§ 4410. Special education services and programs for preschool children with disabilities. 1. Definitions. As used in this section:

a. "Approved evaluator" means either:

(1) a program approved by the commissioner pursuant to paragraph b of subdivision nine of this section; or

(2) a school district or group of appropriately licensed and/or certified professionals associated with a public or private agency approved by the commissioner pursuant to subdivision nine-a of this section.

b. "Approved program" means a program approved by the commissioner pursuant to paragraph a of subdivision nine of this section.

c. "Board" means:

(i) a board of education as defined in section two of this chapter; or

(ii) trustees of a common school district as defined in section sixteen hundred one of this chapter.

d. "City or county official" means the chief executive officer, or, in any county which does not have a chief executive officer, the county governing body, or the mayor of the city of New York.

e. "Committee" means committee on preschool special education.

f. "First eligible for services" means the earliest date on which a child becomes age-eligible for services pursuant to this section, and as defined in regulations of the commissioner in accordance with applicable federal law and regulations, except that a child who is already receiving services under section two hundred thirty-six of the family court act or its successor may, if the parent so chooses, continue to be eligible to receive such services through August thirty-first of the calendar year in which the child first becomes age-eligible to receive services pursuant to this section.

g. "Municipality" means a county outside the city of New York or the city of New York in the case of a county contained within the city of

New York.

h. "Parent" means parent or person in parental relation.

i. "Preschool child" means a child with a disability as defined in section forty-four hundred one of this article who is first eligible for services as defined in paragraph f of this subdivision but who will not have become five years of age on or before December first of the school year, or a later date if a board establishes such later date for eligibility to attend school. A child shall be deemed a preschool child through the month of August of the school year in which the child first becomes eligible to attend school pursuant to section thirty-two hundred two of this chapter.

j. "Related services" means those services as defined in paragraph k of subdivision two of section forty-four hundred one of this article provided to a preschool child at a site determined by the board, including but not limited to an approved or licensed prekindergarten or head start program; the work site of the provider; the child's home; a hospital; a state facility; or a child care location as defined in paragraph a of subdivision eight of this section. If the board determines that documented medical or special needs of the preschool child indicate that the child should not be transported to another site, the child shall be entitled to receive related services in the preschool child's home.

k. "Special education itinerant services" means an approved program provided by a certified special education teacher on an itinerant basis in accordance with the regulations of the commissioner, at a site determined by the board, including but not limited to an approved or licensed prekindergarten or head start program; the child's home; a hospital; a state facility; or a child care location as defined in paragraph a of subdivision eight of this section. If the board determines that documented medical or special needs of the preschool child indicate that the child should not be transported to another site, the child shall be entitled to receive special education itinerant services in the preschool child's home.

2. Provision of services. The board of each school district shall be responsible for the provision of special education services and programs to preschool children in accordance with the provisions of subdivision two of section four thousand four hundred one of this article, except as otherwise limited by regulations of the commissioner; provided, however, that prior to July first, nineteen hundred ninety-one, a board shall be responsible for the provision of special education services and programs to a preschool child only to the extent that there is an approved program available for such preschool children.

3. Committee on preschool special education. a. Each such board shall establish one or more committees to conduct meetings to develop, review and revise the individualized education program of a preschool child with a disability.

* (1) Such board shall ensure that such committee is composed of at least the following members: (i) the parents of the preschool child; (ii) a regular education teacher of such child, whenever the child is or may be participating in a regular education environment; (iii) a special education teacher of the child or, if appropriate, a special education provider of the child; (iv) an appropriate professional employed by the school district who is qualified to provide, or supervise the provision of, special education, who is knowledgeable about the general curriculum of the school district and the availability of preschool special education programs and services and other resources in the school district and the municipality, and who shall serve as chairperson of the committee; (v) an additional parent of a child with a disability who resides in the school district or a neighboring school district and whose child is enrolled in a preschool or elementary level education program, provided that such parent shall not be employed by or under contract with the school district or municipality, and provided further that such additional parent shall not be a required member unless the parents, or a member of the committee on preschool special education, request that such additional parent member participate in accordance with this subparagraph; (vi) an individual who can interpret the instructional implications of evaluation results, provided that such individual may be the member appointed pursuant to clause (ii), (iii),

(iv) or (vii) of this subparagraph where such individuals are determined by the school district to have the knowledge and expertise to do so; (vii) such other persons having knowledge or expertise regarding the child as the board or the parents shall designate, to the extent required under federal law; and for a child in transition from programs and services provided pursuant to applicable federal laws relating to early intervention services, at the request of the parent or person in parental relation to the child, the appropriate professional designated by the agency that has been charged with the responsibility for the preschool child pursuant to said applicable federal laws. In addition, the chief executive officer of the municipality of the preschool child's residence shall appoint an appropriately certified or licensed professional to the committee. Attendance of the appointee of the municipality shall not be required for a quorum. The additional parent need not be in attendance at any meeting of the committee on preschool 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 or a member of the committee on preschool 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.

* NB Effective until June 30, 2027

* (1) Such board shall ensure that such committee is composed of at least the following members: (i) the parents of the preschool child; (ii) a regular education teacher of such child, whenever the child is or may be participating in a regular education environment; (iii) a special education teacher of the child or, if appropriate, a special education provider of the child; (iv) an appropriate professional employed by the school district who is qualified to provide, or supervise the provision of, special education, who is knowledgeable about the general curriculum of the school district and the availability of preschool special education programs and services and other resources in the school district and the municipality, and who shall serve as chairperson of the committee; (v) an additional parent of a child with a disability who

resides in the school district or a neighboring school district and whose child is enrolled in a preschool or elementary level education program, provided that such parent shall not be employed by or under contract with the school district or municipality, and provided further that such additional parent shall not be a required member if the parents request that such additional parent member not participate; (vi) an individual who can interpret the instructional implications of evaluation results, provided that such individual may be the member appointed pursuant to clause (ii), (iii), (iv) or (vii) of this subparagraph where such individuals are determined by the school district to have the knowledge and expertise to do so; (vii) such other persons having knowledge or expertise regarding the child as the board or the parents shall designate, to the extent required under federal law; and for a child in transition from programs and services provided pursuant to applicable federal laws relating to early intervention services, the appropriate professional designated by the agency that has been charged with the responsibility for the preschool child pursuant to said applicable federal laws. In addition, the chief executive officer of the municipality of the preschool child's residence shall appoint an appropriately certified or licensed professional to the committee. Attendance of the appointee of the municipality shall not be required for a quorum.

* NB Effective June 30, 2027

(2) At least five business days prior to a meeting of the committee on preschool special education notice of such meeting shall be given to each committee member, including the appointee of the municipality, and the parent of the preschool child, in writing by first class mail, postage prepaid, telefacsimile, or by personal service. The appropriately licensed or certified professional designated by the agency that has been charged with the responsibility for the preschool child pursuant to applicable federal laws relating to early intervention services shall attend all meetings of the committee conducted prior to the child's initial receipt of services pursuant to this section. The regular education teacher of the child shall participate in the development, review and revision of an individualized education program for the child to the extent required under federal law. A member of such committee shall be considered as a member of a committee on special

education for the purposes of section thirty-eight hundred eleven of this chapter.

