

# STATE OF NEW YORK

4041--A

Cal. No. 406

2023-2024 Regular Sessions

## IN SENATE

February 2, 2023

Introduced by Sens. MAYER, GOUNARDES, JACKSON, LIU, MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

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

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

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4. "Transportation expense." For the purposes of determining transportation aid pursuant to this article, "transportation expense" shall mean any cost incurred by the school district for the transportation of a ~~[handicapped]~~ child with disabilities pursuant to the provisions of subdivision four of section forty-four hundred two of this article, notwithstanding any minimum or maximum aidable limits established by other provisions of the education law or pursuant to regulations of the commissioner or school district, allowed pursuant to the applicable provisions of parts two and three of article seventy-three of this chapter, provided, however, that such transportation shall not be in excess of fifty miles from the home of such pupil to the appropriate special service or program unless the commissioner shall certify that no appropriate non-residential special service or program is available within such fifty miles, and that the commissioner may establish by regulation a maximum number of trips between a pupil's home and the private residential school which provides special services or programs to such pupil. Such cost shall include the cost of joint or regional transportation provided by school districts or boards of cooperative educational services for such purposes and subject to the same limits.

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

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

(e) Make, or have made, periodic evaluations of the adequacy of programs, services and facilities for children with ~~[handicapping conditions]~~ disabilities.

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

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

(1) Provided, however, that in each school district the board of education or trustees of such district are hereby authorized and empowered to contract for such special services or programs as such board shall deem reasonable and appropriate for such ~~[handicapped]~~ children with disabilities after consideration of the recommendations of the local committee on special education and the hearing officer if a hear-

ing is held pursuant to section forty-four hundred four of this chapter and, where specified in subparagraph two of this paragraph, with the approval of the commissioner after a finding by him that no appropriate special services or programs specified in paragraphs a through d and k of subdivision two of section forty-four hundred one are available.

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

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

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

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

§ 6. Subdivisions 1, 2, 4, 8, 14 and 16 of section 4403 of the education law, subdivision 1 as amended by chapter 470 of the laws of 1977, subdivision 2 as amended by chapter 53 of the laws of 1986, subdivision 4 as amended by chapter 479 of the laws of 2022, subdivision 8 as amended by chapter 273 of the laws of 1986, and subdivisions 14 and 16 as amended by section 4 of part E of chapter 501 of the laws of 2012, are amended to read as follows:

1. To maintain a statistical summary of the number of ~~[handicapped]~~ children with disabilities who reside within the state and the nature of their ~~[handicaps]~~ disabilities and to use all means and measures necessary to adequately meet the physical and educational needs of such children, as provided by law.

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

4. To periodically inspect, report on the adequacy of and make recommendations concerning instructional programs or special services for all

1 children with [~~handicapping conditions~~] disabilities who reside in or  
2 attend any state operated or state financed social service facilities,  
3 youth facilities, health facilities, mental health, and developmental  
4 disabilities facilities or state correctional facilities.

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

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

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

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

32 Appeal procedures for children with [~~handicapping conditions~~] disabil-  
33 ities.

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

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

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

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

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

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

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

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

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

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



tionment 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.

§ 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

1 of the family court act for preschool age children with [~~handicapping~~  
2 ~~conditions~~] disabilities.

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

11 § 10. The section heading and subdivision 1 of section 4407 of the  
12 education law, the section heading as amended by chapter 53 of the laws  
13 of 1986, subdivision 1 as amended by chapter 82 of the laws of 1985 and  
14 paragraph a of subdivision 1 as amended by chapter 53 of the laws of  
15 1989, are amended to read as follows:

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

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

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

38 a. The board shall identify each preschool child suspected of having a  
39 [~~handicapping condition~~] disability who resides within the district and,  
40 upon referral to the committee shall, with the consent of the parent,  
41 provide for an evaluation related to the suspected disability of the  
42 child. The board shall make such identification in accordance with regu-  
43 lations of the commissioner.

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

53 d. The approved evaluator shall, following completion of the evalu-  
54 ation, transmit the documentation of the evaluation to all members of  
55 the committee and to a person designated by the municipality in which  
56 the preschool child resides. Each municipality shall notify the approved

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

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

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

21 (ii) the results of all evaluations; and

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

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

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

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

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

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



1 by such municipality which shall be offset by the local contribution due  
2 pursuant to subdivision four of this section.

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

14 § 13. This act shall take effect immediately.