

# STATE OF NEW YORK

9384

## IN ASSEMBLY

March 6, 2024

Introduced by M. of A. BICHOTTE HERMELYN -- 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 Assembly, 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 an appeal by the parent or person in  
23 parental relation of such recommendation shall be resolved, either  
24 through the granting or denial of the appeal by an impartial hearing  
25 officer, or by a state review officer, or the signing of a settlement  
26 agreement between the parent or person in parental relation and the  
27 board of education of the school district in the city having a popu-

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

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1 lation of one million or more or a state agency, within any applicable  
2 time periods prescribed by federal law. Provided, further, that nothing  
3 in this item shall be deemed to prohibit any parent, person in parental  
4 relation or school district from seeking judicial review by any court of  
5 competent jurisdiction.

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

20 § 2. Section 4403 of the education law is amended by adding a new  
21 subdivision 22 to read as follows:

22 22. The commissioner shall ensure that the implementation of any  
23 settlement, decision, order, or judgment, pursuant to item (i) of clause  
24 (b) of subparagraph three of paragraph b of subdivision one of section  
25 forty-four hundred two of this article, is timely implemented. The  
26 commissioner shall be empowered to take all actions necessary to effec-  
27 tuate such timely implementation, including, but not limited to, direct-  
28 ing and compelling such district to implement immediately any such  
29 settlement, decision, order or judgment in accordance with the timelines  
30 established by this article. And it is further provided that if such  
31 district fails to timely make any payment required by such settlement,  
32 decision, order or judgment, the commissioner shall, in his or her sole  
33 discretion: (a) withhold from such district its share of the public  
34 money of the state pursuant to section three hundred six of this chap-  
35 ter; (b) withhold from such district all or a portion of its share of  
36 funds allocated to it pursuant to 20 U.S.C. sections 1411 and 1413 of  
37 the individuals with disabilities act; (c) impose up to nine percent  
38 interest per annum accruing from the date on which payment of such  
39 settlement, decision, order or judgment is late and continuing until it  
40 is fully paid, which shall be payable to the parent or person in  
41 parental relation; (d) report such district's non-compliance to the  
42 United States department of education; and/or (e) take any other action  
43 the commissioner deems appropriate pursuant to the powers vested in the  
44 commissioner by this chapter.

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

47 Notwithstanding any other provision of law, rule or regulation to the  
48 contrary, in a school district in a city having a population of one  
49 million or more, upon the settlement of an impartial hearing or appeal  
50 therefrom, or upon the decision of an impartial hearing officer, state  
51 review officer or a court finding that a unilateral parental placement  
52 was appropriate and that tuition payment and any other services and  
53 costs should be granted for such unilateral placement, such settlement  
54 agreement, decision, order or judgment shall continue in future years,  
55 at the same percentage of the total tuition, services, and costs as the  
56 previous year's payment, until the committee on special education deter-

1 mines the child's needs can be met in another public or approved private  
2 school program and revises the child's individualized education program  
3 to recommend such placement; provided however that where the parent or  
4 person in parental relation brings a due process proceeding to challenge  
5 such revised placement, the unilateral parental placement for which  
6 tuition payment and any other services or costs were granted or settled  
7 upon, shall be the pendency placement, as provided in subdivision four  
8 of this section.

9 § 4. This act shall take effect immediately; provided, however, that  
10 the amendments to clause (b) of subparagraph 3 of paragraph b of subdi-  
11 vision 1 of section 4402 of the education law, made by section one of  
12 this act, shall not affect the expiration of such clause and shall  
13 expire therewith; provided, further, that the amendments to subdivision  
14 1 of section 4404 of the education law, made by section three of this  
15 act, shall not affect the expiration of such subdivision and shall  
16 expire therewith.