

7691

I N   S E N A T E

May 29, 2014

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Introduced by Sen. FELDER -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to determinations of appropriate educational programs for certain students in a school district in a city having a population of one million or more

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Item (i) of clause (b) of subparagraph 3 of paragraph b of  
2     subdivision 1 of section 4402 of the education law, as amended by chap-  
3     ter 378 of the laws of 2007, is amended to read as follows:  
4     (i) Make recommendations based upon a written evaluation setting forth  
5     the reasons for the recommendations, to the child's parent or person in  
6     parental relation and board of education or trustees as to appropriate  
7     educational programs and placement in accordance with the provisions of  
8     subdivision six of section forty-four hundred one-a of this article, and  
9     as to the advisability of continuation, modification, or termination of  
10    special class or program placements which evaluation shall be furnished  
11    to the child's parent or person in parental relation together with the  
12    recommendations provided, however that the committee may recommend a  
13    placement in a school which uses psychotropic drugs only if such school  
14    has a written policy pertaining to such use that is consistent with  
15    subdivision four-a of section thirty-two hundred eight of this chapter  
16    and that the parent or person in parental relation is given such written  
17    policy at the time such recommendation is made. If such recommendation  
18    is not acceptable to the parent or person in parental relation, such  
19    parent or person in parental relation may appeal such recommendation as  
20    provided for in section forty-four hundred four of this [chapter] ARTI-  
21    CLE. PROVIDED, FURTHER, THAT IN A SCHOOL DISTRICT IN A CITY HAVING A  
22    POPULATION OF ONE MILLION OR MORE A PARENT'S APPEAL OF SUCH RECOMMENDA-  
23    TION SHALL BE RESOLVED, EITHER THROUGH THE GRANTING OR DENIAL OF THE  
24    APPEAL BY AN IMPARTIAL HEARING OFFICER, OR BY A STATE REVIEW OFFICER, OR  
25    THE SIGNING OF A SETTLEMENT AGREEMENT BETWEEN THE PARENT OR PERSON IN  
26    PARENTAL RELATION AND THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT IN  
27    THE CITY HAVING A POPULATION OF ONE MILLION OR MORE OR A STATE AGENCY,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD15402-02-4

1 WITHIN ANY APPLICABLE TIME PERIODS PRESCRIBED BY FEDERAL LAW. PROVIDED,  
2 FURTHER, THAT NOTHING IN THIS ITEM SHALL BE DEEMED TO PROHIBIT ANY  
3 PARENT OR THE SCHOOL DISTRICT FROM SEEKING JUDICIAL REVIEW BY ANY COURT  
4 OF COMPETENT JURISDICTION.

5 UPON THE SIGNING OF A WRITTEN SETTLEMENT AGREEMENT BETWEEN A CHILD'S  
6 PARENT OR PERSON IN PARENTAL RELATION AND THE BOARD OF EDUCATION OF THE  
7 SCHOOL DISTRICT IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE OR  
8 A STATE AGENCY, OR THE DECISION, ORDER, OR JUDGMENT OF AN IMPARTIAL  
9 HEARING OFFICER, STATE REVIEW OFFICER OR A COURT FINDING THAT A UNILAT-  
10 ERAL PARENTAL PLACEMENT WAS APPROPRIATE AND THAT TUITION PAYMENT SHOULD  
11 BE GRANTED FOR SUCH UNILATERAL PLACEMENT, AS PROVIDED BY SECTION  
12 1412(A)(10)(C) OF TITLE 20 OF THE UNITED STATES CODE AND THE IMPLEMENT-  
13 ING FEDERAL REGULATIONS, THE AMOUNT OF SUCH PAYMENT AND THE TIME LINE OR  
14 SCHEDULE FOR MAKING SUCH PAYMENT SHALL BE SET FORTH IN ANY SUCH SETTLE-  
15 MENT OR DECISION, ORDER, OR JUDGMENT.

16 S 2. Paragraph a of subdivision 1 of section 4404 of the education law  
17 is amended by adding a new closing paragraph to read as follows:

18 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE  
19 CONTRARY, IN A SCHOOL DISTRICT IN A CITY HAVING A POPULATION OF ONE  
20 MILLION OR MORE, UPON THE DECISION OF AN IMPARTIAL HEARING OFFICER,  
21 STATE REVIEW OFFICER OR A COURT FINDING THAT A UNILATERAL PARENTAL  
22 PLACEMENT WAS APPROPRIATE AND THAT TUITION PAYMENT SHOULD BE GRANTED FOR  
23 SUCH UNILATERAL PLACEMENT, SUCH TUITION PAYMENT SHALL CONTINUE IN  
24 FUTURE YEARS, AT THE SAME PERCENTAGE OF THE TOTAL TUITION COST AS THE  
25 PREVIOUS YEAR'S PAYMENT, UNTIL THE COMMITTEE ON SPECIAL EDUCATION DETER-  
26 MINES THE CHILD'S NEEDS CAN BE MET IN ANOTHER PUBLIC OR APPROVED PRIVATE  
27 SCHOOL PROGRAM AND REVISES THE CHILD'S INDIVIDUALIZED EDUCATION PROGRAM  
28 TO RECOMMEND SUCH PLACEMENT; PROVIDED HOWEVER THAT WHERE THE PARENT OR  
29 PERSON IN PARENTAL RELATION BRINGS A DUE PROCESS PROCEEDING TO CHALLENGE  
30 SUCH REVISED PLACEMENT, THE UNILATERAL PARENTAL PLACEMENT FOR WHICH  
31 TUITION PAYMENT WAS GRANTED SHALL BE THE PENDENCY PLACEMENT, AS PROVIDED  
32 IN SUBDIVISION FOUR OF THIS SECTION.

33 S 3. This act shall take effect immediately; provided, however, that  
34 the amendments to clause (b) of subparagraph 3 of paragraph b of subdivi-  
35 sion 1 of section 4402 of the education law, made by section one of  
36 this act, shall not affect the expiration of such clause and shall  
37 expire therewith; provided, further, that the amendments to subdivision  
38 1 of section 4404 of the education law, made by section two of this act,  
39 shall not affect the expiration of such subdivision and shall expire  
40 therewith.