* (3) Notwithstanding any provision of law, rule or regulation to the contrary, a member of the committee on preschool special education, other than the parents or persons in parental relation to the student or the appointee of the municipality, 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

* (4) Notwithstanding any provision of law, rule or regulation to the contrary, a member of the committee on preschool special education, other than the parents or persons in parental relation to the student or the appointee of the municipality, 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

* (5) Requests for excusal of a member of the committee on preschool special education as provided for in subparagraphs three and four of this paragraph, and the written input as provided for in subparagraph four of this paragraph, 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 committee on preschool education 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

* (6) Notwithstanding any other provision of law, rule or regulation 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 preschool 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:

(i) 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

(ii) 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 dominant 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.

(iii) 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 committee on preschool special education 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 clause shall not affect the requirement that the committee on preschool special education review the individualized education program at the annual meeting, or more often if necessary.

* NB Repealed June 30, 2027

b. Two or more boards may, subject to the approval of the commissioner, establish a joint committee. Boards seeking to establish such a joint committee shall apply to the commissioner for approval on a form prescribed by the commissioner. Such application shall include, but not be limited to, a plan for holding meetings in a manner and at a location convenient for parents.

c. A municipality with one or more boards located within the municipality may coordinate the scheduling and location of meetings with the prior consent of such board or boards and the approval of the commissioner.

d. The committee shall review, at least annually, the status of each preschool child.

e. In any meeting held to review or evaluate a preschool child, the preschool child's parent shall be given the opportunity to attend and participate in the meeting. The committee shall permit individuals invited by the parent to be present. To the extent possible, any meeting of the committee shall be held at a site mutually convenient to the members of the committee and the parent of the preschool child, including but not limited to the work site of the evaluator, the municipal representative on the committee, or the chairperson of the committee. In a city having a population of less than two hundred fifty thousand but more than two hundred thousand and in a city having a population of less than one hundred seventy-five thousand but more than

one hundred fifty thousand, the chairperson of the committee shall determine the location of the meeting.

f. After notification by a service coordinator, as defined in section twenty-five hundred forty-one of the public health law, that a child receiving services pursuant to title II-A of article twenty-five of the public health law potentially will transition to receiving services under this section and that a conference is to be convened to review the child's program options and establish a transition plan, which conference must occur at least ninety days before such child would be eligible for services under this section, the chairperson of the committee on preschool special education of the local school district or his or her designee in which such child resides shall participate in the conference.

g. In any meeting of the committee held to review or reevaluate the status of a preschool child, the professional who participated in the evaluation shall, upon the request of the parent or committee, attend and participate at such meeting.

4. Evaluations. a. The board shall identify each preschool child suspected of having a disability who resides within the district and, upon referral to the committee shall, with the consent of the parent, provide for an evaluation related to the suspected disability of the child. The board shall make such identification in accordance with regulations of the commissioner.

b. Each board shall, within time limits established by the commissioner, be responsible for providing the parent of a preschool child suspected of having a disability with a list of approved evaluators in the geographic area. The parent may select the evaluator from such list. Each board shall provide for dissemination of the list and other information to parents at appropriate sites including but not limited to pre-kindergarten, day care, head start programs and early childhood direction centers, pursuant to regulations of the commissioner.

c. The documentation of the evaluation shall include all assessment reports and a summary report of the findings of the evaluation on a form prescribed by the commissioner including a detailed statement of the preschool child's individual needs. The summary report shall not make reference to any specific provider of special services or programs. In addition, with the consent of the parents, approved evaluators and committees shall be provided with the most recent evaluation report for a child in transition from programs and services provided pursuant to title two-a of article twenty-five of the public health law. Nothing shall prohibit an approved evaluator or the committee from reviewing other assessments or evaluations to determine if such assessments or evaluations fulfill the requirements of the regulations of the commissioner. Notwithstanding any inconsistent provisions of this section, the committee, in its discretion, may obtain an evaluation of the child from another approved evaluator prior to making any recommendation that would place a child in the approved program that conducted the evaluation of the child. If the committee recommends placing a child in an approved program that also conducted an evaluation of such child it shall indicate in writing that such placement is an appropriate one for the child. In addition, the committee shall provide notice to the commissioner of such recommendation.

d. The approved evaluator shall, following completion of the evaluation, transmit the documentation of the evaluation to all members of the committee and to a person designated by the municipality in which the preschool child resides. Each municipality shall notify the approved evaluators in the geographic area of the person so designated. The summary report of the evaluation shall be transmitted in English and when necessary, also in the dominant language or other mode of communication of the parent; the documentation of the evaluation shall be transmitted in English and, upon the request of the parent, also in the dominant language or other mode of communication of the parent, unless not clearly feasible to do so pursuant to regulations promulgated by the commissioner. Costs of translating the summary report and documentation of the evaluation shall be separately reimbursed. If, based on the evaluation, the committee finds that a child has a disability, the committee shall use the documentation of the evaluation

to develop an individualized education program for the preschool child. Nothing herein shall prohibit an approved evaluator from at any time providing the parent with a copy of the documentation of the evaluation provided to the committee.

e. Prior to the committee meeting at which eligibility will be determined, the committee shall provide the parent with a copy of the summary report of the findings of the evaluation, and shall provide the parent with written notice of the opportunity to address the committee in person or in writing. Upon timely request of the parent, the committee shall, prior to meeting, provide a copy of all written documentation to be considered by the committee; provided, however, that such material shall be provided to the parent at any time upon request.

f. If the parent disagrees with the evaluation, the parent may obtain an additional evaluation at public expense to the extent authorized by federal law or regulation.

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

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

(ii) the results of all evaluations; and

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

b. (i) If the committee determines that the child has a disability, the committee shall recommend approved appropriate services or special programs and the frequency, duration and intensity of such services, including but not limited to the appropriateness of single services or half-day programs based on the individual needs of the preschool child. The committee shall first consider the appropriateness of providing: (i) related services only; (ii) special education itinerant services only; (iii) related services in combination with special education itinerant services; (iv) a half-day program, as defined in the regulations of the

commissioner; (v) a full day program; in meeting the child's needs. If the committee determines that the child demonstrates the need for a single related service, such service shall be provided as a related service only or, where appropriate, as a special education itinerant service. Prior to recommending the provision of special education services in a setting which includes only preschool children with disabilities, the committee shall first consider providing special education services in a setting which includes age-appropriate peers without disabilities. Provision of special education services in a setting with no regular contact with such age-appropriate peers shall be considered only when the nature or severity of the child's disability is such that education in a less restrictive environment with the use of supplementary aids and services cannot be achieved satisfactorily. The committee's recommendation shall include a statement of the reasons why less restrictive placements were not recommended. The committee may recommend placement in a program that uses psychotropic drugs only if the program has a written policy pertaining to such use and the parent is given a copy of such written policy at the time such recommendation is made.

