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TO: District Superintendents
Superintendent of Schools
Presidents of Boards of Education
Superintendents of State-Operated and State-Supported Schools
Executive Directors of Approved Private Schools
New York City Board of Education
Organizations, Parents and Individuals Concerned with Special Education
Commissioner's Advisory Panel for Special Education Services
SETRC Project Directors and Professional Development Specialists
Regional School Support Centers
Impartial Hearing Officers
Mediators
Other State Agencies

FROM: James P. DeLorenzo

SUBJECT: Chapter 378 of the Laws of 2007: Conforming State Law to Meet the Requirements of the 2004 Reauthorization of the Individuals with Disabilities Education Act

New York State (NYS) Education Law has been amended, effective June 30, 2007, by Chapter 378 of the Laws of 2007 to conform to the Individuals with Disabilities Education Act (IDEA 2004) and the final federal regulations to implement IDEA 2004. A copy of Chapter 378 is attached. In addition to extending the provisions of Chapter 352 of the Laws of 2005 and Chapter 430 of the Laws of 2006, Chapter 378 also includes amendments relating to:

- students with disabilities attending Charter Schools;
- students with disabilities enrolled in nonpublic schools by their parents;
- definitions of "related services" and "transition";
- agreements between a parent and a school district regarding:
 - attendance of committee on special education (CSE) or committee on preschool special education (CPSE) members at meetings to develop a student's individualized education program (IEP);
 - changes to an IEP after the annual review meeting; and
 - three-year reevaluations.



- who can make a referral for an initial evaluation for special education services; and
- due process procedures.

Additional guidance regarding these changes will be issued in the fall. To ensure dissemination to appropriate individuals within a school district, I request Superintendents to please share this memorandum with other individuals such as Building Principals, Directors of Special Education, School Psychologists, CSE and CPSE Chairpersons, Guidance Counselors and Directors of Pupil Personnel. Questions regarding this memorandum may be directed to the Special Education Policy Unit at 518-473-2878.

Attachment

CHAPTER TEXT:

EXPLANATION--Matter underlined is new; matter in brackets [-] is old law to be omitted.

LAWS OF NEW YORK, 2007

CHAPTER 378

AN ACT to amend the education law, in relation to implementation of the federal individuals with disabilities education improvement act of 2004; to amend chapter 352 of the laws of 2005, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, in relation to extending the expiration; to amend chapter 430 of the laws of 2006, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, in relation to extending the expiration; and providing for the repeal of such provisions upon expiration thereof

Became a law July 18, 2007, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (a) of subdivision 4 of section 2853 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(a) For purposes of sections seven hundred one, seven hundred eleven, seven hundred fifty-one and nine hundred twelve of this chapter, a charter school shall be deemed a nonpublic school in the school district within which the charter school is located. Special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider. **Where the charter school arranges to have the school district of residence provide such special education programs or services, such school district shall provide services in the same manner as it serves students with disabilities in other public schools in the school district, including the provision of supplementary and related services on site to the same extent to which it has a policy or practice of providing such services on the site of such other public schools.**

§ 2. Subdivision 1 of section 2856 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

1. (a) The enrollment of students attending charter schools shall be included in the enrollment, attendance, membership and, if applicable, count of students with disabilities of the school district in which the pupil resides. The charter school shall report all such data to the school districts of residence in a timely manner. Each school district

shall report such enrollment, attendance and count of students with disabilities to the department. The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the school district the charter school basic tuition, which shall be an amount equal to one hundred percent of the amount calculated pursuant to paragraph f of subdivision one of section [~~thirty-six~~] thirty-six hundred two of this chapter for the school district for the year prior to the base year increased by the percentage change in the state total approved operating expense calculated pursuant to paragraph t of subdivision [~~eleven~~] one of section [~~thirty-six~~] thirty-six hundred two of this chapter from two years prior to the base year to the base year.

(b) The school district shall also pay directly to the charter school any federal or state aid attributable to a student with a disability attending charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. Notwithstanding anything in this section to the contrary, amounts payable pursuant to this subdivision from state or local funds may be reduced pursuant to an agreement between the school and the charter entity set forth in the charter. Payments made pursuant to this subdivision shall be made by the school district in six substantially equal installments each year beginning on the first business day of July and every two months thereafter. Amounts payable under this subdivision shall be determined by the commissioner. Amounts payable to a charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter until actual enrollment data is reported to the school district by the charter school. Such projections shall be reconciled with the actual enrollment as actual enrollment data is so reported and at the end of the school's first year of operation and each subsequent year based on a final report of actual enrollment by the charter school, and any necessary adjustments resulting from such final report shall be made to payments during the school's [~~second~~] following year of operation.

