

# STATE OF NEW YORK

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7258--A

2023-2024 Regular Sessions

## IN ASSEMBLY

May 16, 2023

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Introduced by M. of A. BENEDETTO -- read once and referred to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. Subdivisions 3 and 4 of section 4401 of the education law, subdivi-  
5 sion 3 as amended by chapter 563 of the laws of 1980 and subdivision 4  
6 as amended by chapter 367 of the laws of 1979, are amended to read as  
7 follows:

8 3. "Maintenance". For purposes of this article "maintenance" shall  
9 mean the amount charged for room and board and allocable debt service as  
10 determined by the commissioner for the living unit of the residential  
11 facility by a residential school and such reasonable medical expenses  
12 actually and necessarily incurred by a [~~handicapped~~] child with disabili-  
13 ties while actually in attendance at a residential school, provided  
14 that such medical expenses shall be for diagnostic, evaluative, educa-  
15 tionally related, and emergency care services as defined by regulations  
16 of the commissioner. Such amount, which shall not include expenses  
17 which are otherwise reimbursable to a residential facility by a federal,  
18 state or local agency, shall be approved by the commissioner of social  
19 services and the director of the division of the budget and shall not be  
20 otherwise payable or reimbursable.

21 4. "Transportation expense." For the purposes of determining transpor-  
22 tation aid pursuant to this article, "transportation expense" shall mean  
23 any cost incurred by the school district for the transportation of a  
24 [~~handicapped~~] child with disabilities pursuant to the provisions of

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

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1 subdivision four of section forty-four hundred two of this article,  
2 notwithstanding any minimum or maximum aidable limits established by  
3 other provisions of the education law or pursuant to regulations of the  
4 commissioner or school district, allowed pursuant to the applicable  
5 provisions of parts two and three of article seventy-three of this chap-  
6 ter, provided, however, that such transportation shall not be in excess  
7 of fifty miles from the home of such pupil to the appropriate special  
8 service or program unless the commissioner shall certify that no appro-  
9 priate non-residential special service or program is available within  
10 such fifty miles, and that the commissioner may establish by regulation  
11 a maximum number of trips between a pupil's home and the private resi-  
12 dential school which provides special services or programs to such  
13 pupil. Such cost shall include the cost of joint or regional transporta-  
14 tion provided by school districts or boards of cooperative educational  
15 services for such purposes and subject to the same limits.

16 § 3. Clauses (a),(e) and (g) of subparagraph 3 of paragraph b of  
17 subdivision 1 of section 4402 of the education law, clause (a) as  
18 amended by chapter 53 of the laws of 1991 and clauses (e) and (g) as  
19 amended by chapter 53 of the laws of 1986, are amended to read as  
20 follows:

21 (a) Obtain, review and evaluate all relevant information, including  
22 but not limited to that presented by the parent, person in parental  
23 relationship and teacher, pertinent to each child suspected of or iden-  
24 tified as having a [~~handicapping condition~~] disability, including the  
25 results of a physical examination performed in accordance with sections  
26 nine hundred three, nine hundred four and nine hundred five of this  
27 chapter and, where determined to be necessary by a school psychologist,  
28 an appropriate psychological evaluation performed by a qualified private  
29 or school psychologist, and other appropriate assessments as necessary  
30 to ascertain the physical, mental, emotional and cultural-educational  
31 factors which may contribute to the suspected or identified [~~handicap-~~  
32 ~~ping condition~~] disability, and all other school data which bear on the  
33 child's progress, including, where appropriate, observation of classroom  
34 performance.

35 (e) Make, or have made, periodic evaluations of the adequacy of  
36 programs, services and facilities for children with [~~handicapping condi-~~  
37 ~~tions~~] disabilities.

38 (g) Provide for the transmittal of information by the board of educa-  
39 tion, including such test results and evaluations as the committee may  
40 have collected, to the home district of the child with a [~~handicapping~~  
41 ~~condition~~] disability in cases where the home school district has  
42 contracted for the child's education with another school district or  
43 board of cooperative educational services.

