§ 4410-b. Use of certain federal funds. 1. Definitions. For purposes of this section:

a. "Approved preschool special education program" shall mean a public or private agency which has been approved by the commissioner as a provider of special education programs or services to preschool students with disabilities pursuant to subdivision nine of section forty-four hundred ten of this article or pursuant to article eighty-five of this chapter.

b. "Base year" shall mean the school year next preceding the school year in which funds are sub-allocated pursuant to this section.

c. "IEP team" means a committee on special education, a subcommittee on special education, a committee on preschool special education or a subcommittee on preschool special education.

d. "Public or private agency" shall mean an approved preschool special education program, or a state-supported school operating pursuant to article eighty-five of this chapter, or an approved private non-residential or residential school that provides special services or programs pursuant to subdivision two of section forty-four hundred one of this article. Such term shall not include an individual providing related services only to preschool students with disabilities pursuant to section forty-four hundred ten of this article. Such term shall include a board of cooperative educational services only to the extent it is an approved preschool special education program, and only for those students provided special education programs or services pursuant to section forty-four hundred ten of this article.

2. Preschool grants for children with disabilities. Each school district receiving an allocation of funds pursuant to section six hundred nineteen of the individuals with disabilities education act for the nineteen hundred ninety-nine--two thousand school year or any subsequent school year shall sub-allocate such funds in accordance with this subdivision to other public and private agencies providing special education services to students ages three to five who were placed in

such agency by the school district's IEP team. For school years prior to two thousand six--two thousand seven, such sub-allocations shall be made on a per capita basis, based upon the number of students three to five years of age who were placed in such agency by the school district's IEP team and are served by the public or private agency as of December first of the base year, as reported to the commissioner; and, for school years two thousand six--two thousand seven and thereafter, such sub-allocations shall be made on a per capita basis, based upon the number of students three to five years of age who were placed in such agency by the school district's IEP team and who are receiving special education programming and instruction from the public or private agency as of December first of the base year, as reported to the commissioner, and according to a formulae based upon the number of students three to five years of age who are receiving related services only from the public or private agency as of December first of the base year, as reported to the commissioner, such that such sub-allocation shall be in an amount determined in accordance with the provisions of this subdivision; provided, however, that for the nineteen hundred ninety-nine--two thousand school year, the sub-allocation payable to each public or private agency shall not be less than five hundred forty-eight dollars per pupil. For the school year two thousand six--two thousand seven, the per capita sub-allocation shall be adjusted whereby each student three to five years of age who was placed in an agency by the school district's IEP team and who is receiving special education programming and instruction therefrom shall be counted as one per capita and each such student who is receiving related services only from such public or private agency shall be counted as two-thirds of a per capita, for purposes of determining such per capita sub-allocation for such school year and that for the school year two thousand seven--two thousand eight and thereafter, shall be counted as one-third for the purposes of determining the per capita sub-allocation for such school year; provided, however, that any municipality which, prior to July first, two thousand three, operated an approved special education itinerant teacher program for students three to five years of age who were placed in such program by a school district's IEP team, shall be deemed to be a public or private agency for purposes of this section and the sub-allocation directed by this subdivision shall be made on a per

capita basis, based upon the number of students, three to five years of age who are receiving special education programming and instruction and related services only therefrom. In the event the total amount allocated to any school district pursuant to such section six hundred nineteen for the nineteen hundred ninety-nine--two thousand school year is insufficient to pay such sub-allocations at the required per pupil level, the school district may apply to the department for a supplemental allocation of funds in the amount of such deficiency from the state allocation received pursuant to such section six hundred nineteen. Payments of such sub-allocation shall be made in the same proportion as such funds are paid to the school district by the state, within thirty days after: (i) the school district receives any portion of its allocation of funds for the current year pursuant to section six hundred nineteen of the individuals with disabilities education act; or (ii) the school district receives an application for a sub-allocation by a public or private agency, or, for the nineteen hundred ninety-nine--two thousand school year only, the school district receives notice from the commissioner that such an application for a sub-allocation has been filed with the commissioner, whichever occurs later.

