

5362

2013-2014 Regular Sessions

I N   S E N A T E

May 16, 2013

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Introduced by Sens. FLANAGAN, 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 referrals to state adult service agencies for certain students with disabilities who have reached the age of 18; and to repeal clause (d-2) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law relating to the requirement that boards of education develop plans and policies for appropriate declassification of students with disabilities

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

1     Section 1. Subparagraphs 5 and 7 of paragraph b of subdivision 1 of  
2     section 4402 of the education law, subparagraph 5 as amended by chapter  
3     256 of the laws of 1988 and subparagraph 7 as amended by chapter 194 of  
4     the laws of 1991, are amended to read as follows:  
5     (5) The committee on special education or, in the case of a state  
6     operated school, the multidisciplinary team shall [provide written  
7     notice that a child who is placed in those residential programs speci-  
8     fied in paragraphs d, g, h and l of subdivision two of section forty-  
9     four hundred one of this article is not entitled to receive tuition free  
10    educational services after the age of twenty-one, the receipt of a high  
11    school diploma or the time described in subdivision five of this  
12    section. Such written notice shall be provided to the child and to the  
13    parents or legal guardian of such child when such child attains the age  
14    of eighteen or, if such child is over the age of eighteen when placed in  
15    such a residential program, at the time of placement. Upon the first  
16    annual review after the age of fifteen of a child who is receiving non-  
17    residential special services or programs as specified in paragraph a, b,  
18    c, d, e, f, i, j, l or m of subdivision two of section forty-four  
19    hundred one of this article, or is receiving special services or  
20    programs in a day program at the human resources school; is receiving

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

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1 such special services or programs one hundred per centum of the school  
2 day; is receiving individualized attention or intervention because of  
3 intensive management needs or a severe handicap; and, as determined by  
4 the committee on special education or multidisciplinary team pursuant to  
5 regulations promulgated by the commissioner, may need adult services  
6 from the office of mental health, office of mental retardation and  
7 developmental disabilities, the state department of social services, a  
8 social services district, or the state education department, the commit-  
9 tee or multidisciplinary team shall provide to such child's parent or  
10 guardian, and if such child is eighteen years of age or older, to the  
11 child, written notice that such child is not entitled to receive tuition  
12 free educational services after the receipt of a high school diploma,  
13 the age of twenty-one or the time described in subdivision five of this  
14 section.] NOT LATER THAN THE ANNUAL REVIEW PRIOR TO THE EIGHTEENTH  
15 BIRTHDAY OF A STUDENT WITH A DISABILITY WHO IS PLACED IN A RESIDENTIAL  
16 PROGRAM BY THE COMMITTEE OR MULTIDISCIPLINARY TEAM, OR A STUDENT WITH A  
17 DISABILITY WHO IS PLACED IN A DAY PROGRAM BUT THE COMMITTEE OR MULTIDIS-  
18 CIPLINARY TEAM HAS DETERMINED THAT THE STUDENT IS LIKELY TO REQUIRE  
19 ADULT RESIDENTIAL SERVICES, WITH THE CONSENT OF THE PARENTS, NOTIFY AND  
20 INVITE A REPRESENTATIVE OF THE OFFICE OF MENTAL HEALTH, OFFICE FOR  
21 PEOPLE WITH DEVELOPMENTAL DISABILITIES, OR THE STATE EDUCATION DEPART-  
22 MENT, AS APPROPRIATE, TO PARTICIPATE IN THE COMMITTEE ON SPECIAL EDUCA-  
23 TION MEETING FOR THE DEVELOPMENT OF A RECOMMENDATION FOR ADULT SERVICES  
24 PURSUANT TO SECTION 7.37 OR 13.37 OF THE MENTAL HYGIENE LAW, SECTION  
25 THREE HUNDRED NINETY-EIGHT-C OF THE SOCIAL SERVICES LAW OR SECTION  
26 FORTY-FOUR HUNDRED THREE OF THIS ARTICLE. THE COMMITTEE OR MULTIDISCI-  
27 PLINARY TEAM SHALL GIVE THE PARENT OR GUARDIAN OF THE CHILD, THE OPPOR-  
28 TUNITY TO CONSENT IN WRITING TO THE RELEASE OF RELEVANT INFORMATION TO  
29 SUCH OTHER PUBLIC AGENCY OR AGENCIES, UPON REQUEST OF SUCH AGENCY OR  
30 AGENCIES, FOR PURPOSES OF DETERMINING APPROPRIATENESS OF AN ADULT  
31 PROGRAM FOR SUCH STUDENT.

32 (a) [Written notice given pursuant to this subparagraph shall describe  
33 in detail the opportunity to consent to have the child's name and other  
34 relevant information forwarded in a report to the commissioner of mental  
35 health, commissioner of mental retardation and developmental disabili-  
36 ties, commissioner of social services, or commissioner of education, or  
37 their designees, for the purpose of determining whether such child will  
38 likely need adult services and, if so, recommending possible adult  
39 services.] For the purposes of this subparagraph "relevant information"  
40 shall be defined as that information in the possession of and used by  
41 the committee or the multidisciplinary team to ascertain the physical,  
42 mental, emotional and cultural-educational factors which contribute to  
43 the [child's handicapping condition] STUDENT'S DISABILITY, including but  
44 not limited to: (i) results of physical and psychological examinations  
45 performed by private and school district physicians and psychologists;  
46 (ii) relevant information presented by the parent, guardian and teacher;  
47 (iii) school data which bear on the [child's] STUDENT'S progress includ-  
48 ing the [child's] STUDENT'S most recent individualized education  
49 program; (iv) results of the most recent examinations and evaluations  
50 performed pursuant to clause (d) of subparagraph three of this para-  
51 graph; and (v) results of other suitable evaluations and examinations  
52 possessed by the committee or multidisciplinary team. Nothing in this  
53 subparagraph shall be construed to require any committee or multidisci-  
54 plinary team to perform any examination or evaluation not otherwise  
55 required by law.

1 (b) Upon consent obtained pursuant to [clause (c) of] this subpara-  
2 graph, the committee or multidisciplinary team shall forward the  
3 [child's] STUDENT'S name and other relevant information in a report to  
4 the [commissioner of mental health, commissioner of mental retardation  
5 and developmental disabilities, commissioner of social services, or  
6 commissioner of education, or their designees, for the development of a  
7 recommendation for adult services pursuant to section 7.37 or 13.37 of  
8 the mental hygiene law, section three hundred ninety-eight-c of the  
9 social services law or subdivision ten of section forty-four hundred  
10 three of this article. The] APPROPRIATE PUBLIC AGENCY AS DETERMINED BY  
11 THE committee or multidisciplinary team [shall determine which commis-  
12 sioner shall receive the report by considering], BASED UPON the [child's  
13 handicapping condition] STUDENT'S DISABILITY and physical, mental,  
14 emotional and social needs. The committee shall forward additional and  
15 updated relevant information to the [commissioner of mental health,  
16 commissioner of mental retardation and developmental disabilities,  
17 commmissioner of social services, or commissioner of education, or their  
18 designees,] APPROPRIATE PUBLIC AGENCY upon the request for such informa-  
19 tion by such [commissioner or designee] AGENCY, WITH THE CONSENT OF THE  
20 PARENTS, OR THE STUDENT, IF SUCH STUDENT IS EIGHTEEN YEARS OR OLDER.

21 (c) [Upon receipt of the notice by the child pursuant to this subpara-  
22 graph, the child, if eighteen years of age or older, shall be given the  
23 opportunity to consent or withhold consent to the release of the rele-  
24 vant information. Such opportunity shall be given within twenty days of  
25 the receipt of the notice. An appropriate member of the staff of the  
26 educational facility shall be available to assist the child, if neces-  
27 sary, to understand the contents of the notice and the need for his or  
28 her consent for the release of the relevant information. A form,  
29 prescribed by the commissioner, shall be presented to the child for  
30 response, which shall clearly set forth the options of giving consent or  
31 withholding consent. In the event that the child exercises neither  
32 option, and the designated member of the staff of the educational facil-  
33 ity has reason to believe that the child may not be able to understand  
34 the purpose of the form, or in the event that the child is less than  
35 eighteen years of age, the committee on special education or the multi-  
36 disciplinary team shall give the parent or guardian of the child the  
37 opportunity to consent in writing to the release of the relevant infor-  
38 mation. Nothing in this clause shall be construed to be a determination  
39 of the child's mental capacity.

40 (d)] When the committee or multidisciplinary team is notified by the  
41 [commissioner who] PUBLIC AGENCY WHICH received the report that such  
42 state agency is not responsible for determining and recommending adult  
43 services for the child, the committee or multidisciplinary team shall  
44 forward the report to another [commissioner] PUBLIC AGENCY; or, if the  
45 committee or multidisciplinary team determines that there exists a  
46 dispute as to which state agency has the responsibility for determining  
47 and recommending adult services, the committee or multidisciplinary team  
48 may forward the report to the council on children and families for a  
49 resolution of such dispute.

50 [(e) The committee and multidisciplinary team shall prepare and submit  
51 an annual report to the state education department on or before October  
52 first of each year. Such annual report shall contain the number of cases  
53 submitted to each commissioner pursuant to clause (b) or (d) of this  
54 subparagraph, the type and severity of the handicapping condition  
55 involved with each such case, the number of notices received which deny  
56 responsibility for determining and recommending adult services, and

1 other information necessary for the state education department and the  
2 council on children and families to monitor the need for adult services.  
3 Such annual report shall not contain individually identifying informa-  
4 tion. The state education department shall forward a copy of such annual  
5 report to the council on children and families. All information received  
6 by the council on children and families pursuant to this subparagraph  
7 shall be subject to the confidentiality requirements of the department.

8 (f) For purposes of this subparagraph, the term "multidisciplinary  
9 team" refers to the unit which operates in lieu of a committee on  
10 special education with respect to children in state operated schools.

11 (7)] (6) The committee on special education shall provide a copy of  
12 the handbook for parents of children with [handicapping conditions]  
13 DISABILITIES established under subdivision eight of section four thou-  
14 sand four hundred three of this article or a locally approved [hand-  
15 icapped] booklet FOR PARENTS OF CHILDREN WITH DISABILITIES to the  
16 parents or person in parental relationship to a child as soon as practi-  
17 cable after such child has been referred for evaluation to the committee  
18 on special education.

19 S 2. Clause (d-2) of subparagraph 3 of paragraph b of subdivision 1 of  
20 section 4402 of the education law is REPEALED.

21 S 3. This act shall take effect immediately.