(ii) The committee shall recommend approved appropriate services or special programs. The recommendation shall be based on the individual needs of the preschool child. Appropriate services may include one or more related services selected from a list maintained by a municipality pursuant to paragraph c of subdivision nine of this section; provided, however, that if the committee recommends one or more related services from such list, or itinerant services, the committee shall request that the parent identify the initial child care location arranged by the parent, or other site, at which each such service will be provided.

(iii) The reasons for such recommendation shall be in writing and shall be furnished to the preschool child's parent, the municipality in which the preschool child resides and the board. If the committee's recommendation differs from an expressed preference of a parent with respect to the frequency, duration or intensity of services, or with respect to more or less restrictive settings, the committee shall include in its statement the reasons why the committee recommended a program or service other than that preferred by the parent. The committee shall include in its recommendation any statement or

statements provided by the parent, which the board shall consider.

(iv) 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 his or her respective school district who, acting reasonably and in good faith, provides such information shall not be liable for such action.

c. After consideration of the recommendation of the committee and its statement of reasons, including any statement or statements of a parent setting forth an expressed preference, the board shall arrange for the provision of the recommended special services or programs from among the special services and programs approved for such purpose by the commissioner. In the event the special service or program will be provided in the child's home or another care setting for which the parent has made or subsequently makes arrangements, no transportation shall be indicated.

d. If the board disagrees with the recommendation of the committee, it shall set forth in writing a statement of its reasons and send the recommendation back to the committee, a notice of which shall be furnished to the preschool child's parent and the municipality in which the preschool child resides. In the event a board refers the recommendation back to the committee for reconsideration, the board shall also notify the parent and the committee in writing of the need to schedule a meeting to ensure timely placement. If the determination is for two or more related services, where possible, the board shall select from the list maintained by the municipality pursuant to paragraph c of subdivision nine of this section such related service providers that are employed by a single agency for the provision of such services. The board shall provide each related service provider with a copy of the individualized education program and the name and location of each related service provider. The board shall designate one of the service providers to coordinate the provision of the related services. If the

determination is for special education itinerant services and one or more related services, the special education itinerant service provider shall be responsible for the coordination of such services pursuant to regulations of the commissioner.

* e. A preschool child shall receive the services of a program arranged for by the board commencing with the starting date for such program, unless such services are recommended by the committee less than thirty days prior to, or after, the starting date for such program, in which case, such services shall be provided as soon as possible following development of the individualized education program, but no later than thirty days from the recommendation of the committee; provided, however, that in no case shall a child receive services prior to the date that such child is first eligible for services pursuant to paragraph f of subdivision one of this section.

* NB Effective until June 30, 2027

* e. A preschool child shall receive the services of a program arranged for by the board commencing with the starting date for such program, unless such services are recommended by the committee less than thirty days prior to, or after, the starting date for such program, in which case, such services shall be provided no later than thirty days from the recommendation of the committee; provided, however, that in no case shall a child receive services prior to the date that such child is first eligible for services pursuant to paragraph f of subdivision one of this section.

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f. The board shall give written notice of the special services or programs arranged for to the appropriate municipality, and to the related service provider or the approved program selected to provide the services. The municipality shall contract with the approved program in a timely manner but in no event later than forty days from the receipt of written notice of the determination of the board. If the municipality is a city of one million or more persons, the municipality may delegate contracting authority to the board. The contract shall include but not be limited to any provisions required by the commissioner, shall adhere to the rates established pursuant to subdivision ten of this section as applicable and shall be in a form approved by the commissioner. After

receipt of notification from a municipality of actions taken pursuant to this paragraph and subdivision eight of this section, the commissioner shall issue a notice of authorization for reimbursement to the municipality pursuant to the provisions of subdivisions ten and eleven of this section. Provided further, any agreement for transportation services pursuant to subdivision eight of this section shall be a contract, separate and distinct from the contract for special services or programs pursuant to this section, between the municipality and the approved program which shall include but not be limited to any provisions required by the commissioner on a form prescribed by the commissioner.

g. The board shall determine the appropriate municipality based on the municipality within the school district in which the preschool child resides at the time such board issues its written notice of determination. The board shall terminate such determination if the board arranges for the provision of a new service or program for such child or if the preschool child moves out of the school district or moves to a different municipality within the school district. If the board terminates such determination for a preschool child because such child moves to a different municipality within the school district, such board shall issue a new written notice of determination for the same special education service or program effective the next school day which shall become the responsibility of the new municipality in which such child resides. Pursuant to regulations promulgated by the commissioner, if the preschool child moves to a school district that is within a reasonable distance of the child's current approved placement such child may continue in such placement if it is consistent with the individualized needs of the child and the board of the new school district shall issue a notice of determination to continue such placement, provided that nothing shall preclude a parent from requesting and receiving from the committee of the new school district a reevaluation of the continued placement of such preschool child prior to the annual review establishing the placement for the next school year.

h. Such special services or programs shall be furnished between the months of September and June of each year, except for those preschool

children whose disabilities are severe enough to exhibit the need for a structured learning environment of twelve months duration to prevent substantial regression. The committee shall include in its recommendation for such services or programs a statement of the reasons for such recommendation. The board, after consideration of the recommendation of the committee, shall select an appropriate special service or program for each preschool child eligible for such special service or program during the months of July and August from among those programs approved for such purpose by the commissioner. Nothing contained herein shall be construed to prevent the committee from recommending or the board from selecting a special service or program, or the frequency or duration of a special service or program, which is different in type or intensity than the service or program that the child is furnished between the months of September and June.

6. Professional practice issues. a. Notwithstanding any provisions of law to the contrary, approved programs operated by private providers shall be authorized to employ licensed professionals or contract with licensed professionals or entities legally authorized to provide professional services in accordance with section sixty-five hundred three-b of this chapter.

b. An approved program may be formed as an education corporation, or with the consent of the commissioner as: (i) a not-for-profit corporation; (ii) a business corporation that has the operation of an approved program or another special education school as a primary purpose; (iii) a limited liability company; (iv) a professional service limited liability company or a foreign professional service limited liability company in accordance with the applicable provisions of article twelve or thirteen of the limited liability company law; (v) a registered limited liability partnership or registered foreign limited liability partnership in accordance with article eight-B of the partnership law. In addition, a group of appropriately licensed or certified professionals may be formed as a professional services corporation established pursuant to article fifteen of the business corporation law or as a professional service limited liability company, foreign professional service limited liability company or registered

limited liability partnership or registered foreign limited liability partnership in accordance with article eight-B of the partnership law. An approved program formed as such a professional service limited liability company or registered limited liability partnership may be authorized to provide special education itinerant services or other educational services not involving the practice of a profession under title eight of this chapter, and, upon grant of a waiver pursuant to section sixty-five hundred three-b of this chapter, may employ or contract with individuals licensed or otherwise authorized to practice, or with a professional service corporation, partnership or other entity legally authorized to practice any profession under title eight of this chapter in which the entity would not be authorized to provide professional services under the applicable provisions of section twelve hundred three or subdivision (a) of section thirteen hundred one of the limited liability company law or sections 121-1500 or 121-1502 of the partnership law, provided that such contract is within the scope of the department's approval and is only for the purpose of conducting a multi-disciplinary evaluation of a preschool child suspected of having a disability or a preschool child with a disability or providing related services specified in the individualized education program of a preschool child with a disability.

c. Notwithstanding any other provision of law to the contrary, the exemption in subdivision two of section eighty-two hundred seven of this chapter shall apply to persons employed by a center-based program approved pursuant to subdivision nine of this section to perform the duties of a speech-language pathologist, audiologist, teacher of the speech and deaf and hard of hearing or teacher of the deaf to students enrolled in such approved center-based program in the course of their employment.

