

STATE OF NEW YORK

10908

IN ASSEMBLY

April 8, 2026

Introduced by M. of A. OTIS, BARRETT -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to exempting school district providers of special services or programs for preschool students with disabilities from having to obtain program approval from the commissioner of education

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph a of subdivision 9 of section 4410 of the educa-
2 tion law, as amended by chapter 82 of the laws of 1995, the opening
3 paragraph as amended by section 19 of part A of chapter 56 of the laws
4 of 2012, and subparagraph (iii) as amended by section 57-a of part H of
5 chapter 83 of the laws of 2002, is amended to read as follows:

6 a. (i) Providers of special services or programs, except where such
7 provider is a school district, shall apply to the commissioner for
8 program approval on a form prescribed by the commissioner; such applica-
9 tion shall include, but not be limited to, a listing of the services to
10 be provided, the population to be served, a plan for providing services
11 in the least restrictive environment and a description of its evaluation
12 component, if any. The commissioner shall approve programs in accordance
13 with regulations adopted for such purpose and shall periodically review
14 such programs at which time the commissioner shall provide the municipi-
15 pality in which the program is located or for which the municipality
16 bears fiscal responsibility an opportunity for comment within thirty
17 days of the review. In collaboration with municipalities and represen-
18 tatives of approved programs, the commissioner shall develop procedures
19 for conducting such reviews. Municipalities shall be allowed to partic-
20 ipate in such departmental review process. Such review shall be
21 conducted by individuals with appropriate experience as determined by
22 the commissioner and shall be conducted not more than once every three
23 years.

24 [~~(iii) Commencing July first, nineteen hundred ninety-six and continu-~~
25 ~~ing through June thirtieth, two thousand three, a moratorium on the~~
26 ~~approval of any new or expanded programs in settings which include only~~
27 ~~preschool children with disabilities is established. Exceptions shall be~~
28 ~~made for cases in which school districts document a critical need for a~~
29 ~~new or expanded program in a setting which includes only preschool chil-~~

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

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~~1 dren with disabilities, to meet the projected demand for services for
2 preschool children in the least restrictive environment. Applications
3 for new or expanded programs may be made directly to the state education
4 department. Nothing herein shall prohibit the commissioner from approv-
5 ing the modification of a full-day program into half-day sessions.]~~

6 (ii) School district providers of special services or programs shall
7 be exempt from the requirement to apply for program approval pursuant to
8 this subdivision and shall be deemed approved by the commissioner to
9 provide preschool special education programs and services. Additionally,
10 school district providers shall be exempt from the program reapproval
11 process prescribed in subdivision nine-b of this section. Provided,
12 however, that the provision of preschool special education services and
13 programs by school districts shall adhere to the applicable regulatory
14 requirements for approved preschool programs, including program and
15 fiscal standards enumerated in commissioner's regulations. Provided,
16 further, however, that school district providers shall be required to
17 notify the department, on a form prescribed by the commissioner, of the
18 programs and services to be provided prior to the establishment of
19 applicable state reimbursement rates used in contracts with munici-
20 palities for the provision of approved special services or programs to a
21 preschool child with a disability.

22 (iii) Commencing July 1, 1999 the department shall only approve any
23 new or expanded programs in settings which include only preschool chil-
24 dren with disabilities, if the applicant can document a critical need
25 for a new or expanded program in a setting which includes only preschool
26 children with disabilities to meet the projected demand for services for
27 preschool children in the least restrictive environment. If the depart-
28 ment determines that approval will not be granted, it must notify the
29 applicant, in writing, of its reasons for not granting such approval.
30 The department shall establish guidelines, within 90 days of the effec-
31 tive date of this section which shall state the criteria used to deter-
32 mine if the applicant has demonstrated such a critical need. The depart-
33 ment is authorized to consult with the local school district to verify
34 any data submitted.

~~35 [On December 1, 2003 the commissioner shall submit a report to the
36 board of regents, the majority leader of the senate, the speaker of the
37 assembly and governor evaluating the impact of such moratorium on the
38 availability of preschool special education services. The report shall
39 include: (i) information regarding the number of applications for new
40 programs and program expansions and the disposition of those applica-
41 tions by the commissioner; (ii) an assessment of the projected need for
42 additional classes serving only disabled children and those serving
43 disabled children with their non-disabled peers and in other less
44 restrictive settings; (iii) an assessment of the projected need for
45 additional programs due to program closings in the region, number of
46 children receiving early intervention services and existing waiting
47 lists; (iv) an assessment of the distance that children must be trans-
48 ported to receive preschool special education services; (v) an evalu-
49 ation of the programmatic performance and cost-effectiveness of existing
50 programs; (vi) recommendations regarding ways in which improved quality
51 and cost-effectiveness could be achieved through the selective expansion
52 of effective programs and/or the curtailment of less effective programs;
53 and (vii) an assessment of the availability and effectiveness of
54 approved programs providing services to preschool children with autism.]~~

§ 2. This act shall take effect immediately.