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I N S E N A T E

June 15, 2012

Introduced by Sens. FLANAGAN, SKELOS -- 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 consideration of
cultural factors for the purposes of special education placement

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

1 Section 1. Clauses (a) and (b) of subparagraph 3 of paragraph b of
2 subdivision 1 of section 4402 of the education law, clause (a) as
3 amended by chapter 53 of the laws of 1991 and clause (b) as amended by
4 chapter 378 of the laws of 2007, are amended to read as follows:
5 (a) Obtain, review and evaluate all relevant information, including
6 but not limited to that presented by the parent, person in parental
7 relationship and teacher, pertinent to each child suspected of or identified
8 as having a handicapping condition, including the results of a
9 physical examination performed in accordance with sections nine hundred
10 three, nine hundred four and nine hundred five of this chapter and,
11 where determined to be necessary by a school psychologist, an appropriate
12 psychological evaluation performed by a qualified private or school
13 psychologist, and other appropriate assessments as necessary to ascertain
14 the physical, mental, emotional and cultural-educational factors,
15 INCLUDING THE EDUCATIONAL IMPACT ON THE STUDENT OF ANY SUCH FACTORS
16 which may contribute to the suspected or identified handicapping condition,
17 and all other school data which bear on the child's progress,
18 including, where appropriate, observation of classroom performance.
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
28 may recommend a placement in a school which uses psychotropic drugs only

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

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1 if such school has a written policy pertaining to such use that is
2 consistent with subdivision four-a of section thirty-two hundred eight
3 of this chapter and that the parent or person in parental relation is
4 given such written policy at the time such recommendation is made. IF
5 AN EVALUATION CONDUCTED PURSUANT TO CLAUSE (A) OF THIS SUBPARAGRAPH
6 IDENTIFIES CULTURAL-EDUCATIONAL FACTORS WHICH MAY ADVERSELY IMPACT THE
7 STUDENT'S ABILITY TO LEARN, SUCH FACTORS SHALL BE CONSIDERED WHEN EVALU-
8 ATING THE APPROPRIATENESS OF A RECOMMENDED PLACEMENT.

9 (II) If such recommendation is not acceptable to the parent or person
10 in parental relation, such parent or person in parental relation may
11 appeal such recommendation as provided for in section forty-four hundred
12 four of this [chapter] ARTICLE. IF A PARENT, OR PERSON IN PARENTAL
13 RELATION PREVAILS UPON APPEAL AND IS THEREFORE ENTITLED TO TUITION
14 REIMBURSEMENT, OR UPON AGREEMENT WITH THE SCHOOL DISTRICT THAT RESULTS
15 IN TUITION REIMBURSEMENT, SUCH REIMBURSEMENT SHALL CONTINUE FOR THE
16 DURATION OF THE PLACEMENT. PROVIDED FURTHER THAT REIMBURSEMENT SHALL
17 CONTINUE WITHOUT FURTHER APPLICATION OR DELAY SO LONG AS THE PLACEMENT
18 REMAINS APPROPRIATE. FOR PURPOSES OF THIS SECTION, SUCH PLACEMENT SHALL
19 BE DEEMED APPROPRIATE UPON DETERMINATION THAT THE PARENT IS ELIGIBLE FOR
20 TUITION REIMBURSEMENT EITHER BY PREVAILING UPON APPEAL OR PURSUANT TO AN
21 AGREEMENT WITH THE DISTRICT THAT RESULTS IN SUCH REIMBURSEMENT. PROVIDED
22 FURTHER THAT PURSUANT TO SECTION FORTY-FOUR HUNDRED FIVE OF THIS ARTICLE
23 A SCHOOL DISTRICT SHALL GRANT OR DENY A PARENT'S REQUEST FOR TUITION
24 REIMBURSEMENT WITHIN NINETY DAYS FROM THE DATE SUCH REQUEST IS RECEIVED.

25 [(ii)] (III) Notwithstanding any provisions of this clause or clause
26 (a) of this subparagraph to the contrary, in making changes to a
27 student's individualized education program after the annual review has
28 been conducted, the parent or person in parental relation to the student
29 and the school district may agree not to convene a meeting of the
30 committee on special education for the purpose of making those changes,
31 and instead may develop a written document to amend or modify the
32 student's current individualized education program under the following
33 circumstances:

34 (A) The parent or person in parental relation makes a request to the
35 school district for an amendment to the individualized education program
36 and the school district and such parent or person in parental relation
37 agree in writing; or

38 (B) The school district provides the parent or person in parental
39 relation with a written proposal to amend a provision or provisions of
40 the individualized education program that is conveyed in language under-
41 standable to the parent or person in parental relation in such parent's
42 or such person's native language or other [dominate] DOMINANT mode of
43 communication, informs and allows the parent or person in parental
44 relation the opportunity to consult with the appropriate personnel or
45 related service providers concerning the proposed changes and the parent
46 or person in parental relation agrees in writing to such amendments.

47 (C) If the parent or person in parental relation agrees to amend the
48 individualized education program without a meeting, the parent or person
49 in parental relation shall be provided prior written notice of the
50 changes to the individualized education program resulting from such
51 written document and the special education committee shall be notified
52 of such changes. If the school district makes such changes by rewriting
53 the entire individualized education program, it shall provide the parent
54 or person in parental relation with a copy of the rewritten individual-
55 ized education program. If the school district amends the individualized
56 education program without rewriting the entire document, the school

1 district shall provide the parent or person in parental relation with a
2 copy of the document that amends or modifies the individualized educa-
3 tion program or, upon request of the parent or person in parental
4 relation, a revised copy of the individualized education program with
5 the amendments incorporated.

6 Amendments to an individualized education program pursuant to this
7 subitem shall not affect the requirement that the special education
8 committee review the individualized education program at the annual
9 meeting, or more often if necessary.

10 S 2. This act shall take effect on the one hundred twentieth day after
11 it shall have become a law, provided, however, that the amendments to
12 clause (b) of subparagraph 3 of paragraph b of subdivision 1 of section
13 4402 of the education law made by section one of this act shall not
14 affect the expiration of such clause and shall be deemed to expire ther-
15 ewith. Effective immediately, the addition, amendment and/or repeal of
16 any rule or regulation necessary for the implementation of this act on
17 its effective date is authorized to be made on or before such date.