(c) Notwithstanding any other provision of this subdivision to the contrary, payment of the federal aid attributable to a student with a disability attending a charter school shall be made in accordance with the requirements of section 8065-a of title twenty of the United States code and sections 76.785-76.799 and 300.209 of title thirty-four of the code of federal regulations.

§ 3. Clause (v) of subparagraph 3 of paragraph g of subdivision 3 of section 3214 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

(v) the terms "day," "business day," and "school day" shall be as defined in section [~~300-9~~] 300.11 of title thirty-four of the code of federal regulations.

§ 4. Subdivision 1 of section 3602-c of the education law is amended by adding a new paragraph f and subdivisions 2, 2-a and 7, subdivisions 2 and 7 as amended by section 1 of part H of chapter 61 of the laws of 2006 and subdivision 2-a as amended by chapter 430 of the laws of 2006, are amended and a new subdivision 2-b is added to read as follows:

f. "School district of location" means the school district in which the nonpublic elementary or secondary school attended by the student is located.

2. a. Boards of education of all school districts of the state shall furnish services to [~~pupils~~] students who are residents of this state and who attend nonpublic schools located in such school districts, upon

the written request of the parent or person in parental relation of any such ~~[pupil]~~ student. Such a request for career education or services to gifted students shall be filed with the board of education of the school district in which the parent or person in parental relation of the ~~[pupil]~~ student resides on or before the first day of June preceding the school year for which the request is made~~;~~ ~~provided that, in~~. In the case of education for students with disabilities, such a request shall be filed with the trustees or board of education of the school district of location on or before the first of June preceding the school year for which the request is made, or by July first, two thousand seven for the two thousand seven--two thousand eight school year only, provided that where a student is first identified as a student with a disability after the first day of June preceding the school year for which the request is made, or thirty days after the chapter of the laws of two thousand seven which amended this paragraph, takes effect where applicable, and prior to the first day of April of such current school year ~~[or when a student with a disability establishes residence in the school district after June first of the preceding year and prior to April first of the current school year]~~, such request shall be submitted within thirty days after such student is first identified ~~[or establishes residence in the district, as applicable]~~. For students first identified ~~[or establishing residence]~~ after March first of the current school year, any such request for education for students with disabilities in the current school year that is submitted on or after April first of such current school year, shall be deemed a timely request for such services in the following school year.

b. (1) For the purpose of obtaining education for students with disabilities, as defined in paragraph d of subdivision one of this section, such request shall be reviewed by the committee on special education ~~[in accordance with the provisions of section forty-four hundred two of this chapter]~~ of the school district of location, which shall develop an individualized education service program for the student based on the student's individual needs in the same manner and with the same contents as an individualized education program. The committee on special education shall assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or nonpublic schools located within the school district. Review of the recommendation of the committee on special education may be obtained by the parent or person in parental relation of the pupil pursuant to the provisions of section forty-four hundred four of this chapter. ~~[Such]~~

(2) In the event an individualized education program for the two thousand seven--two thousand eight school year is developed pursuant to this section by the committee on special education of the student's school district of residence prior to the effective date of this subparagraph, with the consent of the parent or person in parental relation, such school district shall forward such individualized education program to the committee on special education of the school district of location. Such individualized education program shall be deemed to be an individualized educational services program for purposes of this subdivision, and the school district of location shall provide the services recommended in such individualized education program, unless and until it is amended by its committee on special education in the manner prescribed by law. If, prior to the effective date of this subparagraph, a student suspected of having a disability has been referred to the committee on

special education of the student's school district of residence the results of such evaluation, with the consent of the parent or person in parental relation of the student, shall be shared with the committee on special education of the school district of location, which may adopt such evaluation as its own or conduct a new evaluation in whole or in part.