* d. Notwithstanding any other provision of law to the contrary, the exemption in subdivision one of section seventy-six hundred five of this chapter shall apply to persons employed on a full-time or part-time salary basis, which may include on an hourly, weekly, or monthly basis, or on a fee for evaluation services basis provided that such person is employed by and under the dominion and control of a center-based program approved pursuant to subdivision nine of this section as a certified

school psychologist to provide activities, services and use of the title psychologist to students enrolled in such approved center-based program; and to certified school psychologists employed on a full-time or part-time salary basis, which may include on an hourly, weekly, or monthly basis, or on a fee for evaluation services basis provided that the school psychologist is employed by and under the dominion and control of a program that has been approved pursuant to paragraph b of subdivision nine of this section, or subdivision nine-a of this section, to conduct a multi-disciplinary evaluation of a preschool child having or suspected of having a disability where authorized by paragraph a of subdivision six of section sixty-five hundred three-b of this chapter, in the course of their employment. Nothing in this section shall be construed to authorize a certified school psychologist or group of such school psychologists to engage in independent practice or practice outside of an employment relationship.

* NB Effective until June 30, 2028

* d. Notwithstanding any other provision of law to the contrary, the exemption in subdivision one of section seventy-six hundred five of this chapter shall apply to persons employed by a center-based program approved pursuant to subdivision nine of this section as a school psychologist to provide activities, services and use of the title psychologist to students enrolled in such approved center-based program in the course of their employment.

* NB Effective June 30, 2028

7. Appeals. * a. The parent may file a written request with the board for an impartial hearing with respect to any matter relating to the identification, evaluation or educational placement of, or provision of a free appropriate public education to, the preschool child or a manifestation determination or other matter relating to the preschool child's placement upon discipline, provided, however, that mediation shall be available to the parent in accordance with the procedures specified in section forty-four hundred four-a of this article.

* NB Effective until June 30, 2027

* a. If the determination of the board is not acceptable to the parent, or if the committee or board fails to make or effectuate such a recommendation within such periods of time as are required by

subdivision five of this section or by the regulations of the commissioner, such parent may file a written request with the board for an impartial hearing, provided, however, that mediation shall be available to the parent in accordance with the procedures specified in section forty-four hundred four-a of this article.

* NB Effective June 30, 2027

* b. Upon receipt of such request, the board shall provide for a hearing to be conducted in accordance with the provisions of subdivision one of section forty-four hundred four of this article. The impartial hearing officer shall render a decision, and mail a copy of the decision to the parents and to the board, not later than thirty calendar days after the receipt by the board of a request for a hearing or after the initiation of such a hearing by the board. The decision of the impartial hearing officer shall be based solely upon the record of the proceeding before the impartial hearing officer, and shall set forth the reasons and the factual basis for the determination. The decision shall also include a statement advising the parents and the board of the right to obtain a review of such a decision by a state review officer. The board may initiate a hearing to the extent provided in subdivision one of section forty-four hundred four of this article.

* NB Effective until June 30, 2027

* b. Upon receipt of such request, the board shall provide for a hearing to be conducted in accordance with the provisions of subdivision one of section forty-four hundred four of this article. The impartial hearing officer shall render a decision, and mail a copy of the decision to the parents and to the board, not later than thirty calendar days after the receipt by the board of a request for a hearing or after the initiation of such a hearing by the board. The decision of the impartial hearing officer shall be based solely upon the record of the proceeding before the impartial hearing officer, and shall set forth the reasons and the factual basis for the determination. The decision shall also include a statement advising the parents and the board of the right to obtain a review of such a decision by a state review officer.

* NB Effective June 30, 2027

* c. During the pendency of an appeal pursuant to this subdivision, unless the board and the parent otherwise agree:

(i) a preschool child who has received services pursuant to

subdivision five of this section, shall remain in the current educational placement; or

(ii) a preschool child not previously served pursuant to this section shall, if the parent agrees, receive services in the program designated by the board pursuant to such subdivision five, which designation resulted in such appeal.

A preschool child who is transitioning from part C of the individuals with disabilities education act and/or title two-A of article twenty-five of the public health law and is no longer eligible for services under part C and title two-A of article twenty-five of the public health law by reason of age, the school district or other public agency is not required to provide the services that the child had been receiving under part C and such title two-A. If the child is found eligible for special education programs and services pursuant to this section, and the parent or person in parental relation consents to the initial provision of services, then the school district or other public agency shall provide those special education programs and services that are not in dispute between the parent and the school district or other public agency.

* NB Effective until June 30, 2027

* c. During the pendency of an appeal pursuant to this subdivision, unless the board and the parent otherwise agree:

(i) a preschool child who has received services pursuant to subdivision five of this section, shall remain in the current educational placement; or

(ii) a preschool child not previously served pursuant to this section shall, if the parent agrees, receive services in the program designated by the board pursuant to such subdivision five, which designation resulted in such appeal; or

(iii) a preschool child who received services pursuant to section two hundred thirty-six of the family court act during the previous year may receive, from the provider of such services, preschool special education services in an approved program appropriate to the needs of such child.

* NB Effective June 30, 2027

d. A state review officer of the education department shall review the

decision of the impartial hearing officer in the manner prescribed in subdivision two of section forty-four hundred four of this article and render a decision no later than thirty days after the decision of such hearing officer.

e. Review of the final determination or order of the state review officer may be brought in the manner prescribed in subdivision three of section forty-four hundred four of this article.

