

STATE OF NEW YORK

1036

2017-2018 Regular Sessions

IN ASSEMBLY

January 10, 2017

Introduced by M. of A. NOLAN -- read once and referred 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:

Section 1. Subparagraphs 5 and 7 of paragraph b of subdivision 1 of section 4402 of the education law, subparagraph 5 as amended by chapter 256 of the laws of 1988 and subparagraph 7 as amended by chapter 194 of the laws of 1991, are amended to read as follows:

(5) The committee on special education or, in the case of a state operated school, the multidisciplinary team shall ~~[provide written notice that a child who is placed in those residential programs specified in paragraphs d, g, h and l of subdivision two of section forty four hundred one of this article is not entitled to receive tuition free educational services after the age of twenty-one, the receipt of a high school diploma or the time described in subdivision five of this section. Such written notice shall be provided to the child and to the parents or legal guardian of such child when such child attains the age of eighteen or, if such child is over the age of eighteen when placed in such a residential program, at the time of placement. Upon the first annual review after the age of fifteen of a child who is receiving non-residential special services or programs as specified in paragraph a, b, c, d, e, f, i, j, l or m of subdivision two of section forty four hundred one of this article, or is receiving special services or 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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~~such special services or programs one hundred per centum of the school day; is receiving individualized attention or intervention because of intensive management needs or a severe handicap; and, as determined by the committee on special education or multidisciplinary team pursuant to regulations promulgated by the commissioner, may need adult services from the office of mental health, office of mental retardation and developmental disabilities, the state department of social services, a social services district, or the state education department, the committee or multidisciplinary team shall provide to such child's parent or guardian, and if such child is eighteen years of age or older, to the child, written notice that such child is not entitled to receive tuition free educational services after the receipt of a high school diploma, the age of twenty-one or the time described in subdivision five of this section.]~~ not later than the annual review prior to the eighteenth birthday of a student with a disability who is placed in a residential program by the committee or multidisciplinary team, or a student with a disability who is placed in a day program but the committee or multidisciplinary team has determined that the student is likely to require adult residential services, with the consent of the parents, notify and invite a representative of the office of mental health, office for people with developmental disabilities, or the state education department, as appropriate, to participate in the committee on special education meeting for the development of a recommendation for adult services pursuant to section 7.37 or 13.37 of the mental hygiene law, section three hundred ninety-eight-c of the social services law or section forty-four hundred three of this article. The committee or multidisciplinary team shall give the parent or guardian of the child, the opportunity to consent in writing to the release of relevant information to such other public agency or agencies, upon request of such agency or agencies, for purposes of determining appropriateness of an adult program for such student.

(a) ~~[Written notice given pursuant to this subparagraph shall describe in detail the opportunity to consent to have the child's name and other relevant information forwarded in a report to the commissioner of mental health, commissioner of mental retardation and developmental disabilities, commissioner of social services, or commissioner of education, or their designees, for the purpose of determining whether such child will likely need adult services and, if so, recommending possible adult services.]~~ For the purposes of this subparagraph "relevant information" shall be defined as that information in the possession of and used by the committee or the multidisciplinary team to ascertain the physical, mental, emotional and cultural-educational factors which contribute to the ~~[child's handicapping condition]~~ student's disability, including but not limited to: (i) results of physical and psychological examinations performed by private and school district physicians and psychologists; (ii) relevant information presented by the parent, guardian and teacher; (iii) school data which bear on the ~~[child's]~~ student's progress including the ~~[child's]~~ student's most recent individualized education program; (iv) results of the most recent examinations and evaluations performed pursuant to clause (d) of subparagraph three of this paragraph; and (v) results of other suitable evaluations and examinations possessed by the committee or multidisciplinary team. Nothing in this subparagraph shall be construed to require any committee or multidisciplinary team to perform any examination or evaluation not otherwise required by law.

(b) Upon consent obtained pursuant to ~~[clause (c) of]~~ this subparagraph, the committee or multidisciplinary team shall forward the ~~[child's]~~ student's name and other relevant information in a report to the ~~[commissioner of mental health, commissioner of mental retardation and developmental disabilities, commissioner of social services, or commissioner of education, or their designees, for the development of a recommendation for adult services pursuant to section 7.37 or 13.37 of the mental hygiene law, section three hundred ninety-eight-c of the social services law or subdivision ten of section forty-four hundred three of this article. The]~~ appropriate public agency as determined by the committee or multidisciplinary team ~~[shall determine which commissioner shall receive the report by considering]~~, based upon the ~~[child's handicapping condition]~~ student's disability and physical, mental, emotional and social needs. The committee shall forward additional and updated relevant information to the ~~[commissioner of mental health, commissioner of mental retardation and developmental disabilities, commissioner of social services, or commissioner of education, or their designees,]~~ appropriate public agency upon the request for such information by such ~~[commissioner or designee]~~ agency, with the consent of the parents, or the student, if such student is eighteen years or older.

(c) ~~[Upon receipt of the notice by the child pursuant to this subparagraph, the child, if eighteen years of age or older, shall be given the opportunity to consent or withhold consent to the release of the relevant information. Such opportunity shall be given within twenty days of the receipt of the notice. An appropriate member of the staff of the educational facility shall be available to assist the child, if necessary, to understand the contents of the notice and the need for his or her consent for the release of the relevant information. A form, prescribed by the commissioner, shall be presented to the child for response, which shall clearly set forth the options of giving consent or withholding consent. In the event that the child exercises neither option, and the designated member of the staff of the educational facility has reason to believe that the child may not be able to understand the purpose of the form, or in the event that the child is less than eighteen years of age, the committee on special education or the multidisciplinary team shall give the parent or guardian of the child the opportunity to consent in writing to the release of the relevant information. Nothing in this clause shall be construed to be a determination of the child's mental capacity.]~~

~~(d)~~ When the committee or multidisciplinary team is notified by the ~~[commissioner who]~~ public agency which received the report that such state agency is not responsible for determining and recommending adult services for the child, the committee or multidisciplinary team shall forward the report to another ~~[commissioner]~~ public agency; or, if the committee or multidisciplinary team determines that there exists a dispute as to which state agency has the responsibility for determining and recommending adult services, the committee or multidisciplinary team may forward the report to the council on children and families for a resolution of such dispute.

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

~~other information necessary for the state education department and the council on children and families to monitor the need for adult services. Such annual report shall not contain individually identifying information. The state education department shall forward a copy of such annual report to the council on children and families. All information received by the council on children and families pursuant to this subparagraph shall be subject to the confidentiality requirements of the department.~~

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

~~(7)]~~ (6) The committee on special education shall provide a copy of the handbook for parents of children with [~~handicapping conditions~~] disabilities established under subdivision eight of section four thousand four hundred three of this article or a locally approved [~~handicapped~~] booklet for parents of children with disabilities to the parents or person in parental relationship to a child as soon as practicable after such child has been referred for evaluation to the committee on special education.

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

§ 3. This act shall take effect immediately.