(3) Notwithstanding any other provision of this section to the contrary, an individualized education program developed for the two thousand six--two thousand seven school year shall continue to be in full force and effect and binding on the school districts through the end of such school year. Such individualized education program shall be deemed an individualized educational services program for purposes of dispute resolution.

c. Due process complaints relating to compliance of the school district of location with child find requirements, including evaluation requirements, may be brought by the parent or person in parental relation of the student pursuant to section forty-four hundred four of this chapter.

d. In the case of career education and education of gifted students, the school district of residence shall contract with the school district in which the nonpublic school attended by the pupil is located, for the provision of services pursuant to this section~~[, except that in the case services to students with disabilities in the two thousand six--two thousand seven school year, the school district of residence may contract with the school district in which the nonpublic school attended by the student is located or may provide such services directly].~~

2-a. For the education for students with disabilities provided in the two thousand seven--two thousand eight school year and thereafter, to the extent required by federal law, the school district ~~[in which the nonpublic elementary or secondary school attended by the]~~ of location of a student with a disability [is located] shall be responsible for compliance with the requirements of paragraph ten of subsection (a) of section fourteen hundred twelve of title twenty of the United States code, including but not limited to, equitable provision of services, child find and consultation requirements. The committee on special education of the school district ~~[in which the nonpublic school is located]~~ of location shall ~~[immediately refer any nonpublic school student who is a resident of this state and has been identified through its child find process as a student suspected of having a disability to the committee on special education of the student's school district of residence]~~ be responsible for evaluation and possible identification as a student with a disability ~~[by the committee on special education of the school district of residence]~~ of all students attending nonpublic schools located within the school district, including students who are not New York residents. The school district ~~[in which the nonpublic school is located]~~ of location shall expend a proportionate amount of its federal funds made available under part B of the individuals with disabilities education act for the provision of services to students with disabilities attending such nonpublic schools, including students who are not New York residents, provided that such federal funds may not be used for the cost of carrying out the child find requirement. School districts shall obtain parental consent prior to the release of personally identifiable information concerning a student attending a nonpublic school from records collected or maintained pursuant to part B of the individuals with disabilities education act between such student's school district of residence and school district of location.

2-b. The school district of location shall provide special education

programs and services to students with disabilities attending nonpublic schools in the school district who are not New York residents to the extent required under federal law and regulations and such students

shall not have an individual right to receive special education programs and services pursuant to this section. The committee on special education shall develop services plans for such students in accordance with federal law and regulations. The provisions of subdivision two of this section shall not apply to such students, except that due process complaints relating to compliance of the school district of location with child find requirements, including evaluation requirements, may be brought by the parent or person in parental relation of the student pursuant to section forty-four hundred four of this chapter.

7. a. Boards of education of districts providing career education and gifted education services to non-resident [~~pupils~~] students shall be entitled to recover tuition from the district of residence of such [~~pupils~~] students in accordance with a formula promulgated by the commissioner by regulation.

b. In the case of the education for students with disabilities who are residents of New York, [~~such tuition shall exclude any costs paid with federal or state funds by the school district providing such services~~] a school district of location providing services to non-resident students shall be entitled to recover costs of services, costs of evaluation, and costs of committee on special education administration directly from the district of residence of the student if consent of the parent or person in parental relation is obtained to release of personally identifiable information concerning their child. If such consent is not obtained, the school district of location shall submit to the commissioner, in a form prescribed by the commissioner, a claim for costs of services, evaluation costs, and committee on special education administrative costs that includes the address of the student's permanent residence, including the school district of residence, and a certification by officials of the nonpublic school attended by the student that such address is the address of record of such student. Upon certification by the commissioner of the amount of such claim, the state comptroller shall deduct such amount from any state funds which become due to such school district of residence.

c. The amount charged by the school district of location for services, evaluation, eligible due process costs and committee on special education administrative costs shall not exceed the actual cost to the school district of location, after deducting any costs paid with federal or state funds. The commissioner shall adopt regulations prescribing a dispute resolution mechanism that will be available to a school district of residence where such district disagrees with the amount of tuition or costs charged by the school district of location.

§ 5. Paragraph g of subdivision 2 of section 4002 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

g. Related services which shall in appropriate cases be provided or assured to students with disabilities and which shall include audiology, counseling including rehabilitation counseling services, occupational therapy, parent counseling and training, school health services, school nurse services, school social work, physical therapy, speech pathology, medical services as defined in regulations, psychological services, orientation and mobility services, assistive technology service as defined under federal law, interpreting services, other appropriate

developmental, corrective or other support services, and appropriate access to recreation, as such terms are defined by regulations of the commissioner and approved by the director of the budget. Such term does not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of such device.

