

SED NO. 34

AN ACT to amend the education law and the public health law, in relation to implementation of the federal individuals with disabilities education improvement act of 2004; and providing for the repeal of such provisions upon expiration thereof, to amend the social services law in relation to access by school districts to certain records pertaining to students with disabilities; 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 effectiveness thereof; to repeal subdivisions 21 and 22 of section 4403 of the education law relating to the collection of data on rates of certain special education placements and declassification rates and providing for the repeal of certain provisions upon the expiration thereof

Section 1. Legislative findings. The legislature finds and declares that Congress has enacted the Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446, amending the Individuals with Disabilities Education Act (IDEA) relating to the provision of special education programs and services, effective July 1, 2005. Whereas the United States Department of Education has required states to provide an assurance in their application for funding under Part B of the IDEA that the state and its local educational agencies will comply with the IDEA as amended on July 1, 2005 and any provisions of the applicable federal regulations not inconsistent with the amended federal statute and whereas new federal regulations to implement the amended IDEA have been proposed but have not been finally adopted in time to develop and adopt permanent state legislation conforming to such federal requirements and the state has now been given until June 30, 2007 to make conforming changes in state law, the legislature finds

that it is necessary to enact this temporary transitional legislation containing those amendments to state law necessary to assure that the state of New York will be in compliance with the provisions of the amended IDEA in the 2006-07 school year. Once the final federal implementing regulations are adopted and necessary clarifications are obtained on certain provisions of the amended IDEA, the legislature intends to enact permanent legislation making broader changes in New York state law in response to the amended IDEA and the final federal regulations.

§ 2. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of the education law, as amended by chapter 380 of the laws of 2001, is amended to read as follows:

(1) No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his or her behalf. Where the pupil is a student with a disability or a student presumed to have a disability, the provisions of paragraph g of this subdivision shall also apply. Where a pupil has been suspended in accordance with this subdivision by a principal of a school, superintendent of schools, district superintendent of schools, or community superintendent, the superintendent shall personally hear and determine the proceeding or may, in his or her discretion, designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him or her. A record of the hearing shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and recommendations as to the appropriate measure of discipline to the superintendent. The report of the hearing

officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools. Where the basis for the suspension is, in whole or in part, the possession on school grounds or school property by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

§ 3. Subdivision 2-a of section 3602-c of the education law, as amended by section 1 of part H of chapter 61 of the laws of 2006, is amended to read as follows:

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 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 school district in which the nonpublic school is located 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 for evaluation and possible identification as a student with a disability by the committee on special education of the school district of residence. The school district in which the nonpublic school is located 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, provided that such federal funds may not be used for the cost of carrying out the child find requirement.

§ 4. Subdivision 2 of section 4308 of the education law is amended by adding a new paragraph f to read as follows:

f. Notwithstanding any provisions of this subdivision to the contrary, to the extent required to comply with federal regulations, the commissioner may adopt regulations providing for the possibility, by agreement between the parent or person in parental relation to the student and the department, that attendance of members of the multidisciplinary team is not necessary or that members may be excused from attendance at meetings of the team and of amendments to a student's individualized education program without a meeting after it has completed the annual review of the student's individualized education program. Such regulations shall include, but shall not be limited to, procedures for amendments without a meeting that ensure that, to the extent possible, all requirements under this section or the regulations of the commissioner that apply to amendments of an individualized education program made at a meeting of the team will apply.

§ 5. Subdivision 2 of section 4355 of the education law is amended by adding a new paragraph f to read as follows:

f. Notwithstanding any provisions of this subdivision to the contrary, to the extent required to comply with federal regulations, the commissioner may adopt regulations providing for the possibility, by agreement between the parent or person in parental relation to the student and the department, that attendance of members of the multidisciplinary team is not necessary or that members may be excused from attendance at meetings of the team and of amendments to a student's individualized education program without a meeting after it has completed the annual review of the student's individualized education program. Such regulations shall include procedures for amendments without a meeting that ensure that, to the extent possible, all requirements under this subdivision or the regulations of the commissioner that apply to amendments of an individualized education program made at a meeting of the team will apply.

§ 6. Clause (b) of subparagraph 1 and subparagraph 2 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 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 to the student in question, the student, or a member of the committee on special education. The parents or persons in parental relationship of the student in question shall receive proper written notice of their right to have the school physician attend the meetings of the committee on special education upon referral of said student to the committee on special education or whenever such committee plans to modify or change the identification, evaluation or educational placement of the student 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. Notwithstanding any provisions of this clause or clause (a) of this subparagraph to the contrary, to the extent required to comply with federal regulations, the commissioner may adopt regulations providing for the possibility, by agreement between the parent or person in parental relation to the student and the school district, that attendance of members of the committee on special education is not necessary or that members may be excused from attendance at meetings of the committee.

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.