8. Transportation. The municipality in which a preschool child resides shall, beginning with the first day of service, provide either directly or by contract for suitable transportation, as determined by the board, to and from special services or programs; provided, however, that if the municipality is a city with a population of one million or more persons the municipality may delegate the authority to provide such transportation to the board; and provided further, that prior to providing such transportation directly or contracting with another entity to provide such transportation, such municipality or board shall request and encourage the parents to transport their children at public expense, where cost-effective, at a rate per mile or a public service fare established by the municipality and approved by the commissioner. Except as otherwise provided in this section, the parents' inability or declination to transport their child shall in no way affect the municipality's or board's responsibility to provide recommended services. Such transportation shall be provided once daily from the child care location to the special service or program and once daily from the special service or program to the child care location up to fifty miles from the child care location. If the board determines that a child must receive special services and programs at a location greater than fifty miles from the child care location, it shall request approval of the commissioner. For the purposes of this subdivision, the term "child care location" shall mean a child's home or a place where care for less than twenty-four hours a day is provided on a regular basis and includes, but is not limited to, a variety of child care services such as day care centers, family day care homes and in-home care by persons other than parents. All transportation of such children shall be provided pursuant to the procedures set forth in section two hundred

thirty-six of the family court act using the date called for in the written notice of determination of the board or the date of the written notice of determination of the board, whichever comes later, in lieu of the date the court order was issued. Notwithstanding this subdivision or any provision of law to the contrary, transportation expenses incurred by a municipality for operating and maintenance costs pursuant to this subdivision during the period between the issuance of executive order 202.4 on March sixteenth, two thousand twenty and the issuance of executive order 202.28 on May seventh, two thousand twenty shall be reimbursable and considered approved costs in accordance with the provisions of this section and the regulations of the commissioner.

9. Program approval. a. Providers of special services or programs shall apply to the commissioner for program approval on a form prescribed by the commissioner; such application shall include, but not be limited to, a listing of the services to be provided, the population to be served, a plan for providing services in the least restrictive environment and a description of its evaluation component, if any. The commissioner shall approve programs in accordance with regulations adopted for such purpose and shall periodically review such programs at which time the commissioner shall provide the municipality in which the program is located or for which the municipality bears fiscal responsibility an opportunity for comment within thirty days of the review. In collaboration with municipalities and representatives of approved programs, the commissioner shall develop procedures for conducting such reviews. Municipalities shall be allowed to participate in such departmental review process. Such review shall be conducted by individuals with appropriate experience as determined by the commissioner and shall be conducted not more than once every three years.

(iii) Commencing July first, nineteen hundred ninety-six and continuing through June thirtieth, two thousand three, a moratorium on the approval of any new or expanded programs in settings which include only preschool children with disabilities is established. Exceptions shall be made for cases in which school districts document a critical need for a new or expanded program in a setting which includes only preschool children with disabilities, to meet the projected demand for

services for preschool children in the least restrictive environment. Applications for new or expanded programs may be made directly to the state education department. Nothing herein shall prohibit the commissioner from approving the modification of a full-day program into half-day sessions.

Commencing July 1, 1999 the department shall only approve any new or expanded programs in settings which include only preschool children with disabilities, if the applicant can document a critical need for a new or expanded program in a setting which includes only preschool children with disabilities to meet the projected demand for services for preschool children in the least restrictive environment. If the department determines that approval will not be granted, it must notify the applicant, in writing, of its reasons for not granting such approval. The department shall establish guidelines, within 90 days of the effective date of this section which shall state the criteria used to determine if the applicant has demonstrated such a critical need. The department is authorized to consult with the local school district to verify any data submitted.

On December 1, 2003 the commissioner shall submit a report to the board of regents, the majority leader of the senate, the speaker of the assembly and governor evaluating the impact of such moratorium on the availability of preschool special education services. The report shall include: (i) information regarding the number of applications for new programs and program expansions and the disposition of those applications by the commissioner; (ii) an assessment of the projected need for additional classes serving only disabled children and those serving disabled children with their non-disabled peers and in other less restrictive settings; (iii) an assessment of the projected need for additional programs due to program closings in the region, number of children receiving early intervention services and existing waiting lists; (iv) an assessment of the distance that children must be transported to receive preschool special education services; (v) an evaluation of the programmatic performance and cost-effectiveness of existing programs; (vi) recommendations regarding ways in which improved quality and cost-effectiveness could be achieved through the selective

expansion of effective programs and/or the curtailment of less effective programs; and (vii) an assessment of the availability and effectiveness of approved programs providing services to preschool children with autism.

b. As part of an application submitted pursuant to paragraph a of this subdivision, a provider of special services or programs shall submit a description of its multi-disciplinary evaluation component, if any, which shall be subject to the approval of the commissioner in accordance with regulations adopted for such purpose after consultation with the appropriate advisory committee. Such components or program may rely in part on formal written agreements or affiliations with appropriately certified or licensed professionals, or agencies employing such professionals, provided that such professionals or agencies perform their responsibilities in conformance with regulations of the commissioner and that providers fully disclose any such arrangements on all applications for program approval, and provided further that the provider certifies that it shall apply for and obtain a waiver pursuant to section sixty-five hundred three-b of this chapter prior to providing evaluation services pursuant to such written agreements or affiliations. Nothing herein shall require a provider of special services or programs to have a multidisciplinary evaluation program.

c. Municipalities, or in the case of a city of one million or more persons, the board, shall maintain a list of appropriately certified or licensed professionals to deliver related services consistent with this section and the regulations of the commissioner and shall determine reasonable reimbursement for such services subject to the approval of the commissioner. Such list shall also include reasonable reimbursement, as determined by the municipality and approved by the commissioner and the director of the budget, for the coordination of two or more related services pursuant to paragraph d of subdivision five of this section.

d. Providers may make application to conduct a program that relies on formal written agreements or affiliations with other approved programs or appropriately certified or licensed professionals, provided that such arrangements are fully disclosed on all applications to the commissioner

for program approval, and provided further that the provider certifies it shall apply for and obtain a waiver pursuant to section sixty-five hundred three-b of this chapter prior to providing related services pursuant to any such written agreements or affiliations involving licensed professionals.

e. Nothing herein shall preclude an approved program from providing services in the preschool child's home.

f. As part of an application submitted pursuant to paragraph a of this subdivision, a provider of special services or programs shall describe any program in which preschool children will receive services in conjunction with children placed pursuant to section two hundred thirty-six of the family court act or title II-A of article twenty-five of the public health law. If such preschool program otherwise meets the criteria for approval of preschool programs established by regulations of the commissioner, the commissioner shall approve such program.

g. As part of an application submitted pursuant to paragraph a of this subdivision, a provider of special services or programs shall certify pursuant to regulations promulgated by the commissioner that it will take measures to ensure its executive director or person performing the duties of a chief executive officer: (i) meets the criteria established by the commissioner to be an executive director; and (ii) if paid as a full time executive director, he or she is employed in a full time, full year position and shall not engage in activity that would interfere with or impair such executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

* 9-a. (a) A group of appropriately licensed and/or certified professionals associated with a public or private agency may apply to the commissioner for approval as an evaluator on a form prescribed by the commissioner. The commissioner shall approve evaluators pursuant to this subdivision consistent with the approval process for the multi-disciplinary evaluation component of programs approved pursuant to subdivision nine of this section consistent with regulations adopted pursuant to such subdivision. All school districts are deemed approved evaluators of preschool students suspected of having a disability

without the need to submit an application to the commissioner if staff who provide such evaluation services shall have appropriate licensure and/or certification.