§ 6. Subdivision 2 of section 4308 of the education law is amended by adding four new paragraphs f, g, h and i to read as follows:

f. Notwithstanding any provision of law, rule or regulation to the contrary, a member of the multidisciplinary team, other than the parents or persons in parental relation to the student is not required to attend a meeting of the team, in whole or in part, if the parent or person in parental relation to the student and the department 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.

g. Notwithstanding any provision of law, rule or regulation to the contrary, a member of the multidisciplinary team, other than the parents or persons in parental relation to the student, may be excused from attending a meeting of the team, 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 department consent, in writing, to the excusal and the excused member submits to the parent or person in parental relation to the student and the multidisciplinary team, written input into the development of the individualized education program, and in particular written input with respect to their area of the curriculum or related services, prior to the meeting.

h. Requests for excusal of a member of the multidisciplinary team as provided for in paragraphs f and g of this subdivision, and the written input as provided for in paragraph g of this subdivision, 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 department to excuse a multidisciplinary team member at any time including where the member is unable to attend the meeting because of an emergency or unavoidable scheduling conflict and the department 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.

i. 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 department may agree not to convene a multidisciplinary team meeting 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 department for an amendment to the individualized education program and the department and such parent or person in parental relation agree in writing; or

(ii) The department provides the parent or person in parental relation with a written proposal to amend a provision or provisions of the indi-

vidualized 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 multidisciplinary team shall be notified of such changes. If the department 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 department amends the individualized education program without rewriting the entire document, the department shall provide the parent 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 paragraph shall not affect the requirement that the multidisciplinary team review the individualized education program at the annual meeting, or more often if necessary.

§ 7. Subdivision 2 of section 4355 of the education law is amended by adding four new paragraphs f, g, h and i to read as follows:

f. Notwithstanding any provision of law, rule or regulation to the contrary, a member of the multidisciplinary team, other than the parents or persons in parental relation to the student is not required to attend a meeting of the team, in whole or in part, if the parent or person in parental relation to the student and the department 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.

g. Notwithstanding any provision of law, rule or regulation to the contrary, a member of the multidisciplinary team, other than the parents or persons in parental relation to the student, may be excused from attending a meeting of the team, 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 department consent, in writing, to the excusal and the excused member submits to the parent or person in parental relation to the student and the multidisciplinary team, 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.

h. Requests for excusal of a member of the multidisciplinary team as provided for in paragraphs f and g of this subdivision, and the written input as provided for in paragraph g of this subdivision, 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 department to excuse a multidisciplinary team member at any time including where the member is unable to attend the meeting

because of an emergency or unavoidable scheduling conflict and the department 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.

i. 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 department may agree not to convene a multidisciplinary team meeting 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 department for an amendment to the individualized education program and the department and such parent or person in parental relation agree in writing; or

(ii) The department 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 multidisciplinary team shall be notified of such changes. If the department 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 department amends the individualized education program without rewriting the entire document, the department 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 paragraph shall not affect the requirement that the multidisciplinary team review the individualized education program at the annual meeting, or more often if necessary.

§ 8. Subdivision 1 of section 4401 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

1. A "child with a disability" or "student with a disability" means a person under the age of twenty-one who is entitled to attend public schools pursuant to section thirty-two hundred two of this chapter and who, because of mental, physical or emotional reasons can only receive appropriate educational opportunities from a program of special education. Such term does not include a child whose educational needs are due primarily to unfamiliarity with the English language, environmental, cultural or economic factors. Lack of appropriate instruction in read-

ing, including in the essential components of reading instruction as defined in subsection three of section twelve hundred eight of the elementary and secondary education act of nineteen hundred sixty-five, or lack of appropriate instruction in mathematics or limited English proficiency shall not be the determinant factor in identifying a student as a student with a disability. "Special education" means specially designed instruction which includes special services or programs as delineated in subdivision two of this section, and transportation, provided at no cost to the parents to meet the unique needs of a child with a disability. A "child with a handicapping condition" means a child with a disability.