§ 7. 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 education in accordance with this clause and the regulations of the commissioner. The membership of each subcommittee shall include, but not be limited to, the committee members required by subclauses (i), (ii), (iii), (v), (vi), (ix) and (x) of clause (a) of this subparagraph, and a school psychologist whenever a new psychological evaluation is reviewed or a change to a more restrictive program option, as defined in regulations of the commissioner, is considered. Except when (i) a student is considered for initial placement in a special class, or (ii) a student is considered for initial placement in a special class outside of the student's school of attendance, or (iii) whenever a student is considered for placement in a school primarily serving students with disabilities or a school outside of the student's district, each subcommittee may perform the functions for which the committee on special education is responsible pursuant to the provisions of this subdivision. Notwithstanding any other provisions of this clause to the contrary, to the extent required to comply with federal regulations, the commissioner may adopt regulations providing for

the possibility, by agreement between the parent or person in parental relation to the student and the school district, that attendance of members of the subcommittee is not necessary or that members may be excused from attendance at meetings of the subcommittee. 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.

§ 8. 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) 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. Notwithstanding any other provisions of this section to the contrary, to the extent required to comply with federal regulations, the commissioner may adopt regulations providing for the possibility, by agreement between the parent or person in parental relation to the student and the school district, of amendment of the student's individualized education program without a meeting of the committee or subcommittee on special education after the committee or subcommittee has completed its annual review of the student's individualized education program. Such regulations shall include procedures for amendments without a meeting that ensure that, to the extent possible, all requirements under this section that apply to amendments of an individualized education program made at a meeting of the committee or subcommittee will apply.

§ 9. 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 that to the extent required to comply with federal regulations the commissioner may adopt regulations excusing the committee or subcommittee from conducting a triennial reevaluation where the school district and

the parent or person in parental relation to the student agree that a triennial 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.

§ 10. Subdivisions 21 and 22 of section 4403 of the education law are REPEALED.

§ 11. Paragraph a of subdivision 1 of section 4404 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

a. If the parent or person in parental relation of a student, the board of education or trustees of a school district or a state agency responsible for providing education to students with disabilities presents a complaint with respect to any matter relating to the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student or a manifestation determination or other matter relating to placement upon discipline of a student with a disability that may be the subject of an impartial hearing pursuant to subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations, and the party presenting the complaint or their attorney provides a due process complaint notice in accordance with federal law and regulations and such complaint sets forth an alleged violation that occurred not more than [two years] one year before the date the parent or public agency knew or should have known about

the alleged action that forms the basis for the complaint, the board or agency shall appoint an impartial hearing officer to review the due process complaint notice when challenged and, if the matter is not resolved in a resolution session that has been convened as required by federal law, to preside over an impartial due process hearing and make a determination within such period of time as the commissioner by regulation shall determine, provided that the board of education or trustees shall offer the parent or person in parental relation the option of mediation pursuant to section forty-four hundred four-a of this article as an alternative to an impartial hearing. Where the parent or person in parental relation or a school district or public agency presents a complaint, the school district or public agency responsible for appointing the impartial hearing officer shall provide the parent or person in parental relation with a procedural safeguards notice as required pursuant to subsection (d) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations. Notwithstanding any provision of this subdivision to the contrary, the time limitation on presenting a complaint shall not apply to a parent or person in parental relation to the student if the parent or person in parental relation was prevented from requesting the impartial hearing due to specific misrepresentations by the school district or other public agency that it had resolved the problem forming the basis of the complaint or due to the school district's or other public agency's withholding of information from the parent or person in parental relation that was required under federal law to be provided. Nothing in this subdivision shall be construed to authorize the board of education or trustees to bring an impartial hearing to override the refusal of a parent or person in parental relation to consent where a public agency is prohibited by federal law from initiating such a hearing.

§ 12. Paragraphs a and b of subdivision 3 of section 4404 of the education law, as amended by section 492 of the laws of 2003, are amended to read as follows:

a. Any final determination or order of a state review officer rendered pursuant to subdivision two of this section may only be reviewed in a proceeding brought in the supreme court pursuant to article four of the civil practice law and rules, and paragraph b of this subdivision, or in United States district court. **Any such proceeding shall be commenced within ninety days after the determination to be reviewed becomes final and binding on the parties.**

b. In any such proceeding under article four of the civil practice law and rules, the court may grant any relief authorized by the provisions of rule four hundred eleven of such law and rules, which shall include any relief available in a civil action under section six hundred fifteen of the individuals with disabilities education act (20 U.S.C. section 1415) and also may, in its discretion remand the proceedings to the state review officer for further consideration upon a finding that any relevant and material evidence is then available which was not previously considered by the state review officer. Such proceeding shall be deemed a proceeding against a body or officer for purposes of [sections two hundred seventeen and] **section** five hundred six of the civil practice law and rules. The court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

§ 13. Paragraph f of subdivision 1 of section 4410 of the education law, as amended by chapter 705 of the laws of 1992, is amended to read as follows:

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] title two-A of article twenty-five of the public health law 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 or, at the parent's option, until the last day of the school year in which the child turns three years of age.

