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.

LBD08394-03-3

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

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

8. To develop and distribute a handbook for parents of [~~handicapped~~] children **with disabilities** and the members of committees and subcommittees on special education, which handbook shall explain, in layman terms, the financial and educational obligations of the state, the county or city, the home school district, the committee on special education, and the parent or legal guardian of a [~~handicapped~~] child **with disabilities**, the special services or programs available pursuant to this article, and the legal procedures available to an aggrieved parent or legal guardian of a [~~handicapped~~] child **with disabilities**.

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

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

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

Appeal procedures for children with [~~handicapping conditions~~] **disabilities**.

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

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

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

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

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

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

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

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

c. The apportionments to each school district pursuant to this subdivision shall be based on excess cost paid and attendance during the base year.

d. Notwithstanding sections thirty-six hundred seven and thirty-six hundred nine-a of this chapter, apportionments pursuant to this subdivision shall be paid to school districts upon submission of reports of attendance and approved tuition expenditures filed in a format 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

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 when necessary, also in the dominant language or other mode of communication of the parent; the documentation of the evaluation shall be transmitted in English and, upon the request of the parent, also in the dominant language or other mode of communication of the parent, unless not clearly feasible to do so pursuant to regulations promulgated by the commissioner. Costs of translating the summary report and documentation of the evaluation shall be separately reimbursed. If, based on the evaluation, the committee finds that a child has a [~~handicapping condition~~] **disability**, the committee shall use the documentation of the evaluation to develop an individualized education program for the preschool child. Nothing herein shall prohibit an approved evaluator from at any time providing the parent with a copy of the documentation of the evaluation provided to the committee.

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

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

(ii) the results of all evaluations; and

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

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

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

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

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

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

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

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

§ 13. This act shall take effect immediately.