§ 4402. Duties of school districts. 1. * a. The board of education or trustees of each school district and the city school district of the city of New York shall, under regulations prescribed by the commissioner and approved by the regents of the university, identify, locate and evaluate in accordance with this section all students with disabilities in such district who are in need of special education, including children with disabilities who are homeless children or are wards of the state as defined in the regulations of the commissioner and, consistent with section thirty-six hundred two-c of this chapter, students who attend nonpublic schools within such school district, and shall maintain a register containing the name of each child with a disability who resides in the district, the nature of such child's disability, the educational placement and setting, if any, of such child, and any other student-specific data required to comply with federal law or regulations.

* NB Effective until June 30, 2027

* a. The board of education or trustees of each school district and the city school district of the city of New York shall ascertain under regulations prescribed by the commissioner and approved by the regents of the university, the number of children with handicapping conditions in such district under the age of twenty-one years and the nature of the handicapping condition of each such child in accordance with the provisions of this section, and shall maintain a register containing the name of each child with a handicapping condition who resides in the district, the nature of such child's handicapping condition, the educational placement and setting, if any, of such child.

* NB Effective June 30, 2027

b. (1) The board of education or trustees of each school district shall establish committees and/or subcommittees on special education as necessary to ensure timely evaluation and placement of pupils. The board of education of the city school district of the city of New York, shall establish at least one committee on special education in each of its community school districts, provided that appointments to the community school district committees shall be made upon the approval of the community school board except that the board of education of the city school district of the city of New York, may establish one committee to

serve more than one community school district, in which case, appointments thereto shall be made upon the joint approval of the affected community school boards; provided, however, that prior to such consolidation, the board shall consider the relative caseload of the committee on special education in each affected community school district, including but not limited to the following factors: the number of students evaluated by such committee; the number of referrals to special education in such community school district; the ability to comply with mandated paperwork and timelines; and other issues which the board deems pertinent.

(a) Such committees shall be composed of at least the following members: (i) the parents or persons in parental relationship to the student; (ii) one regular education teacher of the student whenever the student is or may be participating in the regular education environment; (iii) one special education teacher of the student, or, if appropriate, a special education provider of the student; (iv) a school psychologist; (v) a representative of such school district who is qualified to provide or administer or supervise special education and is knowledgeable about the general curriculum and the availability of resources of the school district; (vi) an individual who can interpret the instructional implications of evaluation results; (vii) a school physician; (viii) an additional parent, residing in the school district or a neighboring school district, of a student with a disability, of a student who has been declassified and is no longer eligible for an individualized education program (IEP), or a parent of a disabled child who has graduated, for a period of five years beyond the student's declassification or graduation, provided such parent shall not be employed by or under contract with the school district, and provided further that such additional parent shall not be a required member if the parents request that such additional parent member not participate; (ix) such other persons having knowledge or special expertise regarding the student as the school district or the parents or persons in parental relationship to the student shall designate, to the extent required under federal law; and (x) if appropriate, the student.

* (b) In determining the composition of such committee pursuant to clause (a) of this subparagraph, a school district may determine that a member appointed pursuant to one of subclause (ii), (iii), (iv), (v) or

(ix) of clause (a) of this subparagraph also fulfills the requirement of subclause (vi) of clause (a) of this subparagraph of a member who is an individual who can interpret the instructional implications of evaluation results where such individuals are determined by the school district to have the knowledge and expertise to do so and/or that a member appointed pursuant to subclause (iii) or (iv) of clause (a) of this subparagraph also fulfills the requirement of subclause (v) of clause (a) of this subparagraph of a member who is a representative of the school district. The regular education teacher of the student shall participate in the development, review and revision of the individualized education program for the student, to the extent required under federal law. The school physician need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relation to the student in question, the student, or a member of the committee on special education. The parents or persons in parental relation of the student in question shall receive proper written notice of their right to have the school physician attend the meetings of the committee on special education upon referral of said student to the committee on special education or whenever such committee plans to modify or change the identification, evaluation or educational placement of the student. The additional parent need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relation to the student in question, the student, or a member of the committee on special education. The parents or persons in parental relation of the student in question shall receive proper written notice of their right to have an additional parent attend any meeting of the committee regarding the student along with a statement, prepared by the department, explaining the role of having the additional parent attend the meeting. The committee shall invite the appropriate professionals most familiar with a student's disability or disabilities to attend any meeting concerning the educational program for such student. Except as otherwise provided in this clause or clause (b-1) or (b-2) of this subparagraph, all members of such committee shall attend meetings of the committee on special education.

Members of such committee shall serve at the pleasure of such board and members who are neither employees of nor under contract with such district shall serve without compensation except that such members shall be entitled to a per diem to defray expenses incurred in such service, provided, however, that any expense incurred shall be deemed an aidable operating expense for purposes of state aid.

