# STATE OF NEW YORK

3795--A

2021-2022 Regular Sessions

# IN ASSEMBLY

January 28, 2021

Introduced by M. of A. DICKENS -- read once and referred to the Committee on Education -- recommitted to the Committee on Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

(i) Make recommendations based upon a written evaluation setting forth the reasons for the recommendations, to the child's parent or person in parental relation and board of education or trustees as to appropriate educational programs and placement in accordance with the provisions of subdivision six of section forty-four hundred one-a of this article, and as to the advisability of continuation, modification, or termination of special class or program placements which evaluation shall be furnished to the child's parent or person in parental relation together with the recommendations provided, however that the committee may recommend a placement in a school which uses psychotropic drugs only if such school has a written policy pertaining to such use that is consistent with subdivision four-a of section thirty-two hundred eight of this chapter and that the parent or person in parental relation is given such written policy at the time such recommendation is made. If such recommendation is not acceptable to the parent or person in parental relation, such parent or person in parental relation may appeal such recommendation as provided for in section forty-four hundred four of this [~~chapter~~] **article. Provided, further, that in a school district in a city having a**

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

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population of one million or more a parent's appeal of such recommendation shall be resolved, either through the granting or denial of the appeal by an impartial hearing officer, or by a state review officer, or the signing of a settlement agreement between the parent or person in parental relation and the board of education of the school district in the city having a population of one million or more or a state agency, within any applicable time periods prescribed by federal law. Provided, further, that nothing in this item shall be deemed to prohibit any parent or the school district from seeking judicial review by any court of competent jurisdiction.

Upon the signing of a written settlement agreement between a child's parent or person in parental relation and the board of education of the school district in a city having a population of one million or more or a state agency, or the decision, order, or judgment of an impartial hearing officer, state review officer or a court finding that a unilateral parental placement was appropriate and that tuition payment should be granted for such unilateral placement, as provided by section 1412(a)(10)(c) of title 20 of the United States Code and the implementing federal regulations, the amount of such payment and the time line or schedule for making such payment shall be set forth in any such settlement or decision, order, or judgment, and such payment shall be made in strict accordance with such timeline.

§ 2. Section 4403 of the education law is amended by adding a new subdivision 22 to read as follows:

22. To provide for a special education monitor in a school district in a city having a population of one million or more appointed by the commissioner. Such special education monitor shall ensure that the implementation of any settlement, decision, order, or judgment, pursuant to item (i) of clause (b) of subparagraph three of paragraph b of subdivision one of section fourty-four hundred two of this article, is timely implemented. Such special education monitor shall be empowered and directed to take all actions necessary to effectuate such timely implementation, including, but not limited to, reviewing, evaluating, examining into, inspecting and auditing such district's implementation policies, procedures, practices, protocols, and systems, and compelling any changes to such policies, procedures, practices, protocols, and systems that the special education monitor deems necessary to ensure compliance with such timeline or schedule. The special education monitor shall be empowered to direct and compel such district to implement immediately any such settlement, decision, order or judgement in accordance with the timelines established by this article. And it is further provided that if such district fails to make any payment at the direction of the special education monitor, the commissioner shall, in his or her sole discretion: (a) withhold from such district its share of the public money of the state pursuant to section three hundred six of this chapter; (b) withhold from such district all or a portion of its share of funds allocated to it pursuant to 20 U.S.C. sections 1411 and 1413 of the individuals with disabilities act; (c) report such district's noncompliance to the United States department of education; and (d) take any other action the commissioner deems appropriate pursuant to the powers vested in the commissioner by this chapter.

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

Notwithstanding any other provision of law, rule or regulation to the contrary, in a school district in a city having a population of one million or more, upon the settlement of an impartial hearing or appeal

therefrom, or upon the decision of an impartial hearing officer, state review officer or a court finding that a unilateral parental placement was appropriate and that tuition payment and any other services and costs should be granted for such unilateral placement, such settlement agreement, decision, order or judgment shall continue in future years, at the same percentage of the total tuition, services, and costs as the previous year's payment, until the committee on special education determines the child's needs can be met in another public or approved private school program and revises the child's individualized education program to recommend such placement; provided however that where the parent or person in parental relation brings a due process proceeding to challenge such revised placement, the unilateral parental placement for which tuition payment and any other services or costs were granted or settled upon, shall be the pendency placement, as provided in subdivision four of this section.

§ 4. This act shall take effect immediately; provided, however, that the amendments to clause (b) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law, made by section one of this act, shall not affect the expiration of such clause and shall expire therewith; provided, further, that the amendments to subdivision 1 of section 4404 of the education law, made by section three of this act, shall not affect the expiration of such subdivision and shall expire therewith.