of the district's total general fund expenditures for the preceding school year. The amount to be deducted in the first year shall be the greater of (i) the sum of the amount of such excess payments that is recognized as a liability due to other governments by the district for the preceding school year and the positive remainder of the district's unreserved fund balance at the close of the preceding school year less the product of the district's total general fund expenditures for the preceding school year multiplied by five percent, or (ii) one-third of such excess payments. The amount to be recovered in the second year shall equal the lesser of the remaining amount of such excess payments to be recovered or one-third of such excess payments, and the remaining amount of such excess payments shall be recovered in the third year~~] **in up to ten succeeding school years, as determined by the commissioner in regulations, wherein the commissioner shall establish any eligibility**

requirements and/or payment schedule for such multi-year recovery. Provided further that, notwithstanding any other provisions of this subdivision, any pending payment of moneys due to such district as a prior year adjustment payable pursuant to paragraph c of this subdivision for aid claims that had been previously paid as current year aid payments in excess of the amount to which the district is entitled and for which recovery of excess payments is to be made pursuant to this paragraph, shall be reduced at the time of actual payment by any remaining unrecovered balance of such excess payments, and the remaining scheduled deductions of such excess payments pursuant to this paragraph shall be reduced by the commissioner to reflect the amount so recovered. The commissioner shall certify no payment to a school district based on a claim submitted later than three years after the close of the school year in which such payment was first to be made. For claims for which payment is first to be made in the nineteen hundred ninety-six--ninety-seven school year, the commissioner shall certify no payment to a school district based on a claim submitted later than two years after the close of such school year. For claims for which payment is first to be made in the nineteen hundred ninety-seven--ninety-eight school year and thereafter, the commissioner shall certify no payment to a school district based on a claim submitted later than one year after the close of such school year. Provided, however, no payments shall be barred or reduced where such payment is required as a result of a final audit of the state. It is further provided that, until June thirtieth, nineteen hundred ninety-six, the commissioner may grant a waiver from the provisions of this section for any school district if it is in the best educational interests of the district pursuant to guidelines developed by the commissioner and approved by the director of the budget.

c. Payment of moneys due for prior years. State aid payments due for prior years in accordance with the provisions of this subdivision shall be paid either: (i) from funds available in the general support for public school appropriation as a result of the deduction of excess payments of aid pursuant to paragraph a of this subdivision, or (ii) within the limit of the appropriation designated therefor provided, however, that each eligible claim shall be payable in the order that it has been approved for payment by the commissioner, but in no case shall a single claim draw down more than forty percent of the appropriation so designated for a single year, and provided further that no claim shall be set aside for insufficiency of funds to make a complete payment, but shall be eligible for a partial payment in one year and shall retain its priority date status for appropriations designated for such purposes in future years.

§ 31. Subparagraph 1 of paragraph b of subdivision 6-f of section 3602 of the education law, as added by section 19 of part H of chapter 83 of the laws of 2002, is amended to read as follows:

(1) has a total project cost of [~~one hundred thousand dollars~~] two hundred fifty thousand dollars or less; provided however, that for any district, no more than one project shall be eligible pursuant to this subparagraph for an apportionment within the same school year; and/or

§ 32. Subdivision 2 of section 3625 of the education law, as amended by chapter 474 of the laws of 1996, is amended to read as follows:

2. Filing of transportation contracts. a. Every transportation contract shall be filed with the department within one hundred twenty days of the commencement of service under such contract, subject to the provisions of paragraph b of this subdivision. No transportation expense shall be allowed for a period greater than one hundred twenty days prior

to the filing of any contract for the transportation of pupils with the education department. No contract shall be considered filed unless it bears an original signature of the superintendent of a school district or the designee of the superintendent and the sole trustee or president of the board of education of the school district. The final approval of any such contract by the commissioner shall not, however, obligate the state to allow transportation expense in an amount greater than the amount that would be allowed under the provisions of this part. The state, acting through the department of audit and control, may examine any and all accounts of the contractor in connection with a contract for the transportation of pupils, and every such contract shall contain the following provision: "The contractor hereby consents to an audit of any and all financial records relating to this contract by the department of audit and control."

b. Notwithstanding the provisions of paragraph a of this subdivision, the commissioner may consider extenuating circumstances, including but not limited to possession of a signed and dated return receipt from the department indicating that such transportation contract was timely filed, or evidence of a fire or other natural disaster or catastrophic event that disrupted operations or destroyed files prior to the commencement of the contract or during the contract period, or any other extenuating circumstance defined by the commissioner in regulations which resulted in a contract or contracts not being filed within the one hundred twenty day filing period and may, in his or her discretion, extend the period for filing of such contract or contracts.

§ 33. This act shall take effect July 1, 2018, provided that if this act shall become a law after such date, it shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2018 and provided further, nothing in section six of this act shall be construed to require the retrofitting of school buses purchased prior to the effective date of this act, and provided further that:

(a) the amendments to subdivision 2 of section 3602-c of the education law made by section nine of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith;

(b) the amendments to subparagraph 2 of paragraph b of subdivision 1 of section 4402 of the education law made by section eighteen of this act shall take effect on the same date as the reversion of such subparagraph pursuant to chapter 352 of the laws of 2005, as amended;

(c) the amendments to clause (b) of subparagraph 1 of paragraph b of subdivision 1 of section 4402 of the education law made by section twenty-three of this act shall be subject to the expiration and reversion of such clause pursuant to chapter 378 of the laws of 2007, as amended, when upon such date the provisions of section twenty-four of this act shall take effect; and

(d) the amendments to paragraph a of subdivision 1 of section 4404 of the education law made by section twenty-six of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith.