§ 4401. Definitions. As referred to in this article. * 1. A "child with a disability" or "student with a disability" means a person under the age of twenty-one who is entitled to attend public schools pursuant to section thirty-two hundred two of this chapter and who, because of mental, physical or emotional reasons can only receive appropriate educational opportunities from a program of special education. Such term does not include a child whose educational needs are due primarily to unfamiliarity with the English language, environmental, cultural or economic factors. Lack of appropriate instruction in reading, including in the essential components of reading instruction as defined in subsection three of section twelve hundred eight of the elementary and secondary education act of nineteen hundred sixty-five, or lack of appropriate instruction in mathematics or limited English proficiency shall not be the determinant factor in identifying a student as a student with a disability. "Special education" means specially designed instruction which includes special services or programs as delineated in subdivision two of this section, and transportation, provided at no cost to the parents to meet the unique needs of a child with a disability. A "child with a handicapping condition" means a child with a disability.

* NB Effective until June 30, 2027

* 1. A "child with a disability" or "student with a disability" means a person under the age of twenty-one who is entitled to attend public schools pursuant to section thirty-two hundred two of this chapter and who, because of mental, physical or emotional reasons can only receive appropriate educational opportunities from a program of special education. Such term does not include a child whose educational needs are due primarily to unfamiliarity with the English language, environmental, cultural or economic factors. Lack of instruction in reading or mathematics or limited English proficiency shall not be the determinant factor in identifying a student as a student with a disability. "Special education" means specially designed instruction which includes special services or programs as delineated in subdivision two of this section, and transportation, provided at no cost to the parents to meet the unique needs of a child with a disability. A "child with a handicapping condition" means a child with a disability.

* NB Effective June 30, 2027

2. "Special services or programs". For purposes of this article, special services or programs shall mean the following:

a. Special classes, transitional support services, resource rooms, direct and indirect consultant teacher services, transition services as defined in subdivision nine of this section, assistive technology devices as defined under federal law, travel training, home instruction, and special teachers to include itinerant teachers as provided by the schools of the district of residence with such terms and services to be defined by regulations of the commissioner.

b. Contracts with other districts for special services or programs.

c. Contracts with or special services or programs provided by boards of cooperative educational services.

d. Appointment by the commissioner to a state school in accordance with article eighty-seven or eighty-eight of this chapter or a state-supported school in accordance with article eighty-five of this chapter.

e. Contracts with private non-residential schools which have been approved by the commissioner and which are within the state for special services or programs.

f. Contracts with private non-residential schools which have been approved by the commissioner and which are outside of the state for special services or programs.

g. Contracts with private residential schools which have been approved by the commissioner and which are within the state for special services or programs.

h. Contracts with private residential schools which have been approved by the commissioner and which are outside the state for special services or programs.

i. Contracts with the state university at Binghamton for non-residential special services or programs at the children's unit for treatment and evaluation which have been approved by the commissioner.

j. Provision of educational services in a residential facility for the care and treatment of students with disabilities under the jurisdiction of a state agency other than the department.

* k. Related services which shall in appropriate cases be furnished to students with disabilities shall include audiology, counseling including rehabilitation counseling services, occupational therapy, physical therapy, speech pathology, medical services as defined by regulations of the commissioner, psychological services, school health services, school nurse services, school social work, assistive technology services as defined under federal law, interpreting services, orientation and mobility services, parent counseling and training and other appropriate developmental, corrective or other support services and appropriate access to recreation. Such term does not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of such device.

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* k. Related services which shall in appropriate cases be furnished to students with disabilities shall include audiology, counseling including rehabilitation counseling services, occupational therapy, physical therapy, speech pathology, medical services as defined by regulations of the commissioner, psychological services, school health services, school social work, assistive technology services as defined under federal law, orientation and mobility services, parent counseling and training and other appropriate developmental, corrective or other support services and appropriate access to recreation.

* NB Effective June 30, 2027

l. Contracts for residential or nonresidential placements with a special act school district listed in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven.

m. Provision of nonresidential education services in Fairmount

children's center, which facility has been approved by the commissioner for the education of students with disabilities. Students placed under the provisions of this paragraph shall not be eligible for state aid under the provisions of sections thirty-six hundred two and thirty-six hundred two-c of this chapter.

n. Formalized agreements for the provision of transition services as defined in subdivision nine of this section in programs such as vocational training programs approved by the department or by another state agency. Nothing in this article shall be construed to relieve another agency of responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

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 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.

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 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.

5. "Tuition" shall mean the per pupil cost of all instructional services, supplies and equipment, the operation of instructional facilities and allocable debt service for the instructional facilities, as determined by the commissioner. Approved tuition shall be computed from expenditures from which no revenue has been received from the following sources:

(a) receipts from the federal government;

(b) any cash receipts which reduce the cost of an item applied against the item therefor, except gifts, donations and earned interest, and

(c) any refunds made or any apportionment or payment received from the state for experimental or special programs as approved by the commissioner.

6. "Excess cost" shall mean the difference between the tuition and the sum of the following:

a. the school district basic contribution as defined in subdivision eight of this section; and

b. the amount of federal funds received by the school district and expended for such pupil which in the judgment of the commissioner shall be deemed duplicative.

7. "Excess cost aid ratio" for a school district shall be computed by subtracting from one the product obtained by multiplying fifteen per centum by the combined wealth ratio as defined in section thirty-six

hundred two of this chapter. This aid ratio shall be expressed as a decimal carried to three places without rounding, but shall not be less than fifty hundredths, nor more than one.

8. "School district basic contribution" shall mean an amount equal to the total school district local property and non-property tax levy for the base year divided by the base year public school district enrollment of resident pupils of the school district as defined in paragraph n of subdivision one of section thirty-six hundred two of this chapter, except that for the two thousand thirteen--two thousand fourteen and two thousand fourteen--two thousand fifteen school year and thereafter, for school districts other than central high school districts and their components, such tax levy for the base year shall be divided by the year prior to the base year pupil count as determined by the commissioner pursuant to paragraph f of subdivision two of section thirty-six hundred two of this chapter for any school district in which such year prior to the base year pupil count exceeds one hundred fifty percent of such base year public school district enrollment of resident pupils.

* 9. "Transition services" shall mean a coordinated set of activities for a student with a disability, designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the student's strengths, preferences and interests, and shall include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

* NB Effective until June 30, 2027

* 9. "Transition services" shall mean a coordinated set of activities for a student with a disability, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated competitive employment (including supported employment), continuing and

adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

* NB Effective June 30, 2027

10. Notwithstanding any inconsistent provisions of this article, where a private not-for-profit school enters into a lease, sublease or other agreement with the dormitory authority pursuant to section sixteen hundred eighty of the public authorities law, the tuition rates established by the commissioner pursuant to this section shall be established in two parts, one part of which shall be the cost per child of the annual rental payment pursuant to such lease, sublease or other agreement to be paid by the school district or the social services district, as the case may be, to the fund established by this chapter; the remaining part shall be the tuition amount to be paid to the private not-for-profit school.

11. Notwithstanding any inconsistent provisions of this article, where the special act school district enters into a lease, sublease or other agreement with the dormitory authority pursuant to section four hundred seven-a of this chapter, the tuition rates established by the commissioner pursuant to this section shall be established in two parts, one part of which shall be the cost per child of the annual rental payment pursuant to such section four hundred seven-a of this chapter to be paid by the school district or the social services district, as the case may be, to the fund established in such section; the remaining part shall be the tuition amount to be paid to the special act school district.