§ 14. Paragraph a of subdivision 3 of section 4410 of the education law is amended by adding a new subparagraph 3 to read as follows:

(3) Notwithstanding any other provisions of this subdivision to the contrary, to the extent required to comply with federal regulations, the commissioner may adopt regulations providing for the possibility, by agreement between the parent and the school district, that attendance of members of the committee is not necessary or that members may be excused from attendance at meetings of the committee and of amendments to a preschool child's individualized education program without a meeting after the committee has completed of its annual review of the student's individualized education program. Such regulations shall include but shall not be limited to procedures for amendments without a meeting that ensure that, to the extent possible, all requirements under this section or the regulations of the commissioner that apply to amendments of an individualized education program made at a meeting of the committee will apply.

§ 15. Paragraphs a, b and d of subdivision 7 of section 4410 the education law, paragraph a as amended by chapter 311 of

the laws of 1999; paragraph b as amended by chapter 705 of the laws of 1992 and paragraph d as amended by section 57 of part H of chapter 83 of the laws of 2002, 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 pursuant to the provisions of subdivision one of section forty-four hundred four of this article 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 and the regulations of the commissioner implementing such section forty-four hundred four. [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 and the regulations of the commissioner implementing such section forty-four hundred four.

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]the regulations of the commissioner implementing such subdivision.

§ 17. Subdivision 8 of section 2541 of the public health law, as added by chapter 428 of the laws of 1992; paragraph (a) as amended by section 1 of part B-3 of chapter 62 of the laws of 2003, is amended to read as follows:

8. (a) "Eligible child" means an infant or toddler from birth through age two who has a disability; provided, however, that any toddler with a disability who has been determined to be eligible for program services under section forty-four hundred ten of the education law and:

(i) who turns three years of age on or before the thirty-first day of August shall, if requested by the parent, be eligible to receive early intervention services contained in an IFSP until the first day of September of that calendar year or, at the request of the parent, until the last day of the school year in which the toddler with a disability turns three years of age where such date is later; or

(ii) who turns three years of age on or after the first day of September shall, if requested by the parent and if already receiving services pursuant to this title, be eligible to continue receiving such services until [the second day of January of the following calendar year] the last day of the school year in which the toddler with a disability turns three years of age.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, a child who receives services pursuant to section forty-four hundred ten of the education law shall not be an eligible child.

(c) For purposes of this subdivision, "school year" means the period commencing on July first and ending on the thirtieth day of June next following.

§ 17. Section 372 of the social services law is amended by adding a new subdivision 4-c to read as follows:

4-c. Notwithstanding any other provisions of this section, or any other provision of law, rule or regulation to the contrary, where a child seeks to enroll in a program of a public school district, records relating to such child and maintained by the office of children and family services, an authorized agency, a detention facility, or a social services district shall be disclosed to officials of the school district upon request, provided that such school officials certify that the information is necessary to enroll the child in school and/or for the evaluation or placement of the child in an educational program. Such information shall include, but not be limited to, the name and address and telephone number, if any, of the parent or person in parental relation to the child, except that nothing in this subdivision shall be construed to authorize the release of information relating to the current location of the parent where such parent's current location is confidential by law under a statute other than this section, unless such parent or person in parental relation to the child consents in writing to such release. Where the parent's location is confidential, it shall be the duty of the office of children and family services, authorized agency, detention facility, or a social services district to notify the parent or person in parental relation of the request by school officials and their right to consent to the release of such information or to establish contact with school

officials through other means. The school officials receiving information pursuant to this subdivision shall treat it as confidential and shall not redisclose such information without consent of the parent or person in parental relation, except as authorized under section twelve hundred thirty-two-g of title twenty of the United States Code and the federal regulations implementing such statute, provided that school officials shall not be authorized to redisclose information on the parent's location where such information is confidential and not subject to disclosure under any other provision of law.

§ 18. 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 section 2 of part H of chapter 61 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, [2006] 2007, and section five of this act shall expire and be deemed repealed June 30, 2007.

§ 19. This act shall take effect June 30, 2006 and in the event that it shall become a law after such date, this act shall take effect immediately and shall be deemed to have been in full force on and after June 30, 2006; provided that:

(a) sections eleven and twelve of this act shall take effect September 1, 2006;

(b) sections thirteen and sixteen of this act shall take effect April 1, 2007;

(c) sections one, two, three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this act shall expire and be deemed repealed on June 30, 2007.

(d) the amendments to subdivision 2-a of section 3602-c of the education law made by section three of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith;

(e) the amendments to clause (d) of subparagraph 1 of paragraph b of subdivision 1 of section 4402 of the education law made by section seven of this act shall not affect the expiration of such clause and shall be deemed to expire therewith;

(f) the amendments to clause (b) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law made by section eight of this act shall not affect the repeal of such clause and shall be deemed to expire therewith;

(g) the amendments to clause (d) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law made by section seven of this act shall not affect the repeal of such clause and shall be deemed to expire therewith; and

(h) the amendments to paragraph a subdivision 1 of section 4404 of the education law made by section eleven of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith;

SED NO. 34

MEMORANDUM IN SUPPORT OF “AN ACT TO AMEND THE EDUCATION LAW AND THE PUBLIC HEALTH LAW, IN RELATION TO IMPLEMENTATION OF THE FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004; AND PROVIDING FOR THE REPEAL OF SUCH PROVISIONS UPON EXPIRATION THEREOF, TO AMEND THE SOCIAL SERVICES LAW IN RELATION TO ACCESS BY SCHOOL DISTRICTS TO CERTAIN RECORDS PERTAINING TO STUDENTS WITH DISABILITIES; 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 EFFECTIVENESS THEREOF; TO REPEAL SUBDIVISIONS 21 AND 22 OF SECTION 4403 OF THE EDUCATION LAW RELATING TO THE COLLECTION OF DATA ON RATES OF CERTAIN SPECIAL EDUCATION PLACEMENTS AND DECLASSIFICATION RATES AND PROVIDING FOR THE REPEAL OF CERTAIN PROVISIONS UPON THE EXPIRATION THEREOF”

Purpose of the Bill:

The purpose of the bill is to conform the provisions of the Education Law and to make supporting amendments to the Social Services Law and Public Health Law to ensure compliance with the federal Individuals with Disabilities Education Act (IDEA), as amended by the Individuals with Disabilities Education Improvement Act of 2004 (Public Law 108-446). This bill is necessary in order to assure that New York State will continue to be in compliance with the new requirements of IDEA in the 2006-07 school year. As a condition of federal funding under Part B of IDEA, the United States Department of Education (USDOE) has required that states provide an assurance that the State and its local educational agencies (i.e., school districts) will be in compliance with the new requirements of the amended IDEA and all provisions of the existing federal Part 300 regulations that are not in conflict with the amended IDEA, which took effect on July 1, 2005.

Summary of the Provisions of the Bill:

This legislation extends by one year the effectiveness of the provisions enacted by Chapter 352 of the Laws of 2005 in relation to:

- establishing procedures for resolving interagency disputes relating to the provision or payment of services between State agency programs with education responsibilities and school districts and between municipalities and school districts for preschool students with disabilities;
- attendance and a prohibition against mandatory medication;
- discipline procedures for students with disabilities;
- requirements for equitable provision of services, child find and consultation for children enrolled by their parents in nonpublic elementary and secondary schools;
- the definitions of related services, transition services, and student with a disability;

- child find requirements, including requirements for children who are homeless or wards of the State;
- the frequency of reevaluations of students with disabilities;
- the responsibilities of the Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE) relating to the determination of the setting and services for students with disabilities subject to removals to interim alternative educational settings or other settings;
- required membership of the Commissioner's Advisory Panel for Special Education; and
- due process procedures for students with disabilities, including requirements relating to mediation and impartial hearings.

This bill also proposes to make a series of new amendments to the Education Law, the Social Services Law and the Public Health Law relating to New York's compliance with the IDEA. Like Chapter 352 of the Laws of 2005, because final Federal regulations implementing the Individuals with Disabilities Education Improvement Act of 2004 have not yet been adopted, with one exception these new amendments would be enacted with a one-year sunset. The exception would be the proposed repeal of Education Law §§ 4403(21) and (22), which should not be done in a one-year statute.

Specifically, the bill contains the following provisions:

Section 1 contains legislative findings justifying temporary transitional legislation based on the failure of the USDOE to adopt final regulations in sufficient time to develop and adopt permanent State legislation in the 2006 legislative session. The findings indicate that states have been required to provide an assurance that the state and local educational agencies will comply with the reauthorized IDEA and applicable federal regulations on and after July 1, 2005, but that states now have been given until June 30, 2007 to make conforming amendments to state law.

Section 2 would amend Education Law §3214(3)(c)(1), which relates to student discipline, to add a cross-reference to the provisions of paragraph g relating to discipline procedures for a student with a disability or a student presumed to have a disability so that it is clear to parties in a disciplinary hearing that the IDEA protections for students with disabilities would also apply. A technical amendment is also proposed to restore language that was in place for many years that references a building principal as one of the school officials authorized by law to suspend students for 5 days or less.

Section 3 would make a clarifying amendment to Education Law §3602-c on dual enrollment services to students parentally placed in a nonpublic school. Subdivision 2-a of § 3602-c would be amended to clarify that the requirement for an immediate referral for evaluation to the CSE of the school district of residence only applies to students who are New York residents.

Sections 4 and 5 would add a new paragraph f to Education Law §§4308 and 4355 to authorize the Commissioner to adopt regulations to the extent required by federal IDEA regulations relating to the right of parents and school districts to reach an agreement that it is not necessary for a particular member of the multi-disciplinary team (MDT) at the State Schools at

Rome and Batavia to attend a team meeting; or that an otherwise required member of such team may be excused from attending the meeting; or that an amendment may be made to an individualized education program (IEP) without a meeting of the team after the annual review meeting. Such regulations would include procedures for amendments without a meeting that assures that all requirements applicable to an amendment to an IEP made at a meeting would apply.

Sections 6 and 7 would amend clauses (b) and (d) of subparagraph 1 of paragraph b of subdivision 1 of §4402 of the Education Law to authorize the Commissioner to adopt regulations to the extent required by federal IDEA regulations relating to the right of parents and school districts to reach an agreement that it is not necessary for a particular member of the CSE or subcommittee on special education to attend a committee or subcommittee meeting; or that an otherwise required member of such committee or subcommittee may be excused from attending the meeting.

