S T A T E O F N E W Y O R K

5487

2011-2012 Regular Sessions

I N S E N A T E

May 25, 2011

Introduced by Sen. LANZA -- 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 transportation of children receiving special education services

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

Section 1. Subdivision 4 of section 4402 of the education law, as added by chapter 853 of the laws of 1976, paragraph a as amended by chapter 470 of the laws of 1977, and paragraph d as amended by chapter 646 of the laws of 1992, is amended to read as follows:

4. a. The board of education or the board of trustees of each school district shall provide suitable transportation to and from special classes or programs, with the exception of residential facilities for the care and treatment of children with handicapping conditions under the jurisdiction of an agency of the state other than the state department of education, as specified in subdivisions two and four of section forty-four hundred one of this article.

b. (1) Such board may permit any adult, willing to serve without compensation, to act as an attendant for such children. NOTWITHSTANDING ANY STATE OR LOCAL LAW TO THE CONTRARY, AN ESCORT SHALL NOT BE REQUIRED TO ACCOMPANY A CHILD BEING TRANSPORTED IN A VEHICLE WITH FEWER THAN FOUR OTHER CHILDREN UNLESS THE COMMITTEE HAS RECOMMENDED AN ESCORT IN THE CHILD'S INDIVIDUALIZED EDUCATION PROGRAM OR THE CHILD IS REQUIRED TO BE ACCOMPANIED PURSUANT TO SUBPARAGRAPH TWO OF THIS PARAGRAPH.

(2) SUCH BOARD MAY REQUEST AND ENCOURAGE PARENTS AND PERSONS IN PARENTAL RELATION TO TRANSPORT THEIR CHILDREN, INCLUDING CHILDREN TO BE TRANSPORTED TO NONPUBLIC SCHOOL PURSUANT TO PARAGRAPH D OF THIS SUBDIVISION, AT PUBLIC EXPENSE, WHERE COST-EFFECTIVE, AT A RATE PER MILE OR A PUBLIC SERVICE FARE ESTABLISHED BY THE SCHOOL DISTRICT AND APPROVED BY THE COMMISSIONER. A PROPOSED RATE PER MILE OR PUBLIC SERVICE FARE SUBMITTED TO THE COMMISSIONER SHALL BE EFFECTIVE IMMEDIATELY UPON

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

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APPROVAL BY THE COMMISSIONER, OR ON THE THIRTIETH DAY AFTER ITS SUBMISSION TO THE COMMISSIONER UNLESS THE COMMISSIONER SHALL SPECIFICALLY DISAPPROVE SUCH PROPOSED RATE OR FARE IN WRITING, WITH AN EXPLANATION FOR SUCH DISAPPROVAL. SUCH TRANSPORTATION MAY BE PROVIDED BY PUBLIC TRANSPORTATION WHERE THE CHILD IS ACCOMPANIED BY THE PARENT, PERSON IN PARENTAL RELATION OR OTHER ADULT OVER THE AGE OF TWENTY-ONE LIVING IN THE SAME HOUSEHOLD AS THE PARENT OR PERSON IN PARENTAL RELATION; BY A TAXICAB AS DEFINED IN SECTION ONE HUNDRED FORTY-EIGHT-A OF THE VEHICLE AND TRAFFIC LAW OR LIVERY AS DEFINED IN SECTION ONE HUNDRED TWENTY-ONE-E OF THE VEHICLE AND TRAFFIC LAW WHERE THE CHILD IS ACCOMPANIED BY THE PARENT, PERSON IN PARENTAL RELATION OR OTHER ADULT OVER THE AGE OF TWENTY-ONE LIVING IN THE SAME HOUSEHOLD AS THE PARENT OR PERSON IN PARENTAL RELATION; OR BY MOTOR VEHICLE EQUIPPED WITH SEAT BELTS AND SAFETY SEATING TO THE EXTENT REQUIRED BY SECTION TWELVE HUNDRED TWENTY-NINE-C OF THE VEHICLE AND TRAFFIC LAW AND DRIVEN BY THE PARENT, PERSON IN PARENTAL RELATION OR OTHER ADULT OVER THE AGE OF TWENTY-ONE LIVING IN THE SAME HOUSEHOLD AS THE PARENT OR PERSON IN PARENTAL RELATION. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, A MOTOR VEHICLE WITH A SEATING CAPACITY OF UP TO NINE PERSONS SHALL NOT BE SUBJECT TO REQUIREMENTS APPLICABLE TO A SCHOOL BUS AS DEFINED IN SECTION ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW MERELY BECAUSE PAYMENT TO ITS DRIVER HAS BEEN MADE WITH FUNDS PROVIDED TO A PARENT OR PERSON IN PARENTAL RELATION PURSUANT TO THIS SUBPARAGRAPH, AND A PERSON PROVIDING TRANSPORTATION SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF ARTICLE NINETEEN-A OF THE VEHICLE AND TRAFFIC LAW MERELY BECAUSE HE OR SHE SHALL HAVE RECEIVED SUCH PAYMENT.

c. Such board shall be empowered to contract for transportation services provided pursuant to this subdivision with any municipality, Board of Cooperative Educational Services, public authority or private contractor meeting the school bus provisions outlined in section thirty-six hundred twenty-three of this chapter and the standards and specifications relating thereto.

d. Notwithstanding any other provision of law, such board shall provide suitable transportation up to a distance of fifty miles to and from a nonpublic school which a child with a handicapping condition attends if such child has been so identified by the local committee on special education and such child attends such school for the purpose of receiving services or programs similar to special educational programs recommended for such child by the local committee on special education.

