

STATE OF NEW YORK

5110

2021-2022 Regular Sessions

IN ASSEMBLY

February 11, 2021

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

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 Assem-
bly, 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
22 population of one million or more a parent's appeal of such recommenda-
23 tion shall be resolved, either through the granting or denial of the
24 appeal by an impartial hearing officer, or by a state review officer, or

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

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1 the signing of a settlement agreement between the parent or person in
2 parental relation and the board of education of the school district in
3 the city having a population of one million or more or a state agency,
4 within any applicable time periods prescribed by federal law. Provided,
5 further, that nothing in this item shall be deemed to prohibit any
6 parent or the school district from seeking judicial review by any court
7 of competent jurisdiction.

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

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

21 Notwithstanding any other provision of law, rule or regulation to the
22 contrary, in a school district in a city having a population of one
23 million or more, upon the decision of an impartial hearing officer,
24 state review officer or a court finding that a unilateral parental
25 placement was appropriate and that tuition payment should be granted for
26 such unilateral placement, such tuition payment shall continue in
27 future years, at the same percentage of the total tuition cost as the
28 previous year's payment, until the committee on special education deter-
29 mines the child's needs can be met in another public or approved private
30 school program and revises the child's individualized education program
31 to recommend such placement; provided however that where the parent or
32 person in parental relation brings a due process proceeding to challenge
33 such revised placement, the unilateral parental placement for which
34 tuition payment was granted shall be the pendency placement, as provided
35 in subdivision four of this section.

36 § 3. This act shall take effect immediately; provided, however, that
37 the amendments to clause (b) of subparagraph 3 of paragraph b of subdi-
38 vision 1 of section 4402 of the education law, made by section one of
39 this act, shall not affect the expiration of such clause and shall
40 expire therewith; provided, further, that the amendments to subdivision
41 1 of section 4404 of the education law, made by section two of this act,
42 shall not affect the expiration of such subdivision and shall expire
43 therewith.