

# 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.

LBD02618-01-1

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 vision 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.