Such application shall include, but not be limited to, a description of the multi-disciplinary evaluation services proposed to be provided and a demonstration that all agency employees and staff who provide such evaluation services shall have appropriate licensure and/or certification and that the individual who shall have direct supervision responsibilities over such staff shall have an appropriate level of experience in providing evaluation or services to preschool or kindergarten-aged children with disabilities. To be eligible for approval as an evaluator under this subdivision on and after July first, two thousand eleven, a group of appropriately licensed or certified professionals shall be formed as a limited liability company or professional services corporation established pursuant to article fifteen of the business corporation law, article twelve or thirteen of the limited liability company law or article eight-B of the partnership law. The approval of any groups of licensed or certified professionals that are in existence on July first, two thousand eleven and would not be eligible for approval thereafter shall terminate on July first, two thousand thirteen.

(b) The commissioner shall periodically review such evaluators at which time the commissioner shall provide the municipality in which the evaluator is located an opportunity for comment.

(c) The commissioner shall establish a billing and reimbursement system for services provided by school districts and evaluators approved pursuant to the provisions of this subdivision consistent with billing and reimbursement for evaluation services provided by evaluators approved pursuant to the provisions of subdivision nine of this section.

* NB Repealed July 1, 2027

9-b. Program reapproval process. The commissioner shall periodically review and reapprove programs, including the provision of evaluation services, in accordance with regulations adopted for such purpose, which shall include reapproval criteria designed to assure that quality services are provided in a necessary and cost efficient manner and in

the least restrictive environment which may include settings in which age-appropriate peers without disabilities are typically found. In reviewing programs and the provision of evaluation services, the commissioner shall consider factors including, but not limited to, the percentage of children receiving services from the approved program that conducted the evaluation of the child; and whether there has been evidence of misleading or erroneous advertising. The division of the budget shall consider in a timely manner all requests submitted by the department to hire sufficient staff to conduct such periodic reapproval of programs, as determined by the commissioner, using available federal funds.

Such reapproval process shall provide the municipality in which the program is located or for which the municipality bears fiscal responsibility, an opportunity for comment thirty or more days prior to completion of the reapproval. In collaboration with municipalities and representatives of approved programs, the commissioner shall develop procedures for conducting such reapprovals. Municipalities shall be allowed to participate in such departmental review process. Such reapprovals shall be conducted by individuals with appropriate experience as determined by the commissioner and shall be conducted not more than once every three years, unless the commissioner, on his or her own initiative or at the request of a municipality, determined that reapprovals are earlier or more frequently required. The commissioner shall commence such reapproval process no later than January fifteenth, nineteen hundred ninety-seven. Program reapprovals may result in disapproval of the entire program or a component of the program, including but not limited to the evaluation component. In reapproving a program component, such approval criteria shall include, but not be limited to:

a. the extent to which the program offers services in settings with regular contact with age-appropriate peers, where appropriate to the needs of the population served; and

b. whether there has been evidence of misleading or erroneous advertising.

Such reapproval shall assure an appropriate opportunity to be heard on the findings of the reapproval and the opportunity to address such findings through corrective or remedial action, where applicable. Such reapproval process shall also provide for the determination of action on the part of the department to address the findings of the reapproval which may include, but not be limited to, the withdrawal of approval to provide evaluation services.

9-c. Advertising. The commissioner is authorized to require approved programs and evaluators to periodically submit copies of advertising for review, and to commence a proceeding to revoke the approval of an approved program or evaluator pursuant to this subdivision for false, misleading, deceptive or fraudulent advertising pursuant to regulations to be promulgated by the commissioner, which shall be consistent with article twenty-two-a of the general business law. Such regulations shall prohibit advertisements from including misleading or erroneous information with respect to services to be provided to preschool children and their families. The department shall issue guidelines as to appropriate advertising content. In a revocation proceeding, such guidelines shall not be presumptive evidence that particular advertising is appropriate.

9-d. Business plans. Approved providers of special services and programs, including local educational agencies, shall develop and submit to the commissioner, by January first, nineteen hundred ninety-seven, a business plan, the contents of which shall be determined by the commissioner, which redirects fiscal and personnel resources toward providing special education programs and services in settings with children who do not have disabilities, and reduces the reliance on programs and settings which include only preschool children with disabilities.

10. Approved costs. a. (i) (A) Commencing with the nineteen hundred ninety--ninety-one school year, the commissioner shall annually determine the tuition rate for approved services or programs provided to preschool children pursuant to this section. Such rates for providers of

such services and programs shall be determined in conformance with a methodology established pursuant to subdivision four of section forty-four hundred five of this article after consultation with and a review of an annual report prepared by the advisory committee established pursuant to paragraph a of subdivision twelve of this section and shall be subject to the approval of the director of the budget. Notwithstanding any other provision of law, rule or regulation to the contrary, tuition rates established for the nineteen hundred ninety-five--ninety-six school year shall exclude the two percent cost of living adjustment authorized in rates established for the nineteen hundred ninety-four--ninety-five school year.

(B) Commencing with the two thousand fifteen--two thousand sixteen school year, such special education itinerant services shall be provided by approved programs, and such approved programs shall be reimbursed for such services based on the actual attendance of preschool children receiving such services.

(C) Notwithstanding any other provision of law, rule or regulation to the contrary, on or before the two thousand sixteen--two thousand seventeen school year and thereafter, to be phased-in over no more than four years from such starting year, the commissioner, subject to the approval of the director of the budget, shall establish regional tuition rates for special education itinerant services based on average actual costs in accordance with a methodology established pursuant to subdivision four of section forty-four hundred five of this article.

(D) Notwithstanding any other provision of law, rule or regulation to the contrary, commencing with the two thousand eighteen--two thousand nineteen school year, approved preschool integrated special class programs shall be reimbursed for such services based on an alternative methodology for reimbursement to be established by the commissioner. In developing such methodology the commissioner shall seek input from stakeholders that would be impacted by such alternative methodology. The alternative methodology, subject to the approval of the director of the budget, shall be proposed by the department no later than April first, two thousand eighteen.

(ii) Upon request, the commissioner shall, on a timely basis, transmit to the municipality in which an approved program is located any information provided by such approved program for the purpose of

establishing a rate for the program.

