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:

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

CHILDREN WITH [~~HANDICAPPING CONDITIONS~~] **DISABILITIES**

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

Appeal procedures for children with [~~handicapping conditions~~] **disabilities**.

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

§ 3. The section heading, the opening paragraph of subdivision 1 and subdivisions 2, 3 and 5 of section 4405 of the education law, the 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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of 1986, the opening paragraph of subdivision 1 and subdivisions 3 and 5 as amended by chapter 53 of the laws of 1990, paragraphs a and b of subdivision 3 as amended by chapter 57 of the laws of 1993, paragraph c of subdivision 3 as amended by chapter 82 of the laws of 1995 and paragraph d of subdivision 3 as amended by chapter 260 of the laws of 1993, are amended to read as follows:

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

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

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

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

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

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

c. The apportionments to each school district pursuant to this subdivision shall be based on excess cost paid and attendance during the base year.

d. Notwithstanding sections thirty-six hundred seven and thirty-six hundred nine-a of this chapter, apportionments pursuant to this subdivision shall be paid to school districts upon submission of reports of attendance and approved tuition expenditures filed in a format prescribed by the commissioner and shall be paid from the annual apportionment of public moneys for the support of public schools in accordance with section thirty-six hundred nine-b of this chapter.

5. The commissioner shall annually determine the tuition rate and the commissioner of social services shall annually determine the maintenance rate for special services or programs provided during the months of July and August for children with [~~handicapping conditions~~] **disabilities** entitled to attend public schools without the payment of tuition pursuant to section thirty-two hundred two of this chapter. The commissioner of education shall annually determine the tuition rate, maintenance rate and the medical services rate, if applicable, for such children attending the New York state school for the blind or the New York state school for the deaf during the months of July and August. Such rates shall be determined in conformance with the reimbursement methodologies established pursuant to subdivision four of this section and shall be subject to the approval of the division of the budget. Rates shall be determined for all special services or programs as defined in section forty-four hundred one of this chapter and offered during July and August.

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

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

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

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

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

child. The board shall make such identification in accordance with regulations of the commissioner.

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

d. The approved evaluator shall, following completion of the evaluation, transmit the documentation of the evaluation to all members of the committee and to a person designated by the municipality in which the preschool child resides. Each municipality shall notify the approved evaluators in the geographic area of the person so designated. The summary report of the evaluation shall be transmitted in English and when necessary, also in the dominant language or other mode of communication of the parent; the documentation of the evaluation shall be transmitted in English and, upon the request of the parent, also in the dominant language or other mode of communication of the parent, unless not clearly feasible to do so pursuant to regulations promulgated by the commissioner. Costs of translating the summary report and documentation of the evaluation shall be separately reimbursed. If, based on the evaluation, the committee finds that a child has a [~~handicapping condition~~] **disability**, the committee shall use the documentation of the evaluation to develop an individualized education program for the preschool child. Nothing herein shall prohibit an approved evaluator from at any time providing the parent with a copy of the documentation of the evaluation provided to the committee.

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

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

(ii) the results of all evaluations; and

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

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

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

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

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

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

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

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

§ 7. This act shall take effect immediately.