Section 8 would amend clause (b) of subparagraph 3 of paragraph b of subdivision 1 of §4402 of the Education Law to authorize the Commissioner to adopt regulations to the extent required by federal IDEA regulations to provide for amendment to an IEP without a meeting of the CSE or subcommittee after the annual review meeting. Such regulations would include procedures for amendments without a meeting that assure that all requirements applicable to an amendment to an IEP made at a meeting of the committee or subcommittee would apply.

Section 9 would amend clause (d) of subparagraph 3 of paragraph b of subdivision 1 of §4402 of the Education Law to authorize the Commissioner to adopt regulations to the extent required by federal IDEA regulations to provide that the CSE or subcommittee may be excused from conducting a triennial evaluation if the parent and the school district agree that a triennial evaluation is not necessary.

Section 10 would repeal subdivisions 22 and 23 of section 4403 of the Education Law to eliminate State law requirements that the Department identify and provide assistance to school districts with high rates of identification of students as students with disabilities, school districts with low rates of declassification of students with disabilities, school districts with high rates of placement of students with disabilities in separate sites and school districts with significant disproportionality based on race and ethnicity in such identification or placement in particular settings, and for the report to the Governor and the legislature on its actions by December 1 of each year. Section 616 of the IDEA, 20 U.S.C. § 1416, now imposes extensive data collection requirements associated with the required state performance plan that overlap the provisions of subdivisions 22 and 23 of section 4403 and make them redundant and unnecessary.

Section 11 would amend paragraph a of subdivision 1 of section 4404 of the Education Law to require that an impartial hearing be commenced within one year of the date on which the parent or public agency knew or should have known about the action that forms the basis for the complaint. This would restore the one-year statute of limitations that applied until Chapter 352 of the Laws of 2005 extended the period to 2 years. The time limitation would not apply if a parent is prevented from commencing an impartial hearing because due to specific misrepresentations by a school district or the district's withholding of information it was

required to provide under federal law. Section 11 would also add language to clarify that a board of education may not commence an impartial hearing to override the refusal of a parent to consent where a public agency is prohibited by federal law from initiating such a hearing. Section 11 would take effect September 1, 2006.

Section 12 would amend paragraphs a and b of section 4404 of the Education Law to establish a single statute of limitations for proceedings in State or federal court to review the final determination of the State Review Officer (SRO). The bill would establish a 90-day statute of limitations, which is the minimum period permitted under 20 U.S.C. § 1415(i)(2)(B), rather than the 4 month statute of limitations currently provided under CPLR § 217 for proceedings under Article 4 of the CPLR. Section 12 would take effect September 1, 2006.

Sections 13 and 16 amend Education Law § 4410 (1)(f) and Public Health Law § 2541(8) to allow parents to opt to have their child remain in an early intervention (EI) program until the last day of the school year in which the child turns 3. Under the current provisions of Public Health Law § 2541(8), children who turn age 3 on or before August 31st remain in EI until the first day of September and children who turn 3 on or after September 1 remain in EI until January 1 of the following calendar year. Sections 13 and 16 would take effect April 1, 2007.

Section 14 amends subdivision 3 of section 4410 to authorize the Commissioner to adopt regulations to the extent required by federal IDEA regulations relating to the right of parents and school districts to reach an agreement that it is not necessary for a particular member of the CPSE to attend a CPSE meeting; or that an otherwise required member of such committee may be excused from attending the meeting; or that an amendment may be made to an IEP without a meeting of the CPSE after the annual review meeting. Such regulations would include procedures for amendments without a meeting that assure that all requirements applicable to an amendment to an IEP made at a meeting of the CPSE would apply.

Section 15 amends paragraphs a, b and d of subdivision 7 of section 4410 of the Education Law to conform the due process language and procedures under section 4410 to the provisions of Education Law § 4404, as amended by Chapter 352 of the Laws of 2005, and the IDEA. The language clarifies that impartial hearings involving preschool students with disabilities are brought under the provisions of Education Law § 4404(1), which includes provisions relating to resolution sessions and procedural safeguards notices that are not currently referenced in section 4410. The bill clarifies that parents of preschool children may request 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; that is, under the same circumstances as a school-age student with a disability under Education Law §4404(1). The bill also clarifies that the board may initiate a hearing under the same circumstances as a board of education under Education Law § 4404(1). The bill also eliminates language that requires an impartial hearing officer to render a decision in a hearing involving a preschool student with disabilities within 30 calendar days, rather than the 45 day period generally required under Education Law § 4404(1) and the Regulations of the Commissioner. Finally, the bill repeals language that establishes a special time frame of 30 days from the decision of the hearing officer for review by the SRO on appeal of determinations of

impartial hearing officers involving preschool students with disabilities and makes the procedures contained in Education Law § 4404(2) and the Regulations of the Commissioner apply.

Section 16 is described with section 13 above.