44 § 4. Subparagraph 1 of paragraph b of subdivision 2 of section 4402 of  
45 the education law, as amended by chapter 642 of the laws of 1987, is  
46 amended to read as follows:

47 (1) Provided, however, that in each school district the board of  
48 education or trustees of such district are hereby authorized and  
49 empowered to contract for such special services or programs as such  
50 board shall deem reasonable and appropriate for such [~~handicapped~~] chil-  
51 dren with disabilities after consideration of the recommendations of the  
52 local committee on special education and the hearing officer if a hear-  
53 ing is held pursuant to section forty-four hundred four of this chapter  
54 and, where specified in subparagraph two of this paragraph, with the  
55 approval of the commissioner after a finding by him that no appropriate

1 special services or programs specified in paragraphs a through d and k  
2 of subdivision two of section forty-four hundred one are available.

3 § 5. Paragraphs a and d of subdivision 4 and subdivision 5 of section  
4 4402 of the education law, paragraph a of subdivision 4 as amended by  
5 chapter 470 of the laws of 1977, paragraph d of subdivision 4 as amended  
6 by chapter 646 of the laws of 1992, subdivision 5 as separately amended  
7 by chapters 53 and 683 of the laws of 1986, are amended to read as  
8 follows:

9 a. The board of education or the board of trustees of each school  
10 district shall provide suitable transportation to and from special  
11 classes or programs, with the exception of residential facilities for  
12 the care and treatment of children with [~~handicapping conditions~~] disa-  
13 bilities under the jurisdiction of an agency of the state other than the  
14 state department of education, as specified in subdivisions two and four  
15 of section forty-four hundred one of this article.

16 d. Notwithstanding any other provision of law, such board shall  
17 provide suitable transportation up to a distance of fifty miles to and  
18 from a nonpublic school which a child with a [~~handicapping condition~~]  
19 disability attends if such child has been so identified by the local  
20 committee on special education and such child attends such school for  
21 the purpose of receiving services or programs similar to special educa-  
22 tional programs recommended for such child by the local committee on  
23 special education.

24 5. Notwithstanding any provisions of this article to the contrary or  
25 the provisions of section thirty-two hundred two of this chapter, a  
26 child with a [~~handicapping condition~~] disability who reaches the age of  
27 twenty-one during (a) the period commencing with the first day of July  
28 and ending on the thirty-first day of August shall if otherwise eligi-  
29 ble, be entitled to continue in a July and August program until the  
30 thirty-first day of August or until the termination of the summer  
31 program, whichever shall first occur; or (b) the period commencing on  
32 the first day of September and ending on the thirtieth day of June shall  
33 be entitled to continue in such program until the thirtieth day of June  
34 or until the termination of the school year, whichever shall first  
35 occur.

36 § 6. Subdivisions 1, 2, 4, 8, 14 and 16 of section 4403 of the educa-  
37 tion law, subdivision 1 as amended by chapter 470 of the laws of 1977,  
38 subdivision 2 as amended by chapter 53 of the laws of 1986, subdivision  
39 4 as amended by chapter 479 of the laws of 2022, subdivision 8 as  
40 amended by chapter 273 of the laws of 1986, and subdivisions 14 and 16  
41 as amended by section 4 of part E of chapter 501 of the laws of 2012,  
42 are amended to read as follows:

43 1. To maintain a statistical summary of the number of [~~handicapped~~]  
44 children with disabilities who reside within the state and the nature of  
45 their [~~handicaps~~] disabilities and to use all means and measures neces-  
46 sary to adequately meet the physical and educational needs of such chil-  
47 dren, as provided by law.

48 2. To stimulate all private and public efforts designed to relieve,  
49 care for or educate children with [~~handicapping conditions~~] disabilities  
50 and to coordinate such efforts with the work and function of govern-  
51 mental agencies.