3. Federal flow-through funds. Each school district receiving an allocation of funds pursuant to section six hundred eleven of the individuals with disabilities education act for the nineteen hundred ninety-nine--two thousand school year or any subsequent school year shall sub-allocate such funds in accordance with this subdivision to other public and private agencies providing special education services to students ages three to twenty-one who were placed in such agency by the school district's IEP team. For school years prior to two thousand six--two thousand seven, such sub-allocations shall be made on a per capita basis, based upon the number of students three to twenty-one years of age who were placed in such agency by the school district's IEP team and were served by the public or private agency as of December first of the base year, as reported to the commissioner; and, for the school year two thousand six--two thousand seven and thereafter, such sub-allocations shall be made on a per capita basis, based upon the number of students three to twenty-one years of age who were placed in

such agency by the school district's IEP team and who were receiving special education programming and instruction from the public or private agency as of December first of the base year, as reported to the commissioner, and according to a formulae based upon the number of students three to twenty-one years of age who were receiving related services only from the public or private agency as of December first of the base year, as reported to the commissioner, such that such sub-allocation shall be in an amount determined in accordance with the provisions of this subdivision. For the school year two thousand six--two thousand seven, the per capita sub-allocation shall be adjusted whereby each student three to twenty-one years of age who was placed in an agency by the school district's IEP team and who is receiving special education programming and instruction therefrom shall be counted as one per capita and each such student who is receiving related services only from such public or private agency shall be counted as two-thirds of a per capita, for purposes of determining such per capita sub-allocation for such school year and that for the school year two thousand seven--two thousand eight and thereafter, shall be counted as one-third for the purposes of determining the per capita sub-allocation for such school year; provided, however, that any municipality which, prior to July first, two thousand three, operated an approved special education itinerant teacher program for students three to five years of age who were placed in such program by a school district's IEP team, shall be deemed to be a public or private agency for purposes of this section and the sub-allocation directed by this subdivision shall be made on a per capita basis, based upon the number of students, three to twenty-one years of age who are receiving special education programming and instruction and related services only therefrom. Payments of such sub-allocation shall be made in the same proportion as such funds are paid to the school district by the state within thirty days after: (i) the school district receives any portion of its allocation of funds for the current year pursuant to section six hundred eleven of the individuals with disabilities education act; or (ii) the school district receives an application for a sub-allocation by a public or private agency, or, for the nineteen hundred ninety-nine--two thousand school year only, the school district receives notice from the commissioner that such an application for a sub-allocation has been filed with the

commissioner; whichever occurs later.

4. Charter schools. Notwithstanding the provisions of subdivisions two and three of this section, any sub-allocation of funds received pursuant to sections six hundred eleven and six hundred nineteen of the individuals with disabilities education act shall be made in accordance with section twenty-eight hundred fifty-six of this chapter and the regulations of the commissioner implementing such section.

5. Carryover funds. In addition to the sub-allocations required pursuant to subdivisions two and three of this section, each school district receiving carryover funds from the nineteen hundred ninety-eight--ninety-nine allocation pursuant to sections six hundred eleven and six hundred nineteen of the individuals with disabilities education act shall sub-allocate such carryover funds pursuant to this subdivision to public and private agencies that have their chief administrative offices located within the school district and have carryover funds remaining from such allocation. Such sub-allocations shall be made in the amounts determined by the commissioner in accordance with procedures established by the commissioner. In the event such a public or private agency has its chief administrative offices located outside of the state, such agency may designate any school district having resident students attending its programs as the district responsible for sub-allocation of its nineteen hundred ninety-eight--ninety-nine carryover funds pursuant to this subdivision.

6. Unobligated funds. Notwithstanding any other provision of law to the contrary, funds sub-allocated to public and private agencies pursuant to subdivisions two and three of this section for any school year that are neither obligated by the last day of the project year nor expended consistent with procedures established by the commissioner shall be carried over to the following school year and shall be made available to such agencies in accordance with procedures established by the commissioner, commencing in July and August of such following school year.

7. Funds; failure to apply. Any school district that fails to apply

for its full allocation of funds pursuant to both sections six hundred eleven and six hundred nineteen of the individuals with disabilities education act by a date to be prescribed by the commissioner shall nevertheless be required to make sub-allocations to public or private agencies pursuant to this section using local funds, based on the full amount that the school district was eligible to receive, as if the district had received an allocation of federal funds on such date.

8. Reporting requirements. a. Each public or private agency that receives a sub-allocation of funds pursuant to this section shall submit an annual cost report in a form approved by the commissioner.

b. The commissioner shall, in consultation with representatives of statewide and regional provider organizations including municipalities and school district personnel and other interested parties:

(1) develop forms to be submitted by school districts that report the number of students three to twenty-one years of age who are placed in a public or private agency providing special education services and who are receiving special education programming and instruction from such agency, and the number of such students who are receiving related services only from such agency; and

(2) develop guidelines to assure that funds allocated and sub-allocated pursuant to this section are used for purposes consistent with federal laws and regulations governing such funds.