

STATE OF NEW YORK

4104

2021-2022 Regular Sessions

IN ASSEMBLY

February 1, 2021

Introduced by M. of A. BENEDETTO, BUTTENSCHON, GRIFFIN, HAWLEY -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to replacing the words handicapping conditions with the word disabilities

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

1 Section 1. The article heading of article 89 of the education law, as
2 added by chapter 853 of the laws of 1976, is amended to read as follows:

3 CHILDREN WITH [~~HANDICAPPING-CONDITIONS~~] DISABILITIES

4 § 2. The section heading and subdivision 2 of section 4404 of the
5 education law, as amended by chapter 53 of the laws of 1990, are amended
6 to read as follows:

7 Appeal procedures for children with [~~handicapping-conditions~~] disabil-
8 ities.

9 2. Review by state review officer. A state review officer of the
10 education department shall review and may modify, in such cases and to
11 the extent that the review officer deems necessary, in order to properly
12 effectuate the purposes of this article, any determination of the impar-
13 tial hearing officer relating to the determination of the nature of a
14 child's [~~handicapping-condition~~] disability, selection of an appropriate
15 special education program or service and the failure to provide such
16 program and require such board to comply with the provisions of such
17 modification. The commissioner shall adopt regulations governing the
18 practice and procedure in such appeals to the state review officer;
19 provided, however, that in no event shall any fee or charge whatsoever
20 be imposed for any appeal taken pursuant to this subdivision. The state
21 review officer is empowered to make all orders which are proper or
22 necessary to give effect to the decision of the review officer.

23 § 3. The section heading, the opening paragraph of subdivision 1 and
24 subdivisions 2, 3 and 5 of section 4405 of the education law, the
25 section heading and subdivision 2 as amended by chapter 53 of the laws

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

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1 of 1986, the opening paragraph of subdivision 1 and subdivisions 3 and 5
2 as amended by chapter 53 of the laws of 1990, paragraphs a and b of
3 subdivision 3 as amended by chapter 57 of the laws of 1993, paragraph c
4 of subdivision 3 as amended by chapter 82 of the laws of 1995 and para-
5 graph d of subdivision 3 as amended by chapter 260 of the laws of 1993,
6 are amended to read as follows:

7 Computing financial responsibility for special educational services
8 for certain children with [~~handicapping conditions~~] disabilities.

9 Maintenance for children with [~~handicapping conditions~~] disabilities
10 in residential schools under the provisions of this article or state
11 schools under the provisions of articles eighty-seven and eighty-eight
12 of this chapter.

13 2. Transportation expense. The transportation expense of each child
14 with a [~~handicapping condition~~] disability shall be aidable in accord-
15 ance with subdivision seven of section thirty-six hundred two of this
16 chapter; provided, however, that for the school year commencing July
17 first, nineteen hundred seventy-six, school districts shall be appor-
18 tioned ninety per centum of the estimated amount of its approved costs
19 of such year for the transportation of children with [~~handicapping~~
20 ~~conditions~~] disabilities whose transportation was formerly provided
21 under a family court order and is now a charge upon the school district,
22 subject to the adjustment of any errors after the actual costs are
23 ascertained.

24 3. Computing state financial responsibility for operating expenses for
25 certain children with [~~handicapping conditions~~] disabilities.

26 a. In addition to any other apportionments under the provisions of
27 this chapter, there shall be apportioned to each applicable school
28 district for each child with a [~~handicapping condition~~] disability in
29 attendance in a state school under the provisions of paragraph d of
30 subdivision two of section forty-four hundred one of this article or an
31 approved program under the provisions of paragraphs e, f, g, h, i and l
32 of such subdivision two, the product of such attendance, computed in
33 accordance with regulations of the commissioner, and the excess cost
34 aid: an amount computed by multiplying the excess cost, as defined in
35 subdivision six of section forty-four hundred one of this article by the
36 excess cost aid ratio defined in subdivision seven of this section.

