

STATE OF NEW YORK

1988--A

2021-2022 Regular Sessions

IN SENATE

January 16, 2021

Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Disabilities -- recommit-
ted to the Committee on Disabilities in accordance with Senate Rule 6,
sec. 8 -- 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 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

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 subdi-
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.