(iii) Following determination of tuition rates pursuant to subparagraph (i) of this paragraph, the commissioner shall submit such rates to the director of the budget for approval and shall simultaneously transmit to each municipality the rates for programs located in the municipality. Within thirty calendar days of the commissioner's transmittal date, the municipality may submit comments in writing to the commissioner. The commissioner shall consider such comments and, if he deems it appropriate, adjust such rate prior to final action by the director of the budget. If the commissioner does not adjust the rate, the commissioner shall respond to the comments presented by the municipality.

b. Reimbursement for evaluations conducted by approved evaluators shall be provided pursuant to regulations of the commissioner after consultation with the advisory committee established pursuant to paragraph a of subdivision twelve of this section and shall be subject to approval by the director of the budget.

c. Approved costs for transportation shall be the costs incurred by the municipality in accordance with the provisions of subdivision eight of this section. The commissioner shall establish, in consultation with the municipalities, and with the approval of the director of the budget, regional ceilings for each region of the state, as defined by the commissioner, on the maximum allowable state reimbursement. In developing such ceilings, the commissioner shall consider the size of the geographic area to be served, the projected number of children requiring transportation services and such other factors as the commissioner shall determine may influence the cost of transportation services.

d. (i) At the beginning of the school year, the commissioner shall allocate funds for reimbursement of allowable administrative costs, as defined in regulations of the commissioner, incurred by a board pursuant to this section. Such allocation shall be in an amount equal to a school district's pro rata share of the statewide base year count of preschool children as a percent of federal funds available for such reimbursement,

as determined by the commissioner. In January of any school year in which additional federal funds are determined by the commissioner to be available for such reimbursement, the commissioner shall equitably allocate such funds for reimbursement of allowable administrative costs, in a manner determined by the commissioner which is consistent with federal statutes and regulations governing the use of federal funds, to school districts which have demonstrated a need for such additional funds. At the close of the school year for which such funds were allocated, each board shall submit, in a form prescribed by the commissioner, a statement of the allowable administrative costs incurred pursuant to this section. A board may, subject to approval of the commissioner, submit any allowable administrative costs for which federal funds are not allocated to that school district pursuant to this subdivision to the appropriate municipality or municipalities for reimbursement pursuant to subdivision eleven of this section.

(ii) Boards may submit reasonable costs incurred pursuant to paragraphs a through d of subdivision seven of this section to the appropriate municipality for reimbursement. Boards may also submit to the appropriate municipality for reimbursement of reasonable costs incurred pursuant to paragraph e of subdivision seven of this section: (A) in an action or proceeding brought by another party or (B) in an action or proceeding brought by the board, other than an action or proceeding brought against the state, a department, board or agency of the state or a state officer, except where such state defendant is joined as a necessary party to such action or proceeding, if, upon final disposition of the action or proceeding, the board receives a judgment in its favor annulling the determination or order of the state review officer. The municipality shall be reimbursed for payment of such costs pursuant to subdivision eleven of this section.

(iii) On or after July first, nineteen hundred ninety, and annually thereafter until June thirtieth, two thousand one, municipalities shall be eligible for reimbursement for administrative costs incurred during the preceding year of fifty dollars for each eligible preschool child served in such year pursuant to this section. On or after July first, two thousand one, and annually thereafter, municipalities shall be eligible for reimbursement for administrative costs incurred during the preceding year of seventy-five dollars for each eligible preschool child

served in such year pursuant to this section. Each municipality shall submit a claim in a form prescribed by the commissioner. Upon approval, reimbursement shall be made by the commissioner from appropriations available therefor. Such reimbursement shall be made in the first instance from any federal funds designated under federal law for local use, as determined by the commissioner, that are available after satisfying the provisions of subparagraph (i) of this paragraph. To the extent that such federal funds are not sufficient or available to reimburse a municipality for such costs, reimbursement shall be made with state funds.

e. Public special education funding provided for the purposes of this section shall not be used to purchase regular preschool educational services, day care or other child care services, or to purchase any instructional service other than special services or programs as defined in subdivision two of section forty-four hundred one of this article or in this section, and the purchase of such regular preschool educational services and child care services shall not be approvable pursuant to this section as a charge upon the municipality or the board.

11. Financial responsibility for approved costs. a. The approved costs for a preschool child who receives services pursuant to this section shall be a charge upon the municipality wherein such child resides. All approved costs shall be paid in the first instance and at least quarterly by the appropriate governing body or officer of the municipality upon vouchers presented and audited in the same manner as the case of other claims against the municipality. Notwithstanding any inconsistent provisions of this section, upon notification by the commissioner, a municipality may withhold payments due any provider for services rendered to preschool children in a program for which the commissioner has been unable to establish a tuition rate due to the failure of the provider to file complete and accurate reports for such purpose, as required by the commissioner.

b. (i) Commencing with the reimbursement of municipalities for services provided pursuant to this section on or after July first, nineteen hundred ninety-three, the state shall reimburse fifty-nine and

one half percent of the approved costs paid by a municipality for the purposes of this section. Commencing with the reimbursement of municipalities for services provided pursuant to this section on or after July first, nineteen hundred ninety-four, the state shall reimburse sixty-nine and one-half percent of the approved costs paid by a municipality for the purposes of this section. The state shall reimburse fifty percent of the approved costs paid by a municipality for the purposes of this section for services provided prior to July first, nineteen hundred ninety-three. Such state reimbursement to the municipality shall not be paid prior to April first of the school year in which such approved costs are paid by the municipality.

(ii) In accordance with a schedule adopted by the commissioner, each municipality which has been notified by a board of its obligation to contract for the provision of approved special services or programs for a preschool child shall be provided with a listing of all such children by the commissioner. Such list shall include approved services and costs as prescribed by the commissioner for each such child for whom the municipality shall certify, on such list, the amount expended for such purposes and the date of expenditure. Upon the receipt of such certified statement, the commissioner shall examine the same, and if such expenditures were made as required by this section, the commissioner shall approve it and transmit it to the comptroller for audit. The comptroller shall thereupon issue his warrant, in the amount specified in such approved statement for the payment thereof out of moneys appropriated therefor, to the municipal treasurer or chief fiscal officer as the case may be.

(iii) (a) Notwithstanding the provisions of this paragraph, any monies due municipalities pursuant to this paragraph for services provided during the two thousand eight--two thousand nine and prior school years shall be reduced by an amount equal to the product of the percentage of the approved costs reimbursed by the state pursuant to subparagraph (i) of this paragraph and any federal participation, pursuant to title XIX of the social security act, in special education programs provided pursuant to this section. The commissioner shall deduct such amount, as certified by the commissioner of health as the authorized fiscal agent of the state education department. Such deductions shall be made in accordance with a plan developed by the commissioner and approved by the

director of the budget. To the extent that such deductions exceed moneys owed to the municipality pursuant to this paragraph, such excess shall be deducted from any other payments due the municipality.

(b) Any moneys due municipalities pursuant to this paragraph for services provided during the two thousand nine--two thousand ten school year and thereafter, or for services provided in a prior school year that were not reimbursed by the state on or before April first, two thousand eleven, shall, in the first instance, be designated as the state share of moneys due a municipality pursuant to title XIX of the social security act, on account of school supportive health services provided to preschool students with disabilities pursuant to this section. Such state share shall be assigned on behalf of municipalities to the department of health, as provided herein; the amount designated as such nonfederal share shall be transferred by the commissioner to the department of health based on the monthly report of the commissioner of health to the commissioner; and any remaining moneys to be apportioned to a municipality pursuant to this section shall be paid in accordance with this section. The amount to be assigned to the department of health, as determined by the commissioner of health, for any municipality shall not exceed the federal share of any moneys due such municipality pursuant to title XIX of the social security act. Moneys designated as state share moneys shall be paid to such municipality by the department of health based on the submission and approval of claims related to such school supportive health services, in the manner provided by law.