37 b. In addition to the apportionment provided to a school district
38 pursuant to paragraph a of this subdivision for the attendance of a
39 child with a [~~handicapping condition~~] disability in a state school under
40 the provisions of paragraph d of subdivision two of section forty-four
41 hundred one of this article, for each such child in attendance in such
42 school prior to July first, nineteen hundred ninety, there shall be
43 apportioned an additional amount. Such amount shall equal the product of
44 the taper aidable cost multiplied by the taper aid ratio. The taper
45 aidable cost shall equal the positive remainder resulting when (i) the
46 apportionment attributable to such child pursuant to paragraph a of this
47 subdivision is subtracted from (ii) the product of such child's attend-
48 ance and the tuition for the state school such child attends. The taper
49 aid ratio shall equal the quotient, computed to three decimals without
50 rounding, resulting when the positive remainder of one minus the
51 combined wealth ratio, as defined in subdivision [~~one~~] three of section
52 thirty-six hundred two of this chapter is divided by seventy-five one-
53 hundredths. Such aid ratio shall not be less than zero nor more than
54 one.

1 c. The apportionments to each school district pursuant to this subdivi-
2 sion shall be based on excess cost paid and attendance during the base
3 year.

4 d. Notwithstanding sections thirty-six hundred seven and thirty-six
5 hundred nine-a of this chapter, apportionments pursuant to this subdivi-
6 sion shall be paid to school districts upon submission of reports of
7 attendance and approved tuition expenditures filed in a format
8 prescribed by the commissioner and shall be paid from the annual appor-
9 tionment of public moneys for the support of public schools in accord-
10 ance with section thirty-six hundred nine-b of this chapter.

11 5. The commissioner shall annually determine the tuition rate and the
12 commissioner of social services shall annually determine the maintenance
13 rate for special services or programs provided during the months of July
14 and August for children with [~~handicapping conditions~~] ~~disabilities~~
15 entitled to attend public schools without the payment of tuition pursu-
16 ant to section thirty-two hundred two of this chapter. The commissioner
17 of education shall annually determine the tuition rate, maintenance rate
18 and the medical services rate, if applicable, for such children attend-
19 ing the New York state school for the blind or the New York state school
20 for the deaf during the months of July and August. Such rates shall be
21 determined in conformance with the reimbursement methodologies estab-
22 lished pursuant to subdivision four of this section and shall be subject
23 to the approval of the division of the budget. Rates shall be determined
24 for all special services or programs as defined in section forty-four
25 hundred one of this chapter and offered during July and August.

26 § 4. The section heading and subdivision 1 of section 4407 of the
27 education law, the section heading as amended by chapter 53 of the laws
28 of 1986, subdivision 1 as amended by chapter 82 of the laws of 1985 and
29 paragraph a of subdivision 1 as amended by chapter 53 of the laws of
30 1989, are amended to read as follows:

31 Special provisions relating to instruction of certain children with
32 [~~handicapping conditions~~] ~~disabilities~~. 1. [~~a-~~] When it shall appear to
33 the satisfaction of the department that a child with a [~~handicapping~~
34 ~~condition~~] ~~disability~~ is not receiving instruction because there are no
35 appropriate public or private facilities for instruction of such a child
36 within this state because of the unusual type of the handicap or combi-
37 nation of handicaps as certified by the commissioner, the school
38 district of which each such pupil is a resident is authorized to
39 contract with an educational facility located outside the state, which,
40 in the judgment of the department, can meet the needs of such child for
41 instruction. Contracts, rates, payments and reimbursements pursuant to
42 this section shall be in accordance with section forty-four hundred five
43 of this article.

44 § 5. The section heading, paragraphs a, b and d of subdivision 4 and
45 paragraph a of subdivision 5 of section 4410 of the education law, as
46 added by chapter 243 of the laws of 1989, paragraph a of subdivision 4
47 and subparagraph (iii) of paragraph a of subdivision 5 as amended by
48 chapter 705 of the laws of 1992 and paragraph d of subdivision 4 as
49 amended by chapter 520 of the laws of 1993, are amended to read as
50 follows:

51 Special education services and programs for preschool children with
52 [~~handicapping conditions~~] ~~disabilities~~.

53 a. The board shall identify each preschool child suspected of having a
54 [~~handicapping condition~~] ~~disability~~ who resides within the district and,
55 upon referral to the committee shall, with the consent of the parent,
56 provide for an evaluation related to the suspected disability of the

1 child. The board shall make such identification in accordance with regu-
2 lations of the commissioner.

3 b. Each board shall, within time limits established by the commission-
4 er, be responsible for providing the parent of a preschool child
5 suspected of having a [~~handicapping condition~~] disability with a list of
6 approved evaluators in the geographic area. The parent may select the
7 evaluator from such list. Each board shall provide for dissemination of
8 the list and other information to parents at appropriate sites including
9 but not limited to pre-kindergarten, day care, head start programs and
10 early childhood direction centers, pursuant to regulations of the
11 commissioner.