* NB Effective until June 30, 2027

* (b) In determining the composition of such committee pursuant to clause (a) of this subparagraph, a school district may determine that a member appointed pursuant to one of subclause (ii), (iii), (iv), (v) or (ix) of clause (a) of this subparagraph also fulfills the requirement of subclause (vi) of clause (a) of this subparagraph of a member who is an individual who can interpret the instructional implications of evaluation results where such individuals are determined by the school district to have the knowledge and expertise to do so and/or that a member appointed pursuant to subclause (iii) or (iv) of clause (a) of this subparagraph also fulfills the requirement of subclause (v) of clause (a) of this subparagraph of a member who is a representative of the school district. The regular education teacher of the student shall participate in the development, review and revision of the individualized education program for the student, to the extent required under federal law. The school physician need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relationship to the student in question, the student, or a member of the committee on special education. The parents or persons in parental relationship of the student in question shall receive proper written notice of their right to have the school physician attend the meetings of the committee on special education upon referral of said student to the committee on special education or whenever such committee plans to modify or change the identification, evaluation or educational placement of the student. The additional parent need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relation to the student in question, the student, or

a member of the committee on special education. The parents or persons in parental relation of the student in question shall receive proper written notice of their right to have an additional parent attend any meeting of the committee regarding the student along with a statement, prepared by the department, explaining the role of having the additional parent attend the meeting. The committee shall invite the appropriate professionals most familiar with a student's disability or disabilities to attend any meeting concerning the educational program for such student.

Members of such committee shall serve at the pleasure of such board and members who are neither employees of nor under contract with such district shall serve without compensation except that such members shall be entitled to a per diem to defray expenses incurred in such service, provided, however, that any expense incurred shall be deemed an aidable operating expense for purposes of state aid.

* NB Effective June 30, 2027

* (b-1) Notwithstanding any provision of law, rule or regulation to the contrary, a member of the committee on special education, other than the parents or persons in parental relation to the student is not required to attend a meeting of the team, in whole or in part, if the parent or person in parental relation to the student and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.

* NB Repealed June 30, 2027

* (b-2) Notwithstanding any provision of law, rule or regulation to the contrary, a member of the committee on special education, other than the parents or persons in parental relation to the student, may be excused from attending a meeting of the committee, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the parent or person in parental relation to the student and the school district consent, in writing, to the excusal and the excused member submits to the parent or person in parental relation to the student and such committee, written input into the development of the individualized education program, and in particular written input with respect to their

area of curriculum or related services prior to the meeting.

* NB Repealed June 30, 2027

* (b-3) Requests for excusal of a member of the committee as provided for in clauses (b-1) and (b-2) of this subparagraph, and the written input as provided for in clause (b-2) of this subparagraph, shall be provided not less than five calendar days prior to the meeting date, in order to afford the parent or person in parental relation a reasonable time to review and consider the request. Provided however, that a parent or person in parental relation shall retain the right to request and/or agree with the school district to excuse a member of the special education committee at any time including where the member is unable to attend the meeting because of an emergency or unavoidable scheduling conflict and the school district submits the written input for review and consideration by the parent or person in parental relation within a reasonable time prior to the meeting and prior to obtaining written consent of the parent or person in parental relation to such excusal.

* NB Repealed June 30, 2027

(c) Districts not having available personnel may share the services of a local committee on special education with another school district or contract with a board of cooperative educational services for such personnel pursuant to regulations of the commissioner. A district having a subcommittee on special education may share the services of a local committee on special education with another school district, provided that a representative of such school district who is qualified to provide or administer or supervise special education and is knowledgeable about the general curriculum and the availability of resources of the school district shall be a member of such committee when it convenes on behalf of a student who is a resident of such district.

* (d) Boards of education in city school districts in cities having in excess of one hundred twenty-five thousand inhabitants shall appoint subcommittees on special education, to the extent necessary to ensure timely evaluation and placement of students with disabilities. Boards of education or trustees of any school district outside of a city having a population in excess of one hundred twenty-five thousand inhabitants may appoint subcommittees on special education to assist the board of education in accordance with this clause and the regulations of the