Section 17 would add a new subdivision 4-c to § 372 of the Social Services Law to provide that where a child seeks to enroll in a program of a public school district, school district officials may have access to records relating to the child and maintained by the Office of Children and Family Services, an authorized agency, a detention facility or a social services district that are necessary to enroll the child in school and/or for the evaluation or placement of the child in an educational program. School officials would be required to certify that such information is necessary and would be required to keep the information confidential and not redisclose it without consent of the parent or person in parental relation to the child. Such information would include the name and address of the parent or person in parental relation to the child, except where such parent's current location is confidential by law. Where the parent's location is confidential, it would be the responsibility of the Office of Children and Family Services, authorized agency, detention facility or social services district to notify the parent that the school district has requested such information and of the parent's right to consent to the release of such information or to establish contact with school officials through other means. School officials would not be authorized to redisclose information on the location of the parent's location where such information is confidential and not subject to disclosure.

Section 18 amends section 22 of Chapter 352 of the Laws of 2005 to extend the effectiveness of the provisions of Chapter 352 by one additional year, until June 30, 2007.

Section 19 is the effective date.

Statement in Support of the Bill:

This bill conforms the Education Law and provides for supporting amendments to the Social Services Law and Public Health Law to align State requirements with IDEA as amended by the Individuals with Disabilities Education Improvement Act of 2004 (Public Law 108-446). Unless extended through this bill, the provisions of Education Law in sections 3208, 3214, 4002, 4401, 4402, 4403, 4404, 4404-a and 4410 relating to attendance and a prohibition on mandatory medication, discipline procedures for students with disabilities, child find requirements, due process procedures and the Commissioner's Advisory Panel will no longer be in compliance with federal law. Failure to conform these provisions of the Education Law to the reauthorized IDEA as of July 1, 2005, would result in a conflict between New York law and federal law that could expose both the State and school districts to liability and would deny students with disabilities, parents and school districts with the benefits that they are intended to receive from the reforms made by the Act.

USDOE requires the State to assure compliance with the new IDEA that went into effect on July 1, 2005. Failure to align New York law with the new IDEA could result in a loss or delay

of funding under Part B of IDEA. USDOE further requires the State, prior to expenditure of its use of federal funds for State-level activities, to certify that arrangements to establish responsibility for services pursuant to 20 U.S.C. § 1412(a) (12) (A) are current. Therefore, to ensure that the State is not prohibited from expending its federal State administration funds of more than \$13 million to implement IDEA, the provisions in Education Law enacted in 2005 must be extended to ensure a mechanism for such disputes between State agencies with education responsibilities and school districts and for preschool students with disabilities, between municipalities and school districts.

Federal IDEA regulations implementing the IDEA Reauthorization have not been finally adopted, and while we expect that the final regulations should be issued before classes start next September, we do not know precisely when this will occur. Even if the final federal regulations are issued soon, there isn't sufficient time to do a thorough review of the regulations and craft permanent legislation implementing the IDEA Reauthorization before the Legislature goes on recess in June. Once the final federal regulations are issued, our agency will promulgate regulations and advance additional legislation to assure that all the conforming changes needed in State law are made by June 30, 2007 and will be consistent with the final federal regulations. Accordingly, most of the provisions in this bill are presented with a one-year sunset, so that all the conforming changes can be revisited after the federal regulations are issued.

The provisions of Chapter 352 that are extended by this bill conform New York State law to IDEA and support the State's goals to promote less adversarial mechanisms to resolve disputes between parents and school districts, ensure safe schools while protecting the rights of students with disabilities and ensure that students who need special education, including students who are homeless, wards of the State, or who are enrolled in nonpublic elementary and secondary schools by their parents receive timely and appropriate services and increase accountability for results by proposed amendments that require additional student data collection requirements consistent with federal law.

In addition to the changes to State law enacted by Chapter 352 of the Laws of 2005, which are extended by this bill, it is further necessary to make the following changes to State law to ensure that the requirements of IDEA are fully implemented.

Subdivision 2-a of section 3602-c is amended to clarify that the obligation of the school district in which a nonpublic school is located to immediately refer a nonpublic student to the CSE of the child's school district of residence for evaluation and development of an IEP will only apply to students who are New York residents. This is consistent with the existing language of subdivision 2 of section 3602-c, which limits the right to dual enrollment services to New York residents. Nonpublic school students who are not New York residents would have no individual right to services, but the federal child find and other requirements relating to services to students parentally placed in private schools would apply.

Sections 4402 and 4410 of the Education Law (as well as sections 4308 and 4355) are amended to authorize the Commissioner to adopt regulations to the extent required to comply with federal law relating to the agreement between parents and school districts to determine the participation of a CSE or CPSE member is not necessary or may be excused, to allow for an

amendment to an IEP after the annual review meeting without reconvening another CSE or CPSE meeting, and that three year reevaluation of a student with a disability is not necessary. IDEA clearly establishes the right of the parent and school district to reach such agreements. It is anticipated that the federal regulations will be adopted within the next few months and will make it clear that the State must allow for such agreements. The proposed amendment was written to restrict the Commissioner's authority to develop regulations on this issue only to the extent necessary to comply with the federal regulations. Once the final federal regulations are adopted, the State and school districts will be required to come into compliance with those regulations. By authorizing the Commissioner to adopt regulations relating to excusal of IEP team members and amendments without a meeting, this bill would enable the Commissioner to adopt regulations establishing procedures relating to such excusals and amendments to the extent the federal regulations permit states to do so. If this provision is not enacted, there will be a conflict between State law and the federal regulations until legislation can be enacted. Not only will that generate unnecessary litigation for school districts, the State and parents of students with disabilities, it would also mean that whatever is contained in the federal regulations will prevail in the interim or the State will be out of compliance with the IDEA.