52 4. To periodically inspect, report on the adequacy of and make recom-  
53 mendations concerning instructional programs or special services for all  
54 children with [~~handicapping conditions~~] disabilities who reside in or  
55 attend any state operated or state financed social service facilities,

1 youth facilities, health facilities, mental health, and developmental  
2 disabilities facilities or state correctional facilities.

3 8. To develop and distribute a handbook for parents of [~~handicapped~~]  
4 children with disabilities and the members of committees and subcommit-  
5 tees on special education, which handbook shall explain, in layman  
6 terms, the financial and educational obligations of the state, the coun-  
7 ty or city, the home school district, the committee on special educa-  
8 tion, and the parent or legal guardian of a [~~handicapped~~] child with  
9 disabilities, the special services or programs available pursuant to  
10 this article, and the legal procedures available to an aggrieved parent  
11 or legal guardian of a [~~handicapped~~] child with disabilities.

12 14. To provide technical assistance to school districts to assist in  
13 the adaptation of curriculum for the instruction of children with  
14 [~~handicapping conditions~~] disabilities.

15 16. Commencing with the nineteen hundred eighty-seven--eighty-eight  
16 school year, to provide for instruction during the months of July and  
17 August of students with [~~handicapping conditions~~] disabilities who have  
18 received state appointments pursuant to article eighty-five, eighty-sev-  
19 en or eighty-eight of this chapter and whose [~~handicapping conditions~~]  
20 disabilities, in the judgment of the commissioner, are severe enough to  
21 exhibit the need for a structured learning environment of twelve months  
22 duration to maintain developmental levels, by making such appointments  
23 for twelve months; provided that the initial term of appointment of a  
24 student with a [~~handicapping condition~~] disability who is the minimum  
25 age eligible for such a state appointment shall not commence during the  
26 months of July or August.

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

30 Appeal procedures for children with [~~handicapping conditions~~] disabil-  
31 ities.

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

46 § 8. The section heading, the opening paragraph of subdivision 1 and  
47 subdivisions 2, 3 and 5 of section 4405 of the education law, the  
48 section heading and subdivision 2 as amended by chapter 53 of the laws  
49 of 1986, the opening paragraph of subdivision 1 and subdivisions 3 and 5  
50 as amended by chapter 53 of the laws of 1990, paragraphs a and b of  
51 subdivision 3 as amended by chapter 57 of the laws of 1993, paragraph c  
52 of subdivision 3 as amended by chapter 82 of the laws of 1995 and para-  
53 graph d of subdivision 3 as amended by chapter 260 of the laws of 1993,  
54 are amended to read as follows:

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

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

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

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

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

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

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

50 d. Notwithstanding sections thirty-six hundred seven and thirty-six  
51 hundred nine-a of this chapter, apportionments pursuant to this subdivi-  
52 sion shall be paid to school districts upon submission of reports of  
53 attendance and approved tuition expenditures filed in a format  
54 prescribed by the commissioner and shall be paid from the annual appor-  
55 tionment of public moneys for the support of public schools in accord-  
56 ance 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.

§ 9. Subdivisions 1, 2, 4 and 5 of section 4406 of the education law, subdivisions 1 and 2 as amended and subdivisions 4 and 5 as added by chapter 683 of the laws of 1986, are amended to read as follows:

1. When the family court pursuant to section two hundred thirty-six of the family court act shall issue an order to provide for educational services, including transportation, tuition or maintenance of such children with ~~[handicapping conditions]~~ disabilities, the commissioner ~~[of education]~~, if he approves such order, shall issue a certificate to such effect in duplicate, one of which shall be filed with the clerk of the board of supervisors or other governing elective body of the county or chief fiscal officer of the city of New York and one in the office of the commissioner ~~[of education]~~. Refusal of the commissioner to approve such order may be reviewed only in accordance with the provisions of article seventy-eight of the civil practice law and rules.

