

# 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:

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

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

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

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

11 Upon the signing of a written settlement agreement between a child's  
12 parent or person in parental relation and the board of education of the  
13 school district in a city having a population of one million or more or  
14 a state agency, or the decision, order, or judgment of an impartial  
15 hearing officer, state review officer or a court finding that a unilat-  
16 eral parental placement was appropriate and that tuition payment should  
17 be granted for such unilateral placement, as provided by section  
18 1412(a)(10)(c) of title 20 of the United States Code and the implement-  
19 ing federal regulations, the amount of such payment and the time line or  
20 schedule for making such payment shall be set forth in any such settle-  
21 ment or decision, order, or judgment, and such payment shall be made in  
22 strict accordance with such timeline.

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

25 22. To provide for a special education monitor in a school district in  
26 a city having a population of one million or more appointed by the  
27 commissioner. Such special education monitor shall ensure that the  
28 implementation of any settlement, decision, order, or judgment, pursuant  
29 to item (i) of clause (b) of subparagraph three of paragraph b of subdivi-  
30 vision one of section forty-four hundred two of this article, is timely  
31 implemented. Such special education monitor shall be empowered and  
32 directed to take all actions necessary to effectuate such timely imple-  
33 mentation, including, but not limited to, reviewing, evaluating, examin-  
34 ing into, inspecting and auditing such district's implementation poli-  
35 cies, procedures, practices, protocols, and systems, and compelling any  
36 changes to such policies, procedures, practices, protocols, and systems  
37 that the special education monitor deems necessary to ensure compliance  
38 with such timeline or schedule. The special education monitor shall be  
39 empowered to direct and compel such district to implement immediately  
40 any such settlement, decision, order or judgement in accordance with the  
41 timelines established by this article. And it is further provided that  
42 if such district fails to make any payment at the direction of the  
43 special education monitor, the commissioner shall, in his or her sole  
44 discretion: (a) withhold from such district its share of the public  
45 money of the state pursuant to section three hundred six of this chap-  
46 ter; (b) withhold from such district all or a portion of its share of  
47 funds allocated to it pursuant to 20 U.S.C. sections 1411 and 1413 of  
48 the individuals with disabilities act; (c) report such district's non-  
49 compliance to the United States department of education; and (d) take  
50 any other action the commissioner deems appropriate pursuant to the  
51 powers vested in the commissioner by this chapter.

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

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

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

16 § 4. This act shall take effect immediately; provided, however, that  
17 the amendments to clause (b) of subparagraph 3 of paragraph b of subdi-  
18 vision 1 of section 4402 of the education law, made by section one of  
19 this act, shall not affect the expiration of such clause and shall  
20 expire therewith; provided, further, that the amendments to subdivision  
21 1 of section 4404 of the education law, made by section three of this  
22 act, shall not affect the expiration of such subdivision and shall  
23 expire therewith.