§ 9. Paragraph k of subdivision 2 of section 4401 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

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

§ 10. Subdivision 9 of section 4401 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

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

§ 11. Section 4401-a of the education law, as added by chapter 53 of the laws of 1986, subdivision 1 as amended by chapter 886 of the laws of 1986, paragraph b of subdivision 2 and subdivisions 3, 5 and 6 as amended by section 51-a of part L of chapter 405 of the laws of 1999 and subdivision 4 as amended by chapter 273 of the laws of 1986, is amended to read as follows:

§ 4401-a. Referral and evaluation for special education services or programs. 1. Any [~~pupil~~] student suspected of having a [~~handicapping condition~~] disability may be referred for [~~special education services or programs~~] initial evaluation to determine if the student is a student with a disability by the parent or person in parental [~~relationship~~]

relation, the commissioner or a designee of a public agency responsible for providing education to students with disabilities, including but not limited to the school district in which the student resides. In addition, a professional staff member of the school which the [pupil] student attends or professional staff member of the school district in which the [pupil] student resides, physician, judicial officer, [the commissioner or designee] professional staff member of a public agency, or the pupil himself or herself if such pupil is eighteen years of age or older or is an emancipated minor may request that the school district in which the student resides refer the student for initial evaluation.

2. A request for referral submitted by an individual other than the [pupil] student [~~the pupil's parent or person in parental relationship~~] student or a judicial officer shall:

a. state the reasons in writing for the referral and include any test results, records or reports upon which the referral is based unless such test results, records or reports are unavailable;

b. describe in writing, intervention services programs or instructional methodologies to remediate the [pupil's] student's performance prior to referral including any supplementary aids or support services provided for this purpose or state the reason why no such attempts were made; and

c. describe the extent of contact or involvement prior to the referral with the parent or person in parental relationship.

3. A referral submitted by a parent [~~a~~] or person in parental [~~relationship or the pupil,~~] relation shall be submitted in writing to the chairperson of the committee on special education or the building administrator of the school which the [pupil] student attends or is eligible to attend. If such referral is submitted to the building administrator, the building administrator shall forward a copy to the chairperson of the committee on special education. If such referral is submitted to the chairperson of the committee such chairperson shall forward a copy of such referral to the building administrator of the school which the [pupil] student attends or is eligible to attend. A referral submitted by any other individual shall be submitted in writing to the chairperson of the committee on special education or the building administrator of the school which the [pupil] student attends or is eligible to attend. The building administrator may request a meeting with the parent [~~,~~] or person in parental [~~relationship~~] relation to the [~~pupil and/or the pupil~~] student for the purpose of discussing educational alternatives to special education. Such alternatives may include the provision of [~~educationally related support services or any other~~] services designed to address the learning needs of the student and maintain a child's placement in general education with the provision of appropriate educational and support services. Nothing contained in this section shall in any way impede a committee on special education from continuing its duties and functions under this article with regard to a [pupil] student referred for special education or a parent's access to the committee, except that, if the parent concurs in writing with the building administrator to the provision of educational alternatives to special education, the referral shall be deemed withdrawn.

4. The individual evaluation of the educational needs of a [pupil] student referred to the committee on special education shall be conducted by qualified individuals, in accordance with regulations of the commissioner, with the results of such evaluation forwarded to the committee on special education and the [pupil's] student's parent or person in parental [~~relationship~~] relation.

5. Special education services and programs shall be provided after the appropriateness of the resources of the regular education program, including [~~educationally-related~~], but not limited to, support [~~service~~] services, speech and language [~~improvement~~] services, additional educational services and remedial instruction, have been considered. Each school district shall develop a plan and policies for implementing school wide approaches and [~~prereferral~~] pre-referral interventions in order to implement the provisions of this subdivision.

6. If the committee on special education has determined that placement in special education services or programs is not appropriate for the child under consideration, a copy of the committee's recommendation and pertinent information supporting such recommendation shall be forwarded to the building administrator of the school which the child attends and to the parent or person in parental [~~relationship~~] relation to the child. The building administrator shall determine which [~~educationally related~~] support services, speech and language [~~improvement~~] services and additional educational services should be provided to the child in order to assist the child to benefit from a program of regular education and, to the extent available, shall assure that those services are provided. Nothing contained in this subdivision shall be construed to limit the right of the parent[~~,~~] or a person in parental [~~relationship~~] relation to the [~~pupil or the pupil~~] student to make a referral or to appeal the recommendation of the committee on special education in accordance with the provisions contained in section forty-four hundred four of this chapter.