2. One-half of the cost of providing such services, as provided in subdivision one of this section, as certified by the commissioner ~~[of education]~~, is hereby made a charge against the county or the city of New York in which any such ~~[handicapped]~~ child with disabilities resides, and the remaining one-half of the cost thereof shall be paid by the state out of moneys appropriated therefor. All claims for services rendered and for supplies furnished and for other expenses incurred in providing such services, shall be paid in the first instance by the board of supervisors or other governing elective body of the county or chief fiscal officer of the city of New York in which such ~~[handicapped]~~ child with disabilities resides, upon vouchers presented and audited in the same manner as in the case of other claims against the county or the city of New York.

4. The commissioner is hereby authorized after consultation with an advisory task force to be appointed by the commissioner, appropriately representative of consumers and providers of such services, to establish program and expenditure guidelines and standards for the provision of special services or programs as defined in section forty-four hundred one of this article for children with ~~[handicapping conditions]~~ disabilities who are under the age of five and are not entitled to attend public schools without the payment of tuition pursuant to section thirty-two hundred two of this chapter.

5. a. Each county and the city of New York may perform a fiscal audit of such services or programs within their respective county or city ordered by the family court pursuant to section two hundred thirty-six of the family court act for preschool age children with ~~[handicapping conditions]~~ disabilities.

b. Payments made pursuant to this section by the county or the city of New York shall, upon the conclusion of the July first to June thirtieth school year for which such payment was made, be subject to audit against the actual difference between such audited expenditures and revenues. Any overpayments made shall be refunded to such county or city or such county or city shall withhold the amount of such overpayment from any other payments due to the claimant and shall report such overpayments to the commissioner.

§ 10. 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]~~ disability or combination of ~~[handicaps]~~ disabilities 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.

§ 11. 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

1 when necessary, also in the dominant language or other mode of communi-  
2 cation of the parent; the documentation of the evaluation shall be tran-  
3 smitted in English and, upon the request of the parent, also in the  
4 dominant language or other mode of communication of the parent, unless  
5 not clearly feasible to do so pursuant to regulations promulgated by the  
6 commissioner. Costs of translating the summary report and documentation  
7 of the evaluation shall be separately reimbursed. If, based on the eval-  
8 uation, the committee finds that a child has a [~~handicapping condition~~]  
9 ~~disability~~, the committee shall use the documentation of the evaluation  
10 to develop an individualized education program for the preschool child.  
11 Nothing herein shall prohibit an approved evaluator from at any time  
12 providing the parent with a copy of the documentation of the evaluation  
13 provided to the committee.

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

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

19 (ii) the results of all evaluations; and

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

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

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

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

35 2. School district evaluation and placement responsibility. The  
36 school district of current location of a foster care or homeless child  
37 or child in residential care shall be responsible for the evaluation and  
38 placement procedures prescribed for a preschool child suspected of  
39 having a [~~handicapping condition~~] ~~disability~~ pursuant to section forty-  
40 four hundred ten of this chapter. In issuing its written notice of  
41 determination of services, the board of education of such school  
42 district shall identify the municipality of residence of a preschool  
43 child with a [~~handicapping condition~~] ~~disability~~ who is a foster care or  
44 homeless child or child in residential care. Such notice of determi-  
45 nation shall be transmitted to both the municipality of residence and  
46 the municipality of current location.

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



1     4. Local contribution. The municipality of residence shall be finan-  
2     cially responsible for the local contribution which shall equal that  
3     portion of the approved costs of services to a foster care or homeless  
4     child or child in residential care with a [~~handicapping condition~~] disa-  
5     bility which would not be reimbursed pursuant to the schedule set out in  
6     paragraph b of subdivision eleven of section forty-four hundred ten of  
7     this chapter. The commissioner shall certify to the comptroller the  
8     amount of the local contribution owed by each municipality to the state.  
9     The comptroller shall deduct the amount of such local contribution first  
10    from any moneys due the municipality pursuant to such section and then  
11    from any other moneys due or to become due such municipality.  
12    § 13. This act shall take effect immediately.