S 2. Subdivision 8 of section 4410 of the education law, as amended by chapter 474 of the laws of 1996, is amended to read as follows:

8. Transportation. The municipality in which a preschool child resides shall, beginning with the first day of service, provide either directly or by contract for suitable transportation, as determined by the board, to and from special services or programs; provided, however, that if the municipality is a city with a population of one million or more persons the municipality may delegate the authority to provide such transportation to the board; and provided further, that prior to providing such transportation directly or contracting with another entity to provide such transportation, such municipality or board shall request and encourage the parents to transport their children at public expense, where cost-effective, at a rate per mile or a public service fare established by the municipality and approved by the commissioner. A PROPOSED RATE PER MILE OR PUBLIC SERVICE FARE SUBMITTED TO THE COMMISSIONER SHALL BE EFFECTIVE IMMEDIATELY UPON APPROVAL BY THE COMMISSIONER, OR ON THE THIRTIETH DAY AFTER ITS SUBMISSION TO THE COMMISSIONER UNLESS THE

COMMISSIONER SHALL SPECIFICALLY DISAPPROVE SUCH PROPOSED RATE OR FARE IN WRITING, WITH AN EXPLANATION FOR SUCH DISAPPROVAL. TRANSPORTATION FOR WHICH A PARENT RECEIVES REIMBURSEMENT MAY BE PROVIDED BY PUBLIC TRANSPORTATION WHERE THE CHILD IS ACCOMPANIED BY THE PARENT OR OTHER ADULT OVER THE AGE OF TWENTY-ONE LIVING IN THE SAME HOUSEHOLD AS THE PARENT; BY A TAXICAB AS DEFINED IN SECTION ONE HUNDRED FORTY-EIGHT-A OF THE VEHICLE AND TRAFFIC LAW OR LIVERY AS DEFINED IN SECTION ONE HUNDRED TWENTY-ONE-E OF THE VEHICLE AND TRAFFIC LAW WHERE THE CHILD IS ACCOMPANIED BY THE PARENT OR OTHER ADULT OVER THE AGE OF TWENTY-ONE LIVING INS THE SAME HOUSEHOLD AS THE PARENT, AND, IF THE CHILD IS UNDER THE AGE OF FOUR, A SAFETY SEAT AS DESCRIBED IN SECTION TWELVE HUNDRED TWENTY-NINE-C OF THE VEHICLE AND TRAFFIC LAW IS USED TO SECURE THE CHILD; OR BY MOTOR VEHICLE EQUIPPED WITH SEAT BELTS AND SAFETY SEATING TO THE EXTENT REQUIRED BY SECTION TWELVE HUNDRED TWENTY-NINE-C OF THE VEHICLE AND TRAFFIC LAW AND DRIVEN BY THE PARENT OR OTHER ADULT OVER THE AGE OF TWENTY-ONE LIVING IN THE SAME HOUSEHOLD AS THE PARENT OR PERSON IN PARENTAL RELATION. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, A VEHICLE WITH A SEATING CAPACITY OF UP TO NINE PERSONS SHALL NOT BE SUBJECT TO REQUIREMENTS APPLICABLE TO A SCHOOL BUS AS DEFINED IN SECTION ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW MERELY BECAUSE PAYMENT TO ITS DRIVER HAS BEEN MADE WITH FUNDS PROVIDED TO A PARENT PURSUANT TO THIS SUBDIVISION, AND A PERSON PROVIDING TRANSPORTATION SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF ARTICLE NINETEEN-A OF THE VEHICLE AND TRAFFIC LAW MERELY BECAUSE HE OR SHE SHALL HAVE RECEIVED SUCH PAYMENT.

Except as otherwise provided in this section, the parents' inability or declination to transport their child shall in no way [effect] AFFECT the municipality's or board's responsibility to provide recommended services. Such transportation shall be provided once daily from the child care location to the special service or program and once daily from the special service or program to the child care location up to fifty miles from the child care location. If the board determines that a child must receive special services and programs at a location greater than fifty miles from the child care location, it shall request approval of the commissioner. For the purposes of this subdivision, the term "child care location" shall mean a child's home or a place where care for less than twenty-four hours a day is provided on a regular basis and includes, but is not limited to, a variety of child care services such as day care centers, family day care homes and in-home care by persons other than parents. All transportation of such children shall be provided pursuant to the procedures set forth in section two hundred thirty-six of the family court act using the date called for in the written notice of determination of the board or the date of the written notice of determination of the board, whichever comes later, in lieu of the date the court order was issued.

NOTWITHSTANDING ANY STATE OR LOCAL LAW TO THE CONTRARY, AN ESCORT SHALL NOT BE REQUIRED TO ACCOMPANY A CHILD BEING TRANSPORTED IN A VEHICLE WITH FEWER THAN FOUR OTHER CHILDREN UNLESS THE COMMITTEE HAS RECOMMENDED AN ESCORT IN THE CHILD'S INDIVIDUALIZED EDUCATION PROGRAM OR THE CHILD IS REQUIRED TO BE ACCOMPANIED PURSUANT TO THIS SUBDIVISION.

S 3. This act shall take effect immediately.