This bill also proposes to repeal subdivisions 22 and 23 of section 4403 of the Education Law that require the Department to identify and provide assistance to school districts with high rates of identification of students as students with disabilities, school districts with low rates of declassification of students with disabilities, school districts with high rates of placement of students with disabilities in separate sites and school districts with significant disproportionality based on race and ethnicity in such identification or placement in particular settings, including the report to the Governor and the legislature on its actions by December 1 of each year. The IDEA, as amended in 2004, added specific State monitoring and enforcement requirements, including implementation of a State Performance Plan and Annual Performance Report. Pursuant to IDEA, the State must publicly report on its progress by February 1 of each year and annually report of the progress of each school district in meeting the targets established in the State Performance Plan. In this plan, the State must identify, monitor and direct technical assistance to school districts in relation to 14 areas, including those relating to the identification, classification and placement settings of students by race/ethnicity. Therefore, the more extensive State Performance Plan requirements in IDEA effectively replace the identification reporting, technical assistance requirements of sections 4403(22) and (23). By repealing these State law provisions, this bill would reduce the paperwork burden on school district and eliminate an unnecessary mandate on both school districts and the State.

The bill also proposes amendments that are directed at issues that impact the State's ability to comply with performance targets that are being monitored by USDOE through the State Performance Plan and Annual Performance Report. Under §616 of the IDEA, States that fail to meet the targets in their State performance plan can face a series of escalating sanctions that can lead, among other things, to withholding of IDEA funds. One of the targets that New York must meet relates to the percentage of preschool students with disabilities who are referred from early intervention programs and have IEPs developed and implemented by their third birthday. To meet this target, New York must take steps to relieve the pressure on the preschool special education system that results when students transition from EI to services under section 4410 of the Education Law.

The proposed amendments to Education Law § 4410(1)(f) and Public Health Law § 2541(8), which arise out of pending litigation involving delays in providing services to preschool children with disabilities, would provide some relief to school districts that must serve transitioning three-year-olds in a timely manner. These amendments would allow parents to opt to have their children who reach age 3 while being served in an early intervention program to remain in the EI program until the end of the school year in which the child turns 3, as a number of other states currently do. Currently, Public Health Law § 2541(8) requires that children whose 3rd birthday occurs on or before August 31st enter a 4410 program in September and children whose 3rd birthday occurs on or after September 1 enter a 4410 program on January first of the succeeding calendar year. From a pedagogical standpoint, moving a child to a new program on their 3rd birthday makes little sense where the child is born late in the school year. Giving the parent the option to have their child remain in the EI program through the end of the school year in which they turn 3 will benefit the child by allowing the child to transition when the program starts in September.

The bill also amends subdivision 1 of section 4404 of the Education Law to adopt a one-year time period for a school district or parent to make a request for an impartial hearing. Under §615(b)(6)(B) of IDEA (20 U.S.C. §1415(b)(6)(B)), a party must present a complaint within two years of the date the parent or public agency knew or should have known of the alleged violation, unless the State has an explicit time limitation for presenting such a complaint. Chapter 352 of the Laws of 2005 changed New York States' existing one-year statute of limitations that was in place under decisions of the SRO. The effect of a two-year statute of limitations is to double the amount of time for a party to bring a complaint, thereby increasing the complexity of impartial hearings and imposing substantial additional due process costs on school districts and the State. By opening up a second year, hearing records would become larger, and the factual and legal issues more numerous and complicated (e.g., a single appeal may encompass one year with issues that will have to be decided under IDEA 1997 provisions and one year that will have to be decided under IDEA 2004). The result will be an increased burden on school districts and IHOs at the hearing level and an increased burden on the SRO when cases are appealed. By making the impartial hearing and the review process on appeal much more time consuming, a statute of limitations of more than one year is expected to substantially increase the workload of both IHOs and the SRO, thereby straining their ability to render timely decisions as required by IDEA. The additional costs of allowing claims for tuition reimbursement or compensatory education to be presented that are not time-barred under the prior one-year statute of limitations are expected to be substantial. Further, a statute of limitations of more than one year to request an impartial hearing is programmatically inappropriate. IDEA is designed around the concept of an IEP that describes the programs and services that will be provided to a student with a disability. The IEP must be updated on an annual basis. Allowing up to two years to pass before a complaint is filed and an impartial hearing is commenced will mean that a school district will have to defend itself against what has become a stale claim, litigating about an IEP that has since been superseded by a more current IEP. IDEA due process procedures should be designed to resolve disputes within one year, so that any resulting changes needed to assure that the student receives a free, appropriate public education are made in time to benefit the student.

Subdivision 1 of section 4404 is also amended to establish a 90-day time period for commencing judicial review of a decision of the SRO that would apply to proceedings brought in federal court and in State court. The State's current four-month time period applies to an appeal which would be heard in State court under Article 4 of the CPLR. Should the appeal be heard in a federal court, now that Congress has taken away the District Court's ability to borrow the statute of limitations from State law, there is an issue about the statute of limitations that the court would apply. Arguably, that is the IDEA statute of limitations of 90 days. This bill would resolve the issue by establishing a single 90-day statute of limitations that applies on review in both federal and State courts.

Subdivision 1 of section 4004 is further amended to clarify that the impartial hearing process cannot be utilized to override a parent's refusal of consent where prohibited by federal law. IDEA includes limitations on the use of due process procedures in certain circumstances and our law must be clear that by providing that boards of education may commence impartial hearings, there is no implication that the board of education may do so where federal law would prohibit an override of parental consent.

Finally, Social Services Law § 372 is amended to assure that school districts may be provided access to the information they need from the records of social services districts and other human service agencies when a child is seeking to enroll in a school district program. The information would be limited to the information certified by school officials as necessary to enroll the child in school and/or for the evaluation and placement of the child in an educational program. Where a child in foster care, or in a detention facility, or otherwise under the care or custody of a human services agency seeks to enroll in a school district and that student is a student with a disability or a student suspected of having a disability, the school district needs to know the identity of the student's parent or other person in parental relation and have basic contact information in order to comply with IDEA requirements for parental notice and consent. In fact, the Regulations of the Commissioner require the school district to consult with social services districts to determine if a student needs a surrogate parent appointed when a child is a ward of the State. In practice, however, school districts have had difficulty in obtaining the information they need from social services districts and detention facilities, with the human services agencies citing the confidentiality provisions of Social Services Law § 372 as the reason they must withhold information from their records. When school districts are unable to obtain the information they need to enroll and evaluate the child in a timely manner, they have difficulty evaluating and serving the student within the timelines required by the IDEA. School district compliance with IDEA timelines is an issue for the State in its State Performance Plan and in pending litigation that has been brought against the State.

This bill would remove the barrier of the confidentiality provisions of Social Services Law § 372 that prevents social services districts, detention facilities and authorized agencies from sharing information with school districts. The bill does so while maintaining the confidentiality of the records by clarifying that the information must be maintained as part of the student's educational record, which is confidential and protected from disclosure without parental consent under the provisions of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232-g, as well as the IDEA, where applicable. Special provision is made to insulate from disclosure the address and location of the parent, where the location of the

parent is confidential under a law other than section 372 of the Social Services Law. For example, the bill would not compel the disclosure of the location a parent who is in a battered woman shelter. In that situation, however, the bill would require the human services agency to notify that parent of the school district's request to contact the parent, so that the parent has the opportunity to contact the school district and exercise his or her rights as a parent under the IDEA.

Budgetary Implications of the Bill:

Failure to comply with the IDEA could place New York's allocation of funds under Part B of IDEA (approximately \$13 million in funds for State administration in 2006-07 and \$699 million in total) in jeopardy. The provisions of this bill are not expected to increase costs to the State or school districts beyond those costs that are the consequence of compliance with the 2004 amendments to IDEA, with the possible exception of the provisions of sections 13 and 16 relating to transition from EI to preschool special education. The bill provides increased flexibility and expected cost savings to school districts as a result of amendments that provide relief and potential cost savings to schools in such areas as staff participation in CSE and CPSE meetings and manifestation determinations, reevaluations of students with disabilities; due process hearings and opportunities to resolve disputes prior to an impartial hearing. The provisions of sections 13 and 16 of this bill that would allow parents to opt their child to remain in EI programs until the end of the school year in which they turn 3 may result in increased costs to municipalities and the State to the extent that the cost of services provided through EI programs is higher than the cost to the State and municipalities of the services that would be provided under Education Law §4410. There would be no significant cost impact in the current State fiscal year, since sections 13 and 16 would not take effect until April 1, 2007. However, the ultimate amount of such additional costs is not known and failure to take action to assure that school districts and municipalities are able to timely serve 3 year-olds transitioning from EI to preschool special education will jeopardize the State's funding under Part B of the IDEA.

Prior Legislative History:

This is a new bill.

Effective Date:

This act shall take effect June 30, 2006 and in the event that it shall become a law after such date, this act shall take effect immediately and shall be deemed to have been in full force on and after June 30, 2006; provided that sections eleven and twelve of this act (relating to the time limitations for commencing impartial hearings and for judicial proceedings to review of SRO decisions) shall take effect September 1, 2006 and sections thirteen and seventeen of this act (relating to allowing parents to opt to have their child remain in EI until the end of the school year in which they turn three) shall take effect April 1, 2007, and provided further, however that sections one through nine and eleven through twenty-three of this act shall expire and be deemed repealed on June 30, 2007.

For Further Information Contact:

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Respectfully submitted,

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