§ 4403. Duties of education department. The state education department shall have power and it shall be its duty: 1. To maintain a statistical summary of the number of children with disabilities who reside within the state and the nature of their 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 disabilities and to coordinate such efforts with the work and function of governmental agencies.

3. To formulate such rules and regulations pertaining to the physical and educational needs of such children as the commissioner of education shall deem to be in their best interests. In the city school district of the city of New York in complying with any rules or regulations promulgated under this section relating to maximum group size, other than regulations prescribing the maximum class size in self-contained special education classes, the commissioner shall allow school districts a variance of up to fifty percent rounded up to the nearest whole number from the maximum number of students as specified in regulation in an instructional group in a resource room program, a related service group, and the total number of students assigned to a resource room teacher.

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

5. To require such financial information as may be necessary from and to audit any public or non-public school receiving any public moneys pursuant to any provision of the education law as the commissioner deems appropriate.

* 6. To provide for an advisory panel, appointed by the commissioner composed of individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities,

teachers of children with disabilities, parents or persons in parental relation of children or individuals with disabilities from birth to age twenty-six, state and local educational officials, including officials who carry out activities under subtitle B of title seven of the McKinney-Vento homeless assistance act (section eleven thousand four hundred thirty-one of title forty-two of the United States code, et seq.), representatives of state or regional associations concerned with the education of children with disabilities, representatives of institutions of higher education that prepare special education teachers or administrators and/or related services personnel, administrators of programs for students with disabilities, a representative of the office of children and family services with responsibility for foster care, representatives of other state agencies involved in the financing or delivery of related services to children with disabilities, representatives of nonpublic schools and, upon establishment of such schools, representatives of public charter schools, not less than one representative of a vocational, community or business organization concerned with the provision of transition services to students with disabilities, and representatives of state juvenile and adult corrections agencies, to advise the governor, legislature and commissioner of unmet needs within the state in the education of children with disabilities, in developing procedures for evaluation of the special education system and the reporting of data as required by federal law, in developing corrective action plans to address findings identified in federal monitoring reports, in developing and implementing policies relating to coordination of services, and on the education of students with disabilities who have been convicted as adults and incarcerated in adult prisons and to comment publicly on any rules or regulations proposed for issuance by the commissioner regarding the education of children with disabilities and the procedures for distribution of funds under this article. A majority of the members of the advisory panel shall be individuals with disabilities or parents of children with disabilities. Such panel members shall serve without compensation except that such members shall be entitled to reimbursement for actual and necessary expenses incurred in such service.

* NB Effective until June 30, 2027

* 6. To provide for an advisory panel, appointed by the commissioner

composed of individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities, teachers of children with disabilities, parents or persons in parental relationship of children with disabilities, state and local educational officials, representatives of state or regional associations concerned with the education of children with disabilities, representatives of institutions of higher education that prepare special education teachers or administrators and/or related services personnel, administrators of programs for students with disabilities, representatives of other state agencies involved in the financing or delivery of related services to children with disabilities, representatives of nonpublic schools and, upon establishment of such schools, representatives of public charter schools, at least one representative of a vocational, community or business organization concerned with the provision of transition services to students with disabilities, and representatives of state juvenile and adult corrections agencies, to advise the governor, legislature and commissioner of unmet needs within the state in the education of children with disabilities, in developing procedures for evaluation of the special education system and the reporting of data as required by federal law, in developing corrective action plans to address findings identified in federal monitoring reports, in developing and implementing policies relating to coordination of services, and on the education of students with disabilities who have been convicted as adults and incarcerated in adult prisons and to comment publicly on any rules or regulations proposed for issuance by the commissioner regarding the education of children with disabilities and the procedures for distribution of funds under this article. A majority of the members of the advisory panel shall be individuals with disabilities or parents of children with disabilities. Such panel members shall serve without compensation except that such members shall be entitled to reimbursement for actual and necessary expenses incurred in such service.

* NB Effective June 30, 2027

7. To define, no later than July first, nineteen hundred seventy-seven, in a report to the legislature and the governor, specific criteria for determining whether a particular disorder or condition may be considered a specific learning disability and to describe in such

report diagnostic procedures which can be used in determining whether a particular child has such a disorder or condition, and to recommend in such report, in consultation with the division of the budget, a cost effective program proposal and finance recommendations.