commissioner. The membership of each subcommittee shall include, but not be limited to, the committee members required by subclauses (i), (ii), (iii), (v), (vi), (ix) and (x) of clause (a) of this subparagraph, and a school psychologist whenever a new psychological evaluation is reviewed or a change to a more restrictive program option, as defined in regulations of the commissioner, is considered. Except when (i) a student is considered for initial placement in a special class, or (ii) a student is considered for initial placement in a special class outside of the student's school of attendance, or (iii) whenever a student is considered for placement in a school primarily serving students with disabilities or a school outside of the student's district, each subcommittee may perform the functions for which the committee on special education is responsible pursuant to the provisions of this subdivision. Notwithstanding any other provisions of this clause to the contrary, attendance of members of a subcommittee may be excused from attendance in the same manner as members of a committee on special education pursuant to clauses (b-1), (b-2) or (b-3) of this subparagraph. Each subcommittee shall report annually the status of each student with a disability within its jurisdiction to the committee on special education, and the subcommittee shall refer to the committee, upon receipt of a written request from the parent or person in parental relation to a student, any matter in which the parent disagrees with the subcommittee's recommendation concerning a modification or change in the identification, evaluation, educational placement or provision of a free appropriate public education to such student. The committee on special education shall be responsible for oversight and monitoring of the activities of each subcommittee to assure compliance with the requirements of applicable and federal law and regulations.

* NB Effective until June 30, 2027

* (d) Boards of education in city school districts in cities having in excess of one hundred twenty-five thousand inhabitants shall appoint subcommittees on special education, to the extent necessary to ensure timely evaluation and placement of students with disabilities. Boards of education or trustees of any school district outside of a city having a population in excess of one hundred twenty-five thousand inhabitants may appoint subcommittees on special education to assist the board of education in accordance with this clause and the regulations of the

commissioner. The membership of each subcommittee shall include, but not be limited to, the committee members required by subclauses (i), (ii), (iii), (v), (vi), (ix) and (x) of clause (a) of this subparagraph, and a school psychologist whenever a new psychological evaluation is reviewed or a change to a more restrictive program option, as defined in regulations of the commissioner, is considered. Except when (i) a student is considered for initial placement in a special class, or (ii) a student is considered for initial placement in a special class outside of the student's school of attendance, or (iii) whenever a student is considered for placement in a school primarily serving students with disabilities or a school outside of the student's district, each subcommittee may perform the functions for which the committee on special education is responsible pursuant to the provisions of this subdivision. Each subcommittee shall report annually the status of each student with a disability within its jurisdiction to the committee on special education, and the subcommittee shall refer to the committee, upon receipt of a written request from the parent or person in parental relationship to a student, any matter in which the parent disagrees with the subcommittee's recommendation concerning a modification or change in the identification, evaluation, educational placement or provision of a free appropriate public education to such student. The committee on special education shall be responsible for oversight and monitoring of the activities of each subcommittee to assure compliance with the requirements of applicable and federal law and regulations.

* NB Effective June 30, 2027

* (2) Such committees or subcommittees shall review at least annually, the status of each student with a disability and each student thought to be disabled who is identified pursuant to paragraph a of this subdivision. Such review shall consider the educational progress and achievement of the student with a disability and the student's ability to participate in instructional programs in regular education.

* NB Effective until June 30, 2027

* (2) Such committees or subcommittees shall identify, review and evaluate at least annually, the status of each child with a handicapping condition and each child thought to be handicapped who resides within the school district. Such review shall consider the educational progress and achievement of the child with a handicapping condition and the

child's ability to participate in instructional programs in regular education.

* NB Effective June 30, 2027

(3) The committee or when applicable the subcommittee shall:

(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 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 disability, and all other school data which bear on the child's progress, including, where appropriate, observation of classroom performance.

* (b) (i) Make recommendations based upon a written evaluation setting forth the reasons for the recommendations, to the child's parent or person in parental relation and board of education or trustees as to appropriate educational programs and placement in accordance with the provisions of subdivision six of section forty-four hundred one-a of this article, and as to the advisability of continuation, modification, or termination of special class or program placements which evaluation shall be furnished to the child's parent or person in parental relation together with the recommendations provided, however that the committee may recommend a placement in a school which uses psychotropic drugs only if such school has a written policy pertaining to such use that is consistent with subdivision four-a of section thirty-two hundred eight of this chapter and that the parent or person in parental relation is given such written policy at the time such recommendation is made. If such recommendation is not acceptable to the parent or person in parental relation, such parent or person in parental relation may appeal such recommendation as provided for in section forty-four hundred four of this chapter.

(ii) Notwithstanding any provisions of this clause or clause (a) of this subparagraph to the contrary, in making changes to a student's

individualized education program after the annual review has been conducted, the parent or person in parental relation to the student and the school district may agree not to convene a meeting of the committee on special education for the purpose of making those changes, and instead may develop a written document to amend or modify the student's current individualized education program under the following circumstances:

(A) The parent or person in parental relation makes a request to the school district for an amendment to the individualized education program and the school district and such parent or person in parental relation agree in writing; or

(B) The school district provides the parent or person in parental relation with a written proposal to amend a provision or provisions of the individualized education program that is conveyed in language understandable to the parent or person in parental relation in such parent's or such person's native language or other dominate mode of communication, informs and allows the parent or person in parental relation the opportunity to consult with the appropriate personnel or related service providers concerning the proposed changes and the parent or person in parental relation agrees in writing to such amendments.

(C) If the parent or person in parental relation agrees to amend the individualized education program without a meeting, the parent or person in parental relation shall be provided prior written notice of the changes to the individualized education program resulting from such written document and the special education committee shall be notified of such changes. If the school district makes such changes by rewriting the entire individualized education program, it shall provide the parent or person in parental relation with a copy of the rewritten individualized education program. If the school district amends the individualized education program without rewriting the entire document, the school district shall provide the parent or person in parental relation with a copy of the document that amends or modifies the individualized education program or, upon request of the parent or person in parental relation, a revised copy of the individualized education program with the amendments incorporated.

Amendments to an individualized education program pursuant to this

subitem shall not affect the requirement that the special education committee review the individualized education program at the annual meeting, or more often if necessary.

* NB Effective until June 30, 2027

* (b) Make recommendations based upon a written evaluation setting forth the reasons for the recommendations, to the child's parent or person in parental relationship and board of education or trustees as to appropriate educational programs and placement in accordance with the provisions of subdivision six of section forty-four hundred one-a of this article, and as to the advisability of continuation, modification, or termination of special class or program placements which evaluation shall be furnished to the child's parent or person in parental relationship together with the recommendations provided, however that the committee may recommend a placement in a school which uses psychotropic drugs only if such school has a written policy pertaining to such use and that the parent or person in parental relationship is given such written policy at the time such recommendation is made. If such recommendation is not acceptable to the parent or person in parental relationship, such parent or person in parental relationship may appeal such recommendation as provided for in section forty-four hundred four of this chapter.

* NB Effective June 30, 2027

(c) Provide written prior notice to the parents or person in parental relationship of the child upon receipt of referral for evaluation or whenever such committee plans to continue, modify or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child and advise the parent of or person in parental relationship to the child of his or her opportunity to address the committee, either in person or in writing, on the appropriateness of the committee's recommendations on program placements to be made to the board of education or trustees. Such notice shall, where a child has been placed in a residential program by a committee on special education, or has been determined to be at risk of such a placement pursuant to subparagraph four of paragraph b of subdivision one of section forty-four hundred two of this article, also notify the parent or other person in parental relationship that the child is not entitled to receive free educational services or

to remain in a residential educational program after the age of twenty-one, the receipt of a high school diploma or the time described in subdivision five of this section.

* (d) Advise the board of education or trustees concerning the frequency and nature of periodic reevaluations of students with disabilities by appropriate specialists, provided, however, that each student in a special program or a special class shall be reevaluated by qualified appropriate school personnel at least once every three years, except where the school district and the parent or person in parental relation to the student agree in writing that such a reevaluation is unnecessary. A reevaluation of a student with a disability shall be conducted by qualified individuals, in accordance with regulations of the commissioner consistent with the requirements of a reevaluation as defined by the applicable federal regulation. A reevaluation may not be conducted more than once a year unless the parent or person in parental relation to the student and the school district otherwise agree.

* NB Effective until June 30, 2027

* (d) Advise the board of education or trustees concerning the frequency and nature of periodic reevaluations of students with disabilities by appropriate specialists, provided, however, that each student in a special program or a special class shall be reevaluated by qualified appropriate school personnel at least once every three years. A reevaluation of a student with a disability shall be conducted by qualified individuals, in accordance with regulations of the commissioner consistent with the requirements of a reevaluation as defined by the applicable federal regulation.

* NB Effective June 30, 2027

(d-1) Each school district shall develop policies, pursuant to regulations of the commissioner, to provide special services or programs, to the extent appropriate to the needs of the child, to enable the child to be involved in and progress in the general education curriculum.

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

(f) Report periodically, but at least annually, to the board of education or trustees on the status of programs, services, and facilities made available by the school district in accordance with the

provisions of subdivision eight of section thirty-six hundred two of this chapter. Such reports shall be kept on file for inspection by the commissioner.

(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 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.

(h) Provide the form developed pursuant to subdivision twenty-two of section four of the veterans' services law to the parent or person in parental relation of a child designated by the committee as either disabled or emotionally disturbed.

(i) Provide, to the extent appropriate to the individual needs of the student with a disability that such student is educated in a setting with students who are nondisabled.

* (i) In accordance with the regulations of the commissioner and subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations, to develop a functional behavioral assessment plan, to review, or revise, as appropriate, a behavioral intervention plan, to develop appropriate behavioral interventions and to review and revise, as appropriate, the implementation of a behavioral intervention plan, to address the behavior of a student with a disability who is alleged to have engaged in misconduct, to the extent required by federal law and regulations.

* NB Effective June 30, 2027

* (j) In accordance with the regulations of the commissioner and subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations, to conduct a functional behavioral assessment, to review, or revise, as appropriate or necessary, and implement a behavioral intervention plan, to develop appropriate behavioral interventions and to review and revise, as appropriate or necessary, the implementation of a behavioral intervention plan, to address the behavior of a student with a disability who is alleged to have engaged in misconduct, to the extent required by federal law and regulations.

* NB Effective until June 30, 2027

* (j) In accordance with the regulations of the commissioner and subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations, to conduct a review to determine whether behavior of a student with a disability which violates the applicable school rules or code of conduct and results in a change in placement under federal law, including but not limited to placement in an interim alternative educational setting pursuant to clause (iv) or (vii) of subparagraph three of paragraph g of subdivision three of section thirty-two hundred fourteen of this chapter, was a manifestation of the student's disability, provided that other qualified school district personnel may participate in such review.

* NB Effective June 30, 2027

* (k) In accordance with the regulations of the commissioner and subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations, to determine the setting and services to be provided in the interim alternative educational setting for a student with a disability who carries or possesses a weapon to or at school, on school premises, or to or at a school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function or who has inflicted serious bodily injury upon another person as defined in federal law and the setting and services to be provided to a student with a disability in an interim alternative educational setting or other setting who is removed because of behavior that has been determined not to be a manifestation of the student's disability.

* NB Effective until June 30, 2027

* (k) In accordance with the regulations of the commissioner and subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations, to determine the services to be provided in the interim alternative educational placement for a student with a disability who carries or possesses a weapon to or at school, on school premises, or to or at school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function and the services to be provided to a student with a disability

who is removed because of behavior that has been determined not to be a manifestation of the student's disability.

* NB Effective June 30, 2027

(l) In accordance with the regulations of the commissioner and the provisions of subsection (k) of section fourteen hundred fifteen of title twenty of the United States code, and the implementing federal regulations, to conduct expedited evaluations under the circumstances specified in such federal law and regulations and to conduct such reviews and make such determinations regarding students presumed to have a disability for discipline purposes as defined in subdivision three of section thirty-two hundred fourteen of this chapter as are required under the federal individuals with disabilities education act and implementing regulations.

(3-a) The members of the committee or subcommittee may compile a list of appropriate and/or helpful services that may be available outside of the school setting to provide the parents or person in parental relation of a child with a disability with such information. Such list shall clearly state that these services are in addition to services supplied by the school district and will not be paid for by the school district. Any member of a committee or subcommittee or his or her respective school district who, acting reasonably and in good faith, provides such information shall not be liable for such action.

(4) (a) When the committee on special education of a local school district determines that a child who is living in his or her own home is at risk of a future placement in a residential school, as determined in accordance with guidelines established by the department pursuant to subdivision nineteen of section forty-four hundred three of this article, the committee shall provide the parent or other person in parental relationship with information, where such information has been made available to the committee, about the community support services that may be available to the family, including an assessment of the family's community support services needs in accordance with such guidelines and, where such an assessment is available, the name and address of the agency which can perform the assessment.

* (b) When the committee on special education of a local school district determines that a child who is receiving foster care is at risk of a future placement in a residential school, the committee, with the

consent of the parent or person in parental relation or the student, if he or she is over the age of eighteen, shall notify the social services district responsible for the child of its determination that the child is at risk of placement.

* NB Effective until June 30, 2027

* (b) When the committee on special education of a local school district determines that a child who is receiving foster care is at risk of a future placement in a residential school, the committee shall notify the social services district responsible for the child of its determination that the child is at risk of placement.

* NB Effective June 30, 2027

* (c) The committee on special education, with the consent of the parent or person in parental relation or the student, if he or she is over the age of eighteen, shall request in writing a designee of the appropriate county or state agency to participate, in accordance with guidelines established by the department, in any proceeding of the committee where a child is at risk of residential placement. The committee shall forward a copy of any such request to the office for people with developmental disabilities and the office of mental health. A designee or designees of the agency may participate in any such proceeding for the purpose of making recommendations concerning the appropriateness of residential placement and other programs and placement alternatives, including, but not limited to, community support services that may be available to the family. Such designee or designees shall not be considered members of the committee. Such designee or designees shall include, but not be limited to, representatives of any agency receiving coordinated children's services initiative funding as referenced in the aid to localities budget, of a local interagency coordinating body, of the social services district, the local mental health agency, or health department, or of the developmental disabilities service office, as appropriate. The name of such designee or designees, if any, shall be made available to each committee on special education in the county. In addition, with the consent of the parent or other person in parental relation, the committee may confer with other appropriate providers of services to identify any services that may be of benefit to the family based on the family's identification of or the committee's observation of family services

needs. As used in this chapter, the term "county" means county as defined in section four thousand one of this title, and the term "appropriate agency" means one of the following agencies:

(i) a local interagency body capable of performing a multidisciplinary assessment of the family's community support services needs; or

(ii) if no such agency exists in the locality, any county agency which is receiving state coordinated children's services initiative funding as referenced in the aid to localities budget; or

(iii) where neither such agency exists in the locality, either the area developmental disabilities services office, where the primary reason the child is at risk of placement relates to a developmental disability, or the local mental health agency, where the primary reason the child is at risk of placement relates to any other mental disability.

* NB Effective until June 30, 2027

* (c) The committee on special education shall request in writing a designee of the appropriate county or state agency to participate, in accordance with guidelines established by the department, in any proceeding of the committee where a child is at risk of residential placement. The committee shall forward a copy of any such request to the office for people with developmental disabilities and the office of mental health. A designee or designees of the agency may participate in any such proceeding for the purpose of making recommendations concerning the appropriateness of residential placement and other programs and placement alternatives, including, but not limited to, community support services that may be available to the family. Such designee or designees shall not be considered members of the committee. Such designee or designees shall include, but not be limited to, representatives of any agency receiving coordinated children's services initiative funding as referenced in the aid to localities budget, of a local interagency coordinating body, of the social services district, the local mental health agency, or health department, or of the developmental disabilities service office, as appropriate. The name of such designee or designees, if any, shall be made available to each committee on special education in the county. In addition, with the consent of the parent or other person in parental relationship, the committee may confer with other appropriate providers of services to identify any

services that may be of benefit to the family based on the family's identification of or the committee's observation of family services needs. As used in this chapter, the term "county" means county as defined in section four thousand one of this title, and the term "appropriate agency" means one of the following agencies:

(i) a local interagency body capable of performing a multidisciplinary assessment of the family's community support services needs; or

(ii) if no such agency exists in the locality, any county agency which is receiving state coordinated children's services initiative funding as referenced in the aid to localities budget; or

(iii) where neither such agency exists in the locality, either the area developmental disabilities services office, where the primary reason the child is at risk of placement relates to a developmental disability, or the local mental health agency, where the primary reason the child is at risk of placement relates to any other mental disability.

* NB Effective June 30, 2027

(d) Nothing in this subparagraph shall be construed to establish an entitlement to or constitute a determination of eligibility for any such assessment or services, or to require the school district to pay the costs of such assessment or services or to require that such services be reflected in the plan of educational services and programs recommended or approved for the child, or to limit educational services to be made available to the child or to justify the denial, reduction, or delay of such services to the child. No cause of action for damages shall arise in favor of any person by reason of any failure to comply with the provisions of this section except upon a showing of gross negligence or willful misconduct.

(e) Notwithstanding any inconsistent provision of law, residential schools are authorized to provide temporary care for persons over age twenty-one who are receiving transitional care as described in section 7.37-a or 13.37-a of the mental hygiene law, or on whose behalf temporary payments are being made pursuant to sections 7.38 or 13.38 of the mental hygiene law, where such persons were in the care of the residential school at the time of their twenty-first birthday and such persons have remained continuously in the care of the residential school since their twenty-first birthday.

(f) Notwithstanding any inconsistent provision of law, in any case where an individual receiving transitional care is about to be transferred from a residential school to an adult placement, a transfer plan shall be prepared by the sending facility and forwarded to the receiving facility, the individual and, unless the individual objects, the parents, guardian or other family members prior to the transfer. The transfer plan shall include any information necessary to facilitate a safe transfer, such as specific problems, a schedule for administering medications and behavior unique to the individual.

(5) The committee on special education or, in the case of a state operated school, the multidisciplinary team shall not later than the annual review prior to the eighteenth birthday of a student with a disability who is placed in a residential program by the committee or multidisciplinary team, or a student with a disability who is placed in a day program but the committee or multidisciplinary team has determined that the student is likely to require adult residential services, with the consent of the parents, notify and invite a representative of the office of mental health, office for people with developmental disabilities, or the state education department, as appropriate, to participate in the committee on special education meeting for the development of a recommendation for adult services pursuant to section 7.37 or 13.37 of the mental hygiene law, section three hundred ninety-eight-c of the social services law or section forty-four hundred three of this article. The committee or multidisciplinary team shall give the parent or guardian of the child, the opportunity to consent in writing to the release of relevant information to such other public agency or agencies, upon request of such agency or agencies, for purposes of determining appropriateness of an adult program for such student.

(a) For the purposes of this subparagraph "relevant information" shall be defined as that information in the possession of and used by the committee or the multidisciplinary team to ascertain the physical, mental, emotional and cultural-educational factors which contribute to the student's disability, including but not limited to: (i) results of physical and psychological examinations performed by private and school district physicians and psychologists; (ii) relevant information presented by the parent, guardian and teacher; (iii) school data which

bear on the student's progress including the student's most recent individualized education program; (iv) results of the most recent examinations and evaluations performed pursuant to clause (d) of subparagraph three of this paragraph; and (v) results of other suitable evaluations and examinations possessed by the committee or multidisciplinary team. Nothing in this subparagraph shall be construed to require any committee or multidisciplinary team to perform any examination or evaluation not otherwise required by law.

(b) Upon consent obtained pursuant to this subparagraph, the committee or multidisciplinary team shall forward the student's name and other relevant information in a report to the appropriate public agency as determined by the committee or multidisciplinary team, based upon the student's disability and physical, mental, emotional and social needs. The committee shall forward additional and updated relevant information to the appropriate public agency upon the request for such information by such agency, with the consent of the parents, or the student, if such student is eighteen years or older.

(c) When the committee or multidisciplinary team is notified by the public agency which received the report that such state agency is not responsible for determining and recommending adult services for the child, the committee or multidisciplinary team shall forward the report to another public agency; or, if the committee or multidisciplinary team determines that there exists a dispute as to which state agency has the responsibility for determining and recommending adult services, the committee or multidisciplinary team may forward the report to the council on children and families for a resolution of such dispute.

(6) The committee on special education shall provide a copy of the handbook for parents of children with disabilities established under subdivision eight of section four thousand four hundred three of this article or a locally approved booklet for parents of children with disabilities to the parents or person in parental relationship to a child as soon as practicable after such child has been referred for evaluation to the committee on special education.

2. a. The board of education or trustees of each school district shall be required to furnish suitable educational opportunities for students with disabilities by one of the special services or programs listed in

subdivision two of section forty-four hundred one of this article. The need of the individual child shall determine which of such services shall be rendered. Each district shall provide to the maximum extent appropriate such services in a manner which enables students with disabilities to participate in regular education services when appropriate. Such services or programs shall be furnished between the months of September and June of each year, except that for the nineteen hundred eighty-seven--eighty-eight school year and thereafter, with respect to the students whose disabilities are severe enough to exhibit the need for a structured learning environment of twelve months duration to maintain developmental levels, the board of education or trustees of each school district upon the recommendation of the committee on special education shall also provide, either directly or by contract, for the provision of special services and programs as defined in section forty-four hundred one of this article during the months of July and August as contained in the individualized education program for each eligible student, and with prior approval by the commissioner if required; provided that a student with a disability who is eligible for services, including services during the months of July and August, pursuant to section forty-four hundred ten of this article shall not be eligible to receive services pursuant to this paragraph during the months of July and August.

b. (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 children with disabilities after consideration of the recommendations of the local committee on special education and the hearing officer if a hearing 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.

(2) The board shall select the most reasonable and appropriate special service or program for such children from those programs specified in paragraphs a, b, c, e, f, g, h, i, k, l and m of subdivision two of

section forty-four hundred one of this article upon receipt of the recommendation of the committee on special education. All contracts with schools pursuant to the provisions of paragraphs d, e, f, g, h, l and m of subdivision two of section forty-four hundred one of this article shall be subject to the approval of the commissioner. All contracts under paragraph c of subdivision two of section forty-four hundred one shall be made in accordance with the provisions of subdivision four of section nineteen hundred fifty of this chapter. No child shall be placed in a residential school nor shall a board recommend placement in a residential facility specified in paragraph j of subdivision two of section forty-four hundred one unless there is no appropriate nonresidential school available consistent with the needs of the child. The board shall provide written notice of its determination to the parent or legal guardian of such child. If the determination of the board of education is not consistent with the recommendations of the committee on special education, such notice shall include the statement of the reasons for such determination which shall identify the factors considered by the committee on special education in its evaluation.

(3) If the board cannot secure an appropriate special service within the state or non-residential program to meet the needs of the child, it shall notify the commissioner.

c. Nothing in this section shall be deemed or construed to prohibit a committee on special education from recommending a special service or program specified in paragraph d of subdivision two of section forty-four hundred one of this chapter or to diminish the power of the commissioner to make appointments pursuant to such paragraph.

* d. 1. Notwithstanding any provision of law, rule or regulation to the contrary, the board of education or trustees of a school district, except a city school district in a city with a population of one million or more inhabitants may, upon written notice to the commissioner in compliance with subparagraph two of this paragraph and parental notification, for the remainder of the school year exceed the standards established in regulation for special education class sizes for middle and secondary school students as defined by the commissioner for purposes of this section by no more than a twenty percent increase above such standards, provided that the district is in compliance with such

standards at the start of classes in September of the school year, and further provided that a city school district in a city with a population of one hundred twenty-five thousand or more and less than one million inhabitants shall have the option of either increasing maximum class sizes in any school year pursuant to this section or establishing class sizes for special classes for certain students with disabilities in accordance with the provisions of subdivision six of this section.

2. The notice shall be on a form prescribed by the commissioner, and shall sufficiently demonstrate educational justification and consistency with continuing an appropriate education for all children affected. The commissioner may revoke or preempt any increase in class size upon a finding that increasing class size as proposed would fail to be consistent with appropriate special education.

* NB Repealed July 1, 2027

3. Each school district shall make available a register of public or private agencies and other professional resources within the county from which a parent or person in parental relationship may obtain an independent evaluation of the child.

4. 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 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.

b. Such board may permit any adult, willing to serve without compensation, to act as an attendant for such children.

c. Such board shall be empowered to contract for transportation services provided pursuant to this subdivision with any municipality, Board of Cooperative Educational Services, public authority or private contractor meeting the school bus provisions outlined in section thirty-six hundred twenty-three of this chapter and the standards and

specifications relating thereto.

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 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 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. Notwithstanding any other law, rule or regulation to the contrary, the board of education of a city school district with a population of one hundred twenty-five thousand or more inhabitants shall be permitted to establish maximum class sizes for special classes for certain students with disabilities in accordance with the provisions of this subdivision. For the purpose of obtaining relief from any adverse fiscal impact from under-utilization of special education resources due to low student attendance in special education classes at the middle and secondary level as determined by the commissioner, such boards of education shall, during the school years nineteen hundred ninety-five--ninety-six through June thirtieth, two thousand twenty-seven, be authorized to increase class sizes in special classes containing students with disabilities whose age ranges are equivalent to those of students in middle and secondary schools as defined by the commissioner for purposes of this section by up to but not to exceed one

and two tenths times the applicable maximum class size specified in regulations of the commissioner rounded up to the nearest whole number, provided that in a city school district having a population of one million or more, classes that have a maximum class size of fifteen may be increased by no more than one student and provided that the projected average class size shall not exceed the maximum specified in the applicable regulation, provided that such authorization shall terminate on June thirtieth, two thousand. Such authorization shall be granted upon filing of a notice by such a board of education with the commissioner stating the board's intention to increase such class sizes and a certification that the board will conduct a study of attendance problems at the secondary level and will implement a corrective action plan to increase the rate of attendance of students in such classes to at least the rate for students attending regular education classes in secondary schools of the district. Such corrective action plan shall be submitted for approval by the commissioner by a date during the school year in which such board increases class sizes as provided pursuant to this subdivision to be prescribed by the commissioner. Upon at least thirty days notice to the board of education, after conclusion of the school year in which such board increases class sizes as provided pursuant to this subdivision, the commissioner shall be authorized to terminate such authorization upon a finding that the board has failed to develop or implement an approved corrective action plan.

7. a. The board of education or trustees of each school district and the board of trustees of each charter school shall adopt a policy to ensure that each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for the implementation of a student's individualized education program shall be given a copy of such student's individualized education program prior to the implementation of such program or shall be able to access such student's individualized education program electronically; provided, however, if the policy provides that the student's individualized education program is to be accessed electronically, then such policy shall also ensure that the individuals responsible for the implementation of a student's individualized education program shall be notified and trained on how to access such individualized education

programs electronically.

b. Such policy shall require that any copy of a student's individualized education program provided pursuant to this subdivision shall remain confidential and shall not be redisclosed to any other person, in compliance with federal and state laws and regulations, including the Individuals with Disabilities Education Act and the Family Educational Rights and Privacy Act.

c. Such policy shall require the chair of the committee on special education to designate a professional employee of the school district with knowledge of the student's disability and education program to, prior to the implementation of the individualized education program, inform each teacher, assistant and support staff person of his or her responsibility relating to the implementation of the individualized education program and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the individualized education program.

8. Upon their child's enrollment or attendance in a public school, such school shall notify every parent or person in parental relation of their rights regarding referral and evaluation of their child for the purposes of special education services or programs pursuant to applicable federal and state laws. Such notification may be provided by directing parents or persons in parental relation to obtain information located on the department's website relating to a parent's guide to special education in New York state for children ages three through twenty-one provided the notification shall also contain the name and contact information for the chairperson of the school district's committee on special education or other individual who is charged with processing referrals to the committee in the district.

9. The board of education or trustees of each school district shall develop a procedure to notify the parent or person in parental relation of a student with a disability on the same day a physical or mechanical restraint is applied on such student or such student is placed in a time out room. When the student's parent or person in parental relation

cannot be contacted after reasonable attempts are made, the principal shall record and report such attempts to the committee on special education.