

STATE OF NEW YORK

9073

IN SENATE

June 15, 2018

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

AN ACT to amend the education law, in relation to the handling of appeals regarding recommendations for children with handicapping conditions; 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 the effectiveness thereof; and to amend chapter 378 of the laws of 2007, amending the education law relating to the implementation of the federal individuals with disabilities education improvement act of 2004, in relation to the effectiveness thereof

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

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

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1 population of one million or more a parent's appeal of such recommenda-
2 tion shall be resolved, either through the granting or denial of the
3 appeal by an impartial hearing officer, or by a state review officer, or
4 by a court, or by the signing of a settlement agreement between the
5 parent or person in parental relation and the board of education of the
6 school district in the city having a population of one million or more
7 or state agency.

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

10 Notwithstanding any other provision of law, rule or regulation to the
11 contrary, in a school district in a city having a population of one
12 million or more, upon the decision of an impartial hearing officer,
13 state review officer, or by a court finding, or by the signing of a
14 settlement agreement between the parent or person in parental relation
15 and the board of education of the school district in the city having a
16 population of one million or more or a state agency, that a unilateral
17 parental placement shall be made and that tuition payments shall be
18 granted for such unilateral placement, then such placement and tuition
19 payments shall continue for no less than three years, with such uninter-
20 rupted payments being at the same percentage of the total tuition cost
21 as the previous year's payments, unless and until the committee on
22 special education determines that the child's needs can be met in anoth-
23 er public or approved private school program and where such determi-
24 nation was based upon a significant revision to the child's individual-
25 ized education program that is caused by a substantial change to the
26 child's disability status that requires the committee to recommend such
27 new placement; provided, however, that to qualify for such tuition
28 payments provided pursuant to this paragraph, the family of such child
29 shall have an income of three times or less than the income eligibility
30 requirements under the federal National School Lunch Program; and
31 provided further that where the parent or person in parental relation
32 brings a due process proceeding to challenge such revised, new place-
33 ment, the unilateral parental placement for which tuition payment was
34 granted shall be the pendency placement, as provided in subdivision four
35 of this section.

36 § 3. Section 22 of chapter 352 of the laws of 2005, amending the
37 education law relating to implementation of the federal individuals with
38 disabilities education improvement act of 2004, as amended by chapter 35
39 of the laws of 2015, is amended to read as follows:

40 § 22. This act shall take effect July 1, 2005, provided, however, if
41 this act shall become a law after such date it shall take effect imme-
42 diately and shall be deemed to have been in full force and effect on and
43 after July 1, 2005; and provided further, however, that sections one
44 through four and six through twenty-one of this act shall expire and be
45 deemed repealed June 30, [2018] 2021, and section five of this act shall
46 expire and be deemed repealed June 30, [2018] 2021.

47 § 4. Subdivision d of section 27 of chapter 378 of the laws of 2007,
48 amending the education law relating to implementation of the federal
49 individuals with disabilities education improvement act of 2004, as
50 amended by chapter 35 of the laws of 2015, is amended to read as
51 follows:

52 d. the provisions of this act shall expire and be deemed repealed June
53 30, [2018] 2021.

54 § 5. This act shall take effect immediately; provided, however, that
55 the amendments to item (i) of clause (b) of subparagraph 3 of paragraph
56 b of subdivision 1 of section 4402 of the education law made by section

1 one of this act shall not affect the expiration of such clause and shall
2 be deemed to expire therewith; provided further, however, that the
3 amendments to subdivision 1 of section 4404 of the education law made by
4 section two of this act shall not affect the expiration of such subdivi-
5 sion and shall be deemed to expire therewith.