8. To develop and distribute a handbook for parents of 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 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 child with disabilities.

9. To make provision by regulation of the commissioner to assure the confidentiality of any personally identifiable data, information, and records collected or maintained by the state department of education or any school district, including a committee or subcommittee on special education, and the officers, employees or members thereof, pursuant to or in furtherance of the purposes of this article, and shall establish procedures upon which any such personally identifiable data, information, or records may be disclosed.

10. a. The commissioner shall determine whether a child, whose report is submitted to the department pursuant to clause (b) or (d) of subparagraph five of paragraph b of subdivision one of section forty-four hundred two of this article or subdivision thirteen of section three hundred ninety-eight of the social services law, will likely need adult services and, if such need will likely exist, develop a recommendation of all appropriate adult programs operated or approved by the department which may be available. If necessary and appropriate, the commissioner may conduct an evaluation of the child to determine if adult services will be needed. Such recommendation of all programs shall be made available to the parent or guardian of such child as soon as practicable but no later than six months before such child attains the age of twenty-one.

b. If the commissioner determines, pursuant to paragraph a of this subdivision, that such child will not require adult services, the commissioner shall notify the child's parent or guardian in writing of such determination. Such notice shall be given as soon as practicable but no later than six months before the child attains the age of twenty-one.

c. Notwithstanding paragraphs a and b of this subdivision, the commissioner may determine that the education department is not responsible for determining and recommending adult services for such child. When such a determination is made it shall be made as soon as practicable after receiving the report and the commissioner shall promptly notify in writing the committee on special education, multidisciplinary team or social services official who sent the report that such determination has been made. Such notice shall state the reasons for the determination and may recommend a state agency which may be responsible for determining and recommending adult services.

d. Nothing in this subdivision shall be construed to create an entitlement to adult services.

e. A designee of the commissioner may carry out the functions of the commissioner described in this subdivision.

11. To promulgate regulations concerning standards for the protection of children in residential care from reportable incidents in accordance with this section and article eleven of the social services law, including procedures for:

(a) consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, the review and evaluation of the backgrounds of and the information supplied by any person applying to be an employee, a volunteer or consultant, which shall include but not be limited to the following requirements: that the applicant set forth his or her employment history, provide personal and employment references, and relevant experiential and educational qualifications and, sign a sworn statement indicating whether the

applicant, to the best of his or her knowledge has ever been convicted of a crime in this state or any other jurisdiction;

(b) establishing, for employees, relevant minimal experiential and educational qualifications, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law;

(c) assuring adequate and appropriate supervision of employees, volunteers and consultants;

(d) demonstrating by a residential facility or program that appropriate action is taken to assure the safety of the child who is alleged to have been subjected to a reportable incident in a report to the vulnerable persons' central register in accordance with section four hundred ninety-two of the social services law as well as other children in care, immediately upon notification that such a report of an allegation of a reportable incident has been made with respect to a child in such residential facility or program;

(e) removing a child when it is determined that there is risk to such child if he or she continues to remain within a residential facility or program; and

(f) appropriate preventive and remedial action to be taken including legal actions, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law.

Such standards shall also establish as a priority requirements that:

(A) subject to amounts appropriated therefor, administrators, employees, volunteers and consultants receive training in at least the following: child abuse prevention and identification, safety and security procedures, the principles of child development, the characteristics of children in care, and techniques of group and child management including crisis intervention, the laws, regulations and procedures governing the protection of children from reportable incidents, and other appropriate topics, provided however, that the department may exempt administrators and consultants from such requirements upon demonstration of substantially equivalent knowledge or experience; and

(B) subject to the amounts appropriated therefor, children receive instruction, consistent with their age, needs and circumstances as well

as the needs and circumstances within the program, in techniques and procedures which will enable such children to advocate for and protect themselves from reportable incidents.

