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

7302--A

2013-2014 Regular Sessions

I N A S S E M B L Y

May 10, 2013

Introduced by M. of A. NOLAN -- (at request of the State Comptroller) -- read once and referred to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to special education services and programs for preschool children with disabilities; to amend the education law, in relation to audits by the state comptroller of the expenses reported by program providers of special education services for preschool children with disabilities; and directing the department of education to study alternative systems of reimbursement methodologies and monitoring protocols for the tuition and maintenance components of special education services programs for preschool children with disabilities

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

Section 1. Paragraph c of subdivision 4 of section 4410 of the education law, as amended by chapter 474 of the laws of 1996, is amended to read as follows:

c. The documentation of the evaluation shall include all assessment reports and a summary report of the findings of the evaluation on a form prescribed by the commissioner including a detailed statement of the preschool child's individual needs. The summary report shall not make reference to any specific provider of special services or programs. In addition, with the consent of the parents, approved evaluators and committees shall be provided with the most recent evaluation report for a child in transition from programs and services provided pursuant to title two-a of article twenty-five of the public health law. Nothing shall prohibit an approved evaluator or the committee from reviewing other assessments or evaluations to determine if such assessments or evaluations fulfill the requirements of the regulations of the commissioner. Notwithstanding any inconsistent provisions of this section, the

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

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committee, in its discretion, may obtain an evaluation of the child from another approved evaluator prior to making any recommendation that would place a child in the approved program that conducted the [initial] evaluation of the child. IF THE COMMITTEE RECOMMENDS PLACING A CHILD IN AN APPROVED PROGRAM THAT ALSO CONDUCTED AN EVALUATION OF SUCH CHILD IT SHALL INDICATE IN WRITING THAT SUCH PLACEMENT IS AN APPROPRIATE ONE FOR THE CHILD. IN ADDITION, THE COMMITTEE SHALL PROVIDE NOTICE TO THE COMMISSIONER OF SUCH RECOMMENDATION.

S 2. Subdivision 9 of section 4410 of the education law is amended by adding a new paragraph g to read as follows:

G. AS PART OF AN APPLICATION SUBMITTED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, A PROVIDER OF SPECIAL SERVICES OR PROGRAMS SHALL CERTIFY PURSUANT TO REGULATIONS PROMULGATED BY THE COMMISSIONER THAT IT WILL TAKE MEASURES TO ENSURE ITS EXECUTIVE DIRECTOR OR PERSON PERFORMING THE DUTIES OF A CHIEF EXECUTIVE OFFICER: (I) MEETS THE CRITERIA ESTABLISHED BY THE COMMISSIONER TO BE AN EXECUTIVE DIRECTOR; AND (II) IF PAID AS A FULL TIME EXECUTIVE DIRECTOR, HE OR SHE IS EMPLOYED IN A FULL TIME, FULL YEAR POSITION AND SHALL NOT ENGAGE IN ACTIVITY THAT WOULD INTERFERE WITH OR IMPAIR SUCH EXECUTIVE DIRECTOR'S ABILITY TO CARRY OUT AND PERFORM HIS OR HER DUTIES, RESPONSIBILITIES AND OBLIGATIONS.

S 3. The education law is amended by adding a new section 4410-c to read as follows:

S 4410-C. AUDITS OF SPECIAL EDUCATION SERVICES PROGRAM PROVIDERS FOR PRESCHOOL CHILDREN WITH DISABILITIES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY AND WITHIN SUCH FUNDS AS ARE MADE AVAILABLE FOR SUCH PURPOSE, THE COMPTROLLER SHALL AUDIT THE EXPENSES REPORTED TO THE DEPARTMENT BY EVERY PROGRAM PROVIDER OF SPECIAL EDUCATION SERVICES FOR PRESCHOOL CHILDREN WITH DISABILITIES IN THE STATE. PURSUANT TO A PLAN DEVELOPED BY THE COMPTROLLER, SUCH AUDITS SHALL BE CONDUCTED IN A MANNER SO AS TO CAUSE EVERY SUCH PROVIDER TO BE AUDITED BY THE COMPTROLLER AT LEAST ONCE BY MARCH THIRTY-FIRST, TWO THOUSAND EIGHTEEN.

2. A. THE PRIORITY AND FREQUENCY OF SUCH AