

7079

I N   S E N A T E

March 22, 2016

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

AN ACT to amend the general city law and the education law, in relation to the duration of settlement agreements 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. The general city law is amended by adding a new section 9  
2     to read as follows:

3     S 9. DURATION OF SETTLEMENT AGREEMENTS INVOLVING APPROPRIATE EDUCA-  
4     TIONAL PROGRAMS. IN THE EVENT THAT AN APPEAL OF A RECOMMENDATION MADE  
5     PURSUANT TO ITEM (I) OF CLAUSE (B) OF SUBPARAGRAPH THREE OF PARAGRAPH B  
6     OF SUBDIVISION ONE OF SECTION FORTY-FOUR HUNDRED TWO OF THE EDUCATION  
7     LAW, IS RESOLVED BY THE SIGNING OF A SETTLEMENT AGREEMENT BETWEEN THE  
8     CHILD'S PARENT OR PERSON IN PARENTAL RELATION AND THE BOARD OF EDUCATION  
9     OF THE SCHOOL DISTRICT IN A CITY HAVING A POPULATION OF ONE MILLION OR  
10    MORE, PURSUANT TO ITEM (II) OF CLAUSE (B) OF SUBPARAGRAPH THREE OF PARA-  
11    GRAPH B OF SUBDIVISION ONE OF SECTION FORTY-FOUR HUNDRED TWO OF THE  
12    EDUCATION LAW, THEN SUCH SETTLEMENT AGREEMENT SHALL BE FOR A TERM OF NOT  
13    LESS THAN THREE YEARS, CONTINGENT UPON THERE BEING NO SUBSTANTIAL CHANGE  
14    IN THE CHILD'S INDIVIDUALIZED EDUCATION PROGRAM, AND CONSISTENT WITH ANY  
15    OTHER APPLICABLE TIME PERIODS PRESCRIBED BY FEDERAL LAW.

16    S 2. Clause (b) of subparagraph 3 of paragraph b of subdivision 1 of  
17    section 4402 of the education law, as amended by chapter 378 of the laws  
18    of 2007, is amended to read as follows:

19    (b) (i) Make recommendations based upon a written evaluation setting  
20    forth the reasons for the recommendations, to the child's parent or  
21    person in parental relation and board of education or trustees as to  
22    appropriate educational programs and placement in accordance with the  
23    provisions of subdivision six of section forty-four hundred one-a of  
24    this article, and as to the advisability of continuation, modification,  
25    or termination of special class or program placements which evaluation  
26    shall be furnished to the child's parent or person in parental relation  
27    together with the recommendations provided, however that the committee

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

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1 may recommend a placement in a school which uses psychotropic drugs only  
2 if such school has a written policy pertaining to such use that is  
3 consistent with subdivision four-a of section thirty-two hundred eight  
4 of this chapter and that the parent or person in parental relation is  
5 given such written policy at the time such recommendation is made.

6 (II) If such recommendation MADE IN ACCORDANCE WITH ITEM (I) OF THIS  
7 CLAUSE is not acceptable to the parent or person in parental relation,  
8 such parent or person in parental relation may appeal such recommenda-  
9 tion as provided for in section forty-four hundred four of this [chap-  
10 ter] ARTICLE. PROVIDED, FURTHER, THAT IN A SCHOOL DISTRICT IN A CITY  
11 HAVING A POPULATION OF ONE MILLION OR MORE:

12 (A) A PARENT'S APPEAL OF SUCH RECOMMENDATION SHALL BE RESOLVED, EITHER  
13 THROUGH THE GRANTING OR DENIAL OF THE APPEAL BY AN IMPARTIAL HEARING  
14 OFFICER, OR BY A STATE REVIEW OFFICER, OR THE SIGNING OF A SETTLEMENT  
15 AGREEMENT BETWEEN THE PARENT OR PERSON IN PARENTAL RELATION AND THE  
16 BOARD OF EDUCATION OF THE SCHOOL DISTRICT IN THE CITY HAVING A POPU-  
17 LATION OF ONE MILLION OR MORE OR A STATE AGENCY, WITHIN ANY APPLICABLE  
18 TIME PERIODS PRESCRIBED BY FEDERAL LAW; AND

19 (B) THAT THE APPLICABLE TIME PERIODS ESTABLISHED IN A SIGNED SETTLE-  
20 MENT AGREEMENT, MADE PURSUANT TO SUBITEM (A) OF THIS ITEM, SHALL ALSO BE  
21 IN ACCORDANCE WITH SECTION NINE OF THE GENERAL CITY LAW;

22 (C) THAT NOTHING IN THIS ITEM SHALL BE DEEMED TO PROHIBIT ANY PARENT  
23 OR THE SCHOOL DISTRICT FROM SEEKING JUDICIAL REVIEW BY ANY COURT OF  
24 COMPETENT JURISDICTION;

25 (D) UPON THE SIGNING OF A WRITTEN SETTLEMENT AGREEMENT BETWEEN A  
26 CHILD'S PARENT OR PERSON IN PARENTAL RELATION AND THE BOARD OF EDUCATION  
27 OF THE SCHOOL DISTRICT IN A CITY HAVING A POPULATION OF ONE MILLION OR  
28 MORE OR A STATE AGENCY, OR THE DECISION, ORDER OR JUDGMENT OF AN IMPAR-  
29 TIAL HEARING OFFICER, STATE REVIEW OFFICER OR A COURT FINDING THAT A  
30 UNILATERAL PARENTAL PLACEMENT WAS APPROPRIATE AND THAT TUITION PAYMENT  
31 SHOULD BE GRANTED FOR SUCH UNILATERAL PLACEMENT, AS PROVIDED BY SECTION  
32 1412(A)(10)(C) OF TITLE 20 OF THE UNITED STATES CODE AND THE IMPLEMENT-  
33 ING FEDERAL REGULATIONS, THE AMOUNT OF SUCH PAYMENT AND THE TIMELINE OR  
34 SCHEDULE FOR MAKING SUCH PAYMENT SHALL BE SET FORTH IN ANY SUCH SETTLE-  
35 MENT OR DECISION, ORDER, OR JUDGMENT.

36 [(ii)] (III) Notwithstanding any provisions of this clause or clause  
37 (a) of this subparagraph to the contrary, in making changes to a  
38 student's individualized education program after the annual review has  
39 been conducted, the parent or person in parental relation to the student  
40 and the school district may agree not to convene a meeting of the  
41 committee on special education for the purpose of making those changes,  
42 and instead may develop a written document to amend or modify the  
43 student's current individualized education program under the following  
44 circumstances:

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

49 (B) The school district provides the parent or person in parental  
50 relation with a written proposal to amend a provision or provisions of  
51 the individualized education program that is conveyed in language under-  
52 standable to the parent or person in parental relation in such parent's  
53 or such person's native language or other [dominate] DOMINANT mode of  
54 communication, informs and allows the parent or person in parental  
55 relation the opportunity to consult with the appropriate personnel or

1 related service providers concerning the proposed changes and the parent  
2 or person in parental relation agrees in writing to such amendments.

3 (C) If the parent or person in parental relation agrees to amend the  
4 individualized education program without a meeting, the parent or person  
5 in parental relation shall be provided prior written notice of the  
6 changes to the individualized education program resulting from such  
7 written document and the special education committee shall be notified  
8 of such changes. If the school district makes such changes by rewriting  
9 the entire individualized education program, it shall provide the parent  
10 or person in parental relation with a copy of the rewritten individual-  
11 ized education program. If the school district amends the individualized  
12 education program without rewriting the entire document, the school  
13 district shall provide the parent or person in parental relation with a  
14 copy of the document that amends or modifies the individualized educa-  
15 tion program or, upon request of the parent or person in parental  
16 relation, a revised copy of the individualized education program with  
17 the amendments incorporated.

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

22 S 3. Paragraph a of subdivision 1 of section 4404 of the education law  
23 is amended by adding a new closing paragraph to read as follows:

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

39 S 4. This act shall take effect immediately; provided, that the amend-  
40 ments to clause (b) of subparagraph 3 of paragraph b of subdivision 1 of  
41 section 4402 of the education law, made by section two of this act,  
42 shall not affect the expiration of such clause and shall expire there-  
43 with; and provided, further, that the amendments to subdivision 1 of  
44 section 4404 of the education law, made by section three of this act,  
45 shall not affect the expiration of such subdivision and shall expire  
46 therewith.