The department shall take all reasonable and necessary actions to assure that employees, volunteers and consultants in residential facilities and programs are kept apprised on a current basis of all department policies and procedures relating to the protection of children from reportable incidents and shall monitor and supervise the provision of training to such administrators, employees, volunteers, children and consultants. Regulations and standards developed pursuant to this subdivision shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.

(g) consistent with applicable collective bargaining agreements, assuring that an individual who has committed a category one offense, as defined in paragraph (a) of subdivision four of section four hundred ninety-three of the social services law, that is included on the vulnerable persons' central register is not hired or otherwise used in any position in which such individual would have regular and substantial contact with a service recipient in any program described in paragraph (e) of subdivision four of section four hundred eighty-eight of the social services law.

12. To provide for the development and implementation of a plan of prevention and remediation with respect to a substantiated report of abuse or neglect. Such action shall include: (a) within ten days of receipt of such a substantiated report, development and implementation of a plan of prevention and remediation to be taken with respect to a custodian or the residential facility in order to assure the continued health and safety of children and to provide for the prevention of future acts constituting reportable incidents; and (b) development and implementation of a plan of prevention and remediation, in the event an investigation of an allegation of abuse or neglect determines that a preponderance of the evidence of such allegation exists and such substantiated allegation may be attributed in whole or in part to noncompliance by the residential facility or program with provisions of this chapter or regulations of the department applicable to the

operation of such residential facility or program. Any plan of prevention and remediation required to be developed pursuant to this subdivision by a facility supervised by the department shall be submitted to and approved by the department in accordance with time limits established by regulations of the department. Implementation of the plan shall be monitored by the department. In reviewing the continued qualifications of a residential facility or program for an operating certificate, the department shall evaluate such facility's compliance with plans of prevention and remediation developed and implemented pursuant to this subdivision.

13. To provide technical assistance to school districts for appropriate evaluation and assessment.

14. To provide technical assistance to school districts to assist in the adaptation of curriculum for the instruction of children with disabilities.

15. To provide technical assistance to school districts to assist in developing criteria for placement in special education and criteria for reviewing the ability of a pupil to participate in regular education.

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 disabilities who have received state appointments pursuant to article eighty-five, eighty-seven or eighty-eight of this chapter and whose 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 disability who is the minimum age eligible for such a state appointment shall not commence during the months of July or August.

18. To establish guidelines for determining when a child is at risk of a future placement in a residential school, and for the provision by committees on special education of information to parents and other

persons in parental relationship concerning the availability of community support services to meet the needs of the family. The guidelines shall be developed by the department after consultation with the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services, the department of health, the department of social services and the division for youth.

* 19. To adopt regulations prescribing the state complaint procedures pursuant to sections 300.151 through 300.153 of title thirty-four of the code of federal regulations, where an individual or organization files a written complaint alleging that a public agency has violated part B of the individuals with disabilities education act. Such regulations shall include, but not be limited to, remedies for denial of appropriate services, including, as appropriate, the awarding of monetary reimbursement, compensatory services or other corrective action appropriate to the needs of the child.

* NB Effective until June 30, 2027

* 20. To adopt regulations prescribing the state complaint procedures pursuant to sections 300.660 through 300.662 of title thirty-four of the code of federal regulations, where an individual or organization files a written complaint alleging that a public agency has violated part B of the individuals with disabilities education act. Such regulations shall include, but not be limited to, remedies for denial of appropriate services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child.

* NB Effective June 30, 2027

21. (a) To require special act school districts listed in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, as amended, to provide, on an annual basis or more frequently, as needed, enrollment reports, including current and projected enrollments, proposed budgets and any financial information the commissioner deems appropriate, which shall include, but not be limited to, outstanding revenue anticipation notes as defined in paragraph (a) of subdivision one of section fifty-five of the state finance law, balance owed to employee benefit systems, outstanding bonds, lease costs, and any other

debts to monitor the fiscal stability of special act school districts.

(b) Upon receiving the information identified in paragraph (a) of this subdivision, the department shall determine if any special act district is in need of financial guidance and assistance upon a comprehensive review of such information provided. Upon a determination that a special act district is in need of financial guidance and assistance, the department shall, as soon as practicable, provide the district with specific recommendations to improve the special act district's financial standing in the short and long-term.