12 d. The approved evaluator shall, following completion of the evalu-
13 ation, transmit the documentation of the evaluation to all members of
14 the committee and to a person designated by the municipality in which
15 the preschool child resides. Each municipality shall notify the approved
16 evaluators in the geographic area of the person so designated. The
17 summary report of the evaluation shall be transmitted in English and
18 when necessary, also in the dominant language or other mode of communi-
19 cation of the parent; the documentation of the evaluation shall be tran-
20 smitted in English and, upon the request of the parent, also in the
21 dominant language or other mode of communication of the parent, unless
22 not clearly feasible to do so pursuant to regulations promulgated by the
23 commissioner. Costs of translating the summary report and documentation
24 of the evaluation shall be separately reimbursed. If, based on the eval-
25 uation, the committee finds that a child has a [~~handicapping condition~~]
26 disability, the committee shall use the documentation of the evaluation
27 to develop an individualized education program for the preschool child.
28 Nothing herein shall prohibit an approved evaluator from at any time
29 providing the parent with a copy of the documentation of the evaluation
30 provided to the committee.

31 a. The committee shall review all relevant information, including but
32 not limited to:

33 (i) information presented by the parent and the child's teacher or
34 teachers pertinent to each child suspected of having a [~~handicapping~~
35 ~~condition~~] disability;

36 (ii) the results of all evaluations; and

37 (iii) information provided by the appropriate licensed or certified
38 professional designated by the agency that is charged with the responsi-
39 bility for the child pursuant to applicable federal laws, if any.

40 § 6. The section heading, paragraph f of subdivision 1 and subdivi-
41 sions 2, 3 and 4 of section 4410-a of the education law, as added by
42 chapter 53 of the laws of 1990, paragraph f of subdivision 1 as amended
43 by chapter 474 of the laws of 1996, subdivisions 2, 3 and 4 as amended
44 by chapter 280 of the laws of 1994 and such section as renumbered by
45 chapter 705 of the laws of 1992, are amended to read as follows:

46 Responsibility for certain temporary-resident preschool children with
47 [~~handicapping conditions~~] disabilities.

48 f. "Preschool child with a disability" shall mean a child eligible for
49 services pursuant to section forty-four hundred ten of this chapter. [~~A~~
50 ~~"preschool child with a handicapping condition" means a preschool child~~
51 ~~with a disability.~~]

52 2. School district evaluation and placement responsibility. The
53 school district of current location of a foster care or homeless child
54 or child in residential care shall be responsible for the evaluation and
55 placement procedures prescribed for a preschool child suspected of
56 having a [~~handicapping condition~~] disability pursuant to section forty-

1 four hundred ten of this chapter. In issuing its written notice of
2 determination of services, the board of education of such school
3 district shall identify the municipality of residence of a preschool
4 child with a [~~handicapping condition~~] disability who is a foster care or
5 homeless child or child in residential care. Such notice of determi-
6 nation shall be transmitted to both the municipality of residence and
7 the municipality of current location.

8 3. Contract and payment responsibility. The municipality of current
9 location shall be the municipality of record for a preschool child with
10 a [~~handicapping condition~~] disability who is a foster care or homeless
11 child or child in residential care for the purposes of section forty-
12 four hundred ten of this chapter provided, however, that, notwithstand-
13 ing the provision of paragraph b of subdivision eleven of such section,
14 the state shall reimburse one hundred percent of the approved costs paid
15 by such municipality which shall be offset by the local contribution due
16 pursuant to subdivision four of this section.

17 4. Local contribution. The municipality of residence shall be finan-
18 cially responsible for the local contribution which shall equal that
19 portion of the approved costs of services to a foster care or homeless
20 child or child in residential care with a [~~handicapping condition~~] disa-
21 bility which would not be reimbursed pursuant to the schedule set out in
22 paragraph b of subdivision eleven of section forty-four hundred ten of
23 this chapter. The commissioner shall certify to the comptroller the
24 amount of the local contribution owed by each municipality to the state.
25 The comptroller shall deduct the amount of such local contribution first
26 from any moneys due the municipality pursuant to such section and then
27 from any other moneys due or to become due such municipality.

28 § 7. This act shall take effect immediately.