(iv) Notwithstanding any other provision of law to the contrary, no payments shall be made by the commissioner pursuant to this section on or after July first, nineteen hundred ninety-six based on a claim for services provided during school years nineteen hundred eighty-nine--ninety, nineteen hundred ninety--ninety-one, nineteen hundred ninety-one-ninety-two, nineteen hundred ninety-two--ninety-three, nineteen hundred ninety-three--ninety-four, and nineteen hundred ninety-four--ninety-five which is submitted later than two years after the end of the nineteen hundred ninety-five--ninety-six school year; provided, however, that no payment shall be barred or reduced where such payment is required as a result of a court order or judgment or a final audit, and provided further that

the commissioner may grant a waiver to a municipality excusing the late filing of such a claim upon a finding that the delay was caused by a party other than the municipality or a board to which the municipality delegated authority pursuant to paragraph f of subdivision five or subdivision eight of this section.

(v) Notwithstanding any other provision of law to the contrary, no payments shall be made by the commissioner pursuant to this section on or after July first, nineteen hundred ninety-six based on a claim for services provided in the nineteen hundred ninety-five--ninety-six school year or thereafter which is submitted later than three years after the end of the school year in which services were rendered, provided, however, that no payment shall be barred or reduced where such payment is required as a result of a court order or judgment or a final audit, and provided further that the commissioner may grant a waiver to a municipality excusing the late filing of such a claim upon a finding that the delay was caused by a party other than the municipality or a board to which the municipality delegates authority pursuant to paragraph f of subdivision five or subdivision eight of this section.

(vi) Notwithstanding any other provision of law to the contrary, beginning with state reimbursement otherwise payable in the two thousand six--two thousand seven state fiscal year and in each year thereafter, payments pursuant to this section, subject to county agreement and in the amounts specified in such agreement, shall be paid no later than June thirtieth of the state fiscal year next following the state fiscal year in which such reimbursement was otherwise eligible for payment and in which the liability to the county for such state reimbursement accrued, provided that such payments in a subsequent state fiscal year shall be recognized by the state and the applicable county as satisfying the state reimbursement obligation for the prior state fiscal year. Any unspent amount associated with such county agreements shall not be available for payments to other counties or municipalities.

c. (i) Each municipality, or, in addition, in the case of a city of one million or more persons, the board, may perform a fiscal audit of such services or programs for which it bears fiscal responsibility in accordance with audit standards established by the commissioner, which may include site visitation. The department shall provide guidelines on

standards and procedures to municipalities and boards, for fiscal audits of services or programs pursuant to this section. Prior to commencing a fiscal audit pursuant to this subparagraph, a municipality shall ascertain that neither the state nor any other municipality has performed a fiscal audit of the same services or programs within the current fiscal year for such program. If it is determined that no such audit has been performed, the municipality shall inquire with the department to determine which other municipalities, if any, bear financial responsibility for the services or programs to be audited and shall afford such other municipalities an opportunity to recommend issues to be examined through the audit. Municipalities completing audits pursuant to this subparagraph shall provide copies to the department, the provider of the services and programs and all other municipalities previously determined to bear financial responsibility for the audited services and programs. No other municipality may conduct an additional fiscal audit of the same services or programs during such current fiscal year for such program.

(ii) Payments made pursuant to this section by a municipality shall, upon conclusion of the July first to June thirtieth school year for which such payment was made, be subject to audit against the actual difference between such audited expenditures and revenues. The municipality shall submit the results of any such audit to the commissioner and the commissioner of social services, if appropriate, for review and, if warranted, adjustment of the tuition and/or maintenance rates. The municipality is authorized to recover overpayments made to a provider of special services or programs pursuant to this section as determined by the commissioner or the commissioner of health based upon their adjustment of a tuition and/or maintenance rate, provided that for purposes of making such adjustment and recovery, the municipality shall be deemed to have paid one hundred percent of the disallowed costs. Such recovery may be accomplished by withholding such amount from any moneys due the provider in the current year, or by direct reimbursement. The commissioner shall promulgate rules and regulations necessary to implement the provisions of this paragraph within sixty days of the effective date of the chapter of the laws of two thousand thirteen which amended this subparagraph.

12. Advisory committees. a. The commissioner shall establish an advisory committee consisting of representatives of municipalities to advise the commissioner on establishing the rate methodology authorized by subdivision ten of this section.

b. The commissioner shall establish such other advisory committees as he deems necessary to implement the provisions of this section.

13. a. The commissioner shall adopt regulations to implement the provisions of this section. Such regulations shall include:

(i) regional cost ceilings on average per pupil transportation cost for the reimbursement of transportation expenditures, where regions shall be as defined by the commissioner;

(ii) the requirement that committees identify transportation options for preschool children, consistent with this article, including encouraging parents to transport their children at public expense where cost-effective; and

(iii) the requirement that each program approved pursuant to the provisions of this section shall make application to the commissioner for approval to provide special education itinerant services.

b. The commissioner shall ensure that eligibility criteria are consistently applied.

c. The commissioner shall, in consultation with clinicians trained in early childhood educational services, municipal representatives, representatives of parents of children requiring preschool and school age special education services, representatives of statewide and regional provider organizations, academic experts concerned with the provision of special education services, and such other early childhood education professionals as the commissioner shall deem appropriate, develop clinical practice guidelines for the purpose of assisting evaluators with respect to appropriate diagnosis and evaluation, and committees with respect to the type, frequency and duration of services. The commissioner may at his or her own discretion use existing advisory committees and may add additional members to develop these guidelines. Such guidelines shall be designed to assure that appropriate services

are provided in a manner which is necessary and cost efficient, and in the least restrictive environment, and shall promote the education of children in integrated settings with children who do not have disabilities insofar as possible and appropriate, including through the provision of related services or special education itinerant services.

* d. The commissioner shall establish procedures for administrative appeals to resolve interagency disputes between boards and municipalities over responsibility for provision of, or payment for, special education programs or services to preschool children with disabilities. During the pendency of any such appeal, the board or, where applicable, a state department or agency responsible for developing the preschool child's individualized education program, shall provide and pay for the special education programs and services on the preschool child's individualized education program and may seek reimbursement in the appeal. The commissioner shall be authorized to make all orders that in the commissioner's judgment are proper or necessary to give effect to the decision in the appeal. Upon a determination that a public agency has failed to provide or pay for such special education programs and services, the commissioner shall certify the amount of such costs to the state comptroller and the state comptroller to deduct such amount from any state funds that become due to such public agency.

* NB Repealed June 30, 2027