§ 12. Clause (b) of subparagraph 1 of paragraph b of subdivision 1 of section 4402 of the education law, as amended by chapter 311 of the laws of 1999, is amended and three new clauses (b-1), (b-2) and (b-3) are added to read as follows:

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

The committee shall invite the appropriate professionals most familiar with a student's disability or disabilities to attend any meeting concerning the educational program for such student. Except as otherwise provided in this clause or clause (b-1) or (b-2) of this subparagraph, all members of such committee shall attend meetings of the committee on special education.

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

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

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

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

§ 13. Clause (d) of subparagraph 1 of paragraph b of subdivision 1 of section 4402 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

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

tion in accordance with this clause and the regulations of the commissioner. The membership of each subcommittee shall include, but not be limited to, the committee members required by subclauses (i), (ii), (iii), (v), (vi), (ix) and (x) of clause (a) of this subparagraph, and a

school psychologist whenever a new psychological evaluation is reviewed or a change to a more restrictive program option, as defined in regulations of the commissioner, is considered. Except when (i) a student is considered for initial placement in a special class, or (ii) a student is considered for initial placement in a special class outside of the student's school of attendance, or (iii) whenever a student is considered for placement in a school primarily serving students with disabilities or a school outside of the student's district, each subcommittee may perform the functions for which the committee on special education is responsible pursuant to the provisions of this subdivision. Notwithstanding any other provisions of this clause to the contrary, attendance of members of a subcommittee may be excused from attendance in the same manner as members of a committee on special education pursuant to clauses (b-1), (b-2) or (b-3) of this subparagraph. Each subcommittee shall report annually the status of each student with a disability within its jurisdiction to the committee on special education, and the subcommittee shall refer to the committee, upon receipt of a written request from the parent or person in parental relation to a student, any matter in which the parent disagrees with the subcommittee's recommendation concerning a modification or change in the identification, evaluation, educational placement or provision of a free appropriate public education to such student. The committee on special education shall be responsible for oversight and monitoring of the activities of each subcommittee to assure compliance with the requirements of applicable and federal law and regulations.

§ 14. Clause (b) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

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

(ii) Notwithstanding any provisions of this clause or clause (a) of this subparagraph to the contrary, in making changes to a student's individualized education program after the annual review has been conducted, the parent or person in parental relation to the student and

the school district may agree not to convene a meeting of the committee on special education for the purpose of making those changes, and instead may develop a written document to amend or modify the student's current individualized education program under the following circumstances:

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

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

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

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

§ 15. Clause (d) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

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

§ 16. Clause (j) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law, as amended by chapter 352 of the laws

of 2005, is amended to read as follows:

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

§ 17. Clauses (b) and (c) of subparagraph 4 of paragraph b of subdivision 1 of section 4402 of the education law, as amended by chapter 600 of the laws of 1994, are amended to read as follows:

(b) When the committee on special education of a local school district determines that a child who is receiving foster care is at risk of a future placement in a residential school, the committee, with the consent of the parent or person in parental relation or the student, if he or she is over the age of eighteen, shall notify the social services district responsible for the child of its determination that the child is at risk of placement.

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

- (i) a local interagency body capable of performing a multidisciplinary assessment of the family's community support services needs; or
- (ii) if no such agency exists in the locality, any county agency which is receiving state coordinated children's services initiative funding as referenced in the aid to localities budget; or
- (iii) where neither such agency exists in the locality, either the

area developmental disabilities services office, where the primary reason the child is at risk of placement relates to mental retardation or a developmental disability, or the local mental health agency, where the primary reason the child is at risk of placement relates to any other mental disability.

§ 18. Subdivision 20 of section 4403 of the education law, as added by chapter 311 of the laws of 1999, is renumbered subdivision 19-a and amended to read as follows:

19-a. To adopt regulations prescribing the state complaint procedures pursuant to sections [~~300.660~~] 300.151 through [~~300.662~~] 300.153 of title thirty-four of the code of federal regulations, where an individual or organization files a written complaint alleging that a public agency has violated part B of the individuals with disabilities education act. Such regulations shall include, but not be limited to, remedies for denial of appropriate services, including, as appropriate, the awarding of monetary reimbursement, compensatory services or other corrective action appropriate to the needs of the child.

§ 19. Paragraph b of subdivision 4 of section 4404 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

b. For students with disabilities placed in an interim alternative educational setting pursuant to clause (iv) or (vii) of subparagraph three of paragraph g of subdivision three of section thirty-two hundred fourteen of this chapter, during the pendency of proceedings conducted pursuant to this section in which the parents or persons in parental relation challenge the interim alternative educational setting or a manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the impartial hearing officer or until expiration of the time period of the student's placement in an interim alternative educational setting, whichever comes first, unless the local school district and the parents or persons in parental [~~relationship~~] relation otherwise agree. After the expiration of such placement in an interim alternative educational setting, if the school district proposes to change the student's placement, during the pendency of any proceedings to challenge the proposed change in placement, the student shall return to and remain in the current educational placement, which shall be the student's placement prior to the interim alternative educational setting, unless the local school district and the parents or persons in parental relation otherwise agree or unless as a result of a decision by an impartial hearing officer in an expedited hearing, the interim alternative educational setting is extended [~~or another appropriate placement is ordered~~] for a period not to exceed forty-five school days based on a determination that maintaining the current educational placement of the student is substantially likely to result in injury to the student or to others. Such procedure for extension of an interim alternative educational setting may be repeated as necessary.

§ 20. Subdivision 5 of section 4404-a of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

5. Each session in the mediation process shall be scheduled in a timely manner, and shall be held in a location that is convenient to the parties to the dispute. An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement. Such agreement shall be a legally binding agreement

that sets forth the resolution of the dispute and: (i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil action or proceeding; (ii) is signed by both the parent or person in parental relation and a representative of the school district or agency who has the authority to bind such school district or agency; and (iii) is enforceable in any state court of competent jurisdiction or in a United States district court. The committee on special education or committee on preschool special education shall immediately amend the student's individualized education program to be consistent with such mediation agreement. Discussions that occur in the mediation process shall be confidential, and may not be used as evidence in any subsequent proceedings pursuant to section forty-four hundred four of this article or in any subsequent civil actions or proceedings. [~~The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.~~]

§ 21. Subparagraph 1 of paragraph a of subdivision 3 of section 4410 of the education law, as amended by chapter 311 of the laws of 1999, is amended and four new subparagraphs 3, 4, 5 and 6 are added to read as follows:

(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, 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.

(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.

(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.

(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.

(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.

§ 22. Paragraph e of subdivision 5 of section 4410 of the education law, as amended by chapter 693 of the laws of 1993, is amended to read as follows:

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.

§ 23. Paragraphs a, b and c of subdivision 7 of section 4410 of the education law, paragraph a as amended by chapter 311 of the laws of 1999, paragraph b as amended and paragraph c as added by chapter 705 of the laws of 1992, are amended to read as follows:

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~~] 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.

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.

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].~~

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.

§ 24. Section 22 of chapter 352 of the laws of 2005, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, as amended by chapter 430 of the laws of 2006, is amended to read as follows:

§ 22. This act shall take effect July 1, 2005, provided, however, if this act shall become a law after such date it shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2005; and provided further, however, that sections one through four and six through twenty-one of this act shall expire and be deemed repealed June 30, [2007] 2009, and section five of this act shall expire and be deemed repealed June 30, [2007] 2009.

§ 25. Subdivision (a) of section 8 of chapter 430 of the laws of 2006, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, is amended to read as follows:

(a) sections one, two, and six of this act shall expire and be deemed repealed June 30, [2007] 2009;

§ 26. Severability. If any provision of this act or its application to any person or circumstance is held invalid, this invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

§ 27. This act shall take effect immediately; provided however:

a. sections one, two, three, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three of this act shall take effect June 30, 2007; provided however, if this act shall become a law after such date it shall take effect immediately and shall be deemed to have been in full force and effect on and after June 30, 2007;

b. the amendments to sections 3214, 3602-c, 4002, 4401, 4402, 4404, and 4404-a of the education law made by sections three, four, five, eight, nine, ten, thirteen, fourteen, fifteen, sixteen, nineteen and twenty of this act respectively shall not affect the expiration or repeal of such provisions and shall be deemed to be expired or repealed therewith;

c. the amendments to subdivision 7 of section 3602-c of the education law made by section four of this act shall first apply to charges for costs of services, evaluation and committee on special education administration that relate to the provision of special education programs and services to students attending nonpublic schools for the 2007-2008 school year and shall be deemed to have been in full force on and after June 30, 2007; and

d. the provisions of this act shall expire and be deemed repealed June 30, 2009.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly
