

STATE OF NEW YORK

5606

2019-2020 Regular Sessions

IN SENATE

May 8, 2019

Introduced by Sen. MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to special act school districts and special education; and to amend the social services law and the executive law, in relation to the protection of people with special needs

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

1 Section 1. Section 4004 of the education law is amended by adding a
2 new subdivision 5 to read as follows:

3 5. The board of education of a special act school district shall be
4 authorized to establish a fiscal stabilization reserve fund. There may
5 be paid into such fund an amount as may be provided pursuant to the
6 requirements of paragraph k of subdivision four of section forty-four
7 hundred five of this title.

8 § 2. Subdivision 4 of section 4405 of the education law is amended by
9 adding a new paragraph k to read as follows:

10 k. (i) The tuition methodology established pursuant to this subdivi-
11 sion for the two thousand seventeen--two thousand eighteen school year
12 and annually thereafter shall authorize approved private residential or
13 non-residential schools for the education of students with disabilities
14 that are located within the state, and special act school districts, to
15 retain funds in excess of their allowable and reimbursable costs
16 incurred for services and programs provided to school-age students. The
17 amount of funds that may be annually retained shall not exceed one
18 percent of the school's or school district's total allowable and reim-
19 bursable costs for services and programs provided to school-age students
20 for the school year from which the funds are to be retained; provided
21 that the total accumulated balance that may be retained shall not exceed
22 four percent of such total costs for such school year. Funds may be
23 expended only pursuant to an authorization of the governing board of the

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

LBD11532-01-9

1 school or school district, for a purpose expressly authorized as part of
2 the approved tuition methodology for the year in which the funds are to
3 be expended. The director of the budget, in consultation with the
4 commissioner, shall establish the authorized uses for the expenditures
5 of such funds as part of the approved tuition methodology. Any school or
6 school district that retains funds pursuant to this paragraph shall be
7 required to annually report a statement of the total balance of any such
8 retained funds, the amount, if any, retained in the prior school year,
9 the amount, if any, dispersed in the prior school year, and any addi-
10 tional information requested by the department as part of the financial
11 reports that are required to be annually submitted to the department.

12 (ii) Notwithstanding any law to the contrary, a special act school
13 district, as authorized under article eighty-one of this title, or an
14 educational or residential facility, as authorized by chapter eight
15 hundred fifty-three of the laws of nineteen hundred seventy-six, an
16 educational institution as authorized under article eighty-five of this
17 title, or a program authorized by this article, for aid payable for the
18 two thousand eighteen--two thousand nineteen school year and thereafter,
19 shall receive at minimum, the same percentage increase as that of gener-
20 al support for public schools as enacted in the state budget when
21 compared to the enacted state budget in the base year.

22 § 3. Section 4405 of the education law is amended by adding a new
23 subdivision 7 to read as follows:

24 7. a. Within funds appropriated for such purpose there shall be addi-
25 tional aid payable for the two thousand eighteen--two thousand nineteen
26 school year and thereafter to schools providing special services or
27 programs as defined in subdivision one and paragraphs e, g, and l of
28 subdivision two of section forty-four hundred one of this article and
29 approved preschool programs that provide full and half-day educational
30 programs in accordance with section forty-four hundred ten of this arti-
31 cle to help prevent excessive staff turnover through a targeted adjust-
32 ment of compensation for related services providers as defined in para-
33 graph k of subdivision two of section forty-four hundred one of this
34 article, providing direct services to students at such schools. The
35 commissioner shall develop an allocation plan, subject to the approval
36 of the director of the budget, that distributes funds appropriated here-
37 in among eligible schools.

38 b. Within funds appropriated for such purpose there shall be addi-
39 tional aid payable for the two thousand eighteen--two thousand nineteen
40 school year and thereafter to schools for the blind and deaf to help
41 prevent excessive instructional staff and direct services staff turnover
42 through a targeted adjustment of compensation for teachers providing
43 direct instructional services and related services providers as defined
44 in paragraph k of subdivision two of section forty-four hundred one of
45 this article, providing direct services to students at such schools. The
46 commissioner shall develop an allocation plan, subject to the approval
47 of the director of the budget, that distributes funds appropriated here-
48 in among eligible schools.

49 § 4. The education law is amended by adding a new section 4008 to read
50 as follows:

51 § 4008. Expunction of a record. Any person employed, including a
52 licensed or credentialed person employed by a special act school
53 district, as authorized under this article, an educational or residen-
54 tial facility, as authorized by chapter eight hundred fifty-three of the
55 laws of nineteen hundred seventy-six, an educational institution as
56 authorized under article eighty-five of this title, or a program author-

1 ized by article eighty-nine of this title, shall upon notification of an
2 unsubstantiated allegation of abuse or neglect as defined in section
3 four hundred ninety-four of the social services law, have the record of
4 unsubstantiated allegation of abuse or neglect expunged from their
5 license, credential, and/or personnel record.

6 § 5. Subdivision 1 of section 494 of the social services law, as added
7 by section 1 of part B of chapter 501 of the laws of 2012, is amended to
8 read as follows:

9 1. (a) The subject of an investigation of an allegation of abuse or
10 neglect shall be notified of their status as the subject of an investi-
11 gation of an allegation of abuse or neglect within five calendar days of
12 the receipt of an allegation against such subject. The justice center or
13 cooperating oversight agency shall have an additional sixty calendar
14 days to complete its investigation, conduct any hearings, and to inform
15 the subject of the allegation of abuse or neglect of the outcome of the
16 investigation. The subject of an investigation of an allegation of abuse
17 or neglect may be suspended pending a hearing on the charges and the
18 final determination thereof. The suspension shall be with pay, except
19 the employee may be suspended without pay if such employee has entered a
20 guilty plea to or has been convicted of a felony crime concerning the
21 criminal sale or possession of a controlled substance, a precursor of a
22 controlled substance, or drug paraphernalia as defined in article two
23 hundred twenty or two hundred twenty-one of the penal law; or a felony
24 crime involving the physical abuse of a minor or student. The impartial
25 hearing office, as defined by section five hundred sixty-four of the
26 executive law, shall render a decision within fifteen days of the
27 completion of the investigatory period if substantiated charges were
28 made. At any time subsequent to the completion of an investigation of an
29 allegation of abuse or neglect, but in no event later than thirty days
30 after the subject of the report is notified that the report is substan-
31 tiated, the subject may request that the vulnerable persons' central
32 register amend the findings of the report. If the register does not
33 amend the findings of the report in accordance with such request, the
34 subject shall have the right to be heard before an administrative law
35 judge, to determine whether the findings of the report should be amended
36 on the grounds that they are inaccurate or inconsistent with the
37 provisions in this article. The office shall establish [~~an appeals pro-~~
38 ~~cess~~] a process of notification of appeals, within five business days of
39 notification of a decision, by which the subject of the report is noti-
40 fied of the right to appeal and the procedure by which he or she may
41 challenge the determination that a report is substantiated, with a de
42 novo standard of review.

43 (b) If the administrative law judge determines that the justice center
44 failed to prove by a preponderance of the evidence the finding that the
45 subject committed the act or acts of abuse or neglect, the justice
46 center shall amend the record to reflect that such a finding was made,
47 and shall [~~promptly~~] within five calendar days, notify the subject of
48 the report and any other persons or entities previously notified of the
49 existence of the report of the amended finding. Such report shall be
50 sealed in accordance with the standards set forth in section four
51 hundred ninety-six of this article.

52 § 6. The executive law is amended by adding a new section 563 to read
53 as follows:

54 § 563. Joint training. The justice center shall biannually conduct
55 regional joint trainings on oversight and standards with educational
56 institutions and facilities that the justice center and cooperating

oversight agencies exercise jurisdiction over to ensure equal standards and enforcement among the different regions of the state. The joint trainings participants shall include, but not be limited to: justice center headquarters staff, justice center regional office staff, justice center and cooperating oversight agencies investigative staff, the bargaining unit, if any, of any employee of an educational institution or facility under the oversight of the justice center or any cooperating oversight agencies, and employees from each job classification at an educational institution or facility under the oversight of the justice center or any cooperating oversight agencies.

§ 7. The executive law is amended by adding a new section 564 to read as follows:

§ 564. Hearing officers. 1. All hearings pursuant to this section shall be conducted before and by a single hearing officer selected as provided for in this section. A hearing officer shall not be eligible to serve in such position if he or she is a resident of the school district, other than the city of New York, under the jurisdiction of the employing board or agency, an employee, agent or representative of the employing board or of any labor organization representing employees of such employing board or agency, has served as such agent or representative within two years of the date of the scheduled hearing, or if he or she is then serving as a mediator or fact finder in the same school district. The process for selection of an impartial hearing officer shall be as similar as possible to the regulatory framework for the appointment of an impartial hearing officer for due process complaints.

2. Notwithstanding any law to the contrary, for the purposes of this section, for any allegations or charges, other than criminal allegations or charges, any persons, including licensed or credentialed persons employed by a special act school district, as authorized under article eighty-one of the education law, or an educational or residential facility, as authorized by chapter eight hundred fifty-three of the laws of nineteen hundred seventy-six, an educational institution as authorized under article eighty-five of the education law, or a program authorized by article eighty-nine of the education law, shall be entitled to representation by a representative of the bargaining unit or representation secured by the person employed, to be present in any investigation by the justice center or any cooperating oversight agencies.

3. Notwithstanding any law to the contrary, for the purposes of this section, for any criminal allegations or charges, any persons, including licensed or credentialed persons employed by a special act school district, as authorized under article eighty-one of the education law, or an educational or residential facility, as authorized by chapter eight hundred fifty-three of the laws of nineteen hundred seventy-six, an educational institution as authorized under article eighty-five of the education law, or a program authorized by article eighty-nine of the education law, shall be entitled to representation by a representative of the bargaining unit or representation secured by the person employed, to be present in any investigation by the justice center or any cooperating oversight agencies.

§ 8. This act shall take effect immediately.