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:

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

11. Financial responsibility for approved costs. a. **(i)** The approved costs for a preschool child who receives services pursuant to this section shall be a charge upon the municipality wherein such child resides. All approved costs shall be paid in the first instance and at least quarterly by the appropriate governing body or officer of the municipality upon vouchers presented and audited in the same manner as the case of other claims against the municipality. Notwithstanding any inconsistent provisions of this section, upon notification by the commissioner, a municipality may withhold payments due any provider for 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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commissioner has been unable to establish a tuition rate due to the failure of the provider to file complete and accurate reports for such purpose, as required by the commissioner.

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

b. (i) Commencing with the reimbursement of municipalities for services provided pursuant to this section on or after July first, nineteen hundred ninety-three, the state shall reimburse fifty-nine and one half percent of the approved costs paid by a municipality for the purposes of this section. Commencing with the reimbursement of municipalities **or local school districts** for services provided pursuant to this section on or after July first, nineteen hundred ninety-four, the state shall reimburse sixty-nine and one-half percent of the approved costs paid by a municipality for the purposes of this section. The state shall reimburse fifty percent of the approved costs paid by a municipality for the purposes of this section for services provided prior to July first, nineteen hundred ninety-three. Such state reimbursement to the municipality **or local school district** shall not be paid prior to April first of the school year in which such approved costs are paid by the municipality **or local school district**.

(ii) In accordance with a schedule adopted by the commissioner, each municipality **or local school district** which has been notified by a board of its obligation to contract for the provision of approved special services or programs for a preschool child shall be provided with a listing of all such children by the commissioner. Such list shall include approved services and costs as prescribed by the commissioner for each such child for whom the municipality **or local school district** shall certify, on such list, the amount expended for such purposes and the date of expenditure. Upon the receipt of such certified statement, the commissioner shall examine the same, and if such expenditures were made as required by this section, the commissioner shall approve [~~it~~] **such statement** and transmit it to the comptroller for audit. The comptroller shall thereupon issue his warrant, in the **total** amount specified in such approved statement for the payment thereof out of moneys appropriated therefor, to the municipal **or local school district** treasurer or chief fiscal officer as the case may be.

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

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

(b) Any moneys due municipalities **or local school districts** pursuant to this paragraph for services provided during the two thousand nine--two thousand ten school year and thereafter, or for services provided in a prior school year that were not reimbursed by the state on or before April first, two thousand eleven, shall, in the first instance, be designated as the state share of moneys due a municipality **or local school district** pursuant to title XIX of the social security act, on account of school supportive health services provided to preschool students with disabilities pursuant to this section. Such state share shall be assigned on behalf of municipalities **or local school districts** to the department of health, as provided herein; the amount designated as such nonfederal share shall be transferred by the commissioner to the department of health based on the monthly report of the commissioner of health to the commissioner; and any remaining moneys to be apportioned to a municipality **or local school district** pursuant to this section shall be paid in accordance with this section. The amount to be assigned to the department of health, as determined by the commissioner of health, for any municipality **or local school district** shall not exceed the federal share of any moneys due such municipality **or local school district** pursuant to title XIX of the social security act. Moneys designated as state share moneys shall be paid to such municipality **or local school district** by the department of health based on the submission and approval of claims related to such school supportive health services, in the manner provided by law.

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

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

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

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

c. (i) Each municipality **or local school district**, or, in addition, in the case of a city of one million or more persons, the board, may perform a fiscal audit of such services or programs for which it bears fiscal responsibility in accordance with audit standards established by the commissioner, which may include site visitation. The department shall provide guidelines on standards and procedures to municipalities**, local school districts** and boards, for fiscal audits of services or programs pursuant to this section. Prior to commencing a fiscal audit pursuant to this subparagraph, a municipality **or local school district** shall ascertain that neither the state nor any other municipality **or local school district** has performed a fiscal audit of the same services or programs within the current fiscal year for such program. If it is determined that no such audit has been performed, the municipality **or local school district** shall inquire with the department to determine which other municipalities **or local school districts**, if any, bear financial responsibility for the services or programs to be audited and shall afford such other municipalities **or local school districts** an opportunity to recommend issues to be examined through the audit. Municipalities **and local school districts** completing audits pursuant to this subparagraph shall provide copies to the department, the provider of the services and programs and all other municipalities **or local school districts** previously determined to bear financial responsibility for the audited services and programs. No other municipality **or local school district** may conduct an additional fiscal audit of the same services or programs during such current fiscal year for such program.

(ii) Payments made pursuant to this section by a municipality **or local school district** shall, upon conclusion of the July first to June thirtieth school year for which such payment was made, be subject to audit against the actual difference between such audited expenditures and revenues. The municipality **or local school district** shall submit the results of any such audit to the commissioner and the commissioner of social services, if appropriate, for review and, if warranted, adjustment of the tuition and/or maintenance rates. The municipality **or local school district** is authorized to recover overpayments made to a provider of special services or programs pursuant to this section as determined

by the commissioner or the commissioner of health based upon their adjustment of a tuition and/or maintenance rate, provided that for purposes of making such adjustment and recovery, the municipality **or local school district** shall be deemed to have paid one hundred percent of the disallowed costs. Such recovery may be accomplished by withholding such amount from any moneys due the provider in the current year, or by direct reimbursement. The commissioner shall promulgate rules and regulations necessary to implement the provisions of this paragraph within sixty days of the effective date of [~~the~~] **section twenty-four of part A of** chapter **fifty-seven** of the laws of two thousand thirteen [~~which amended this subparagraph~~].

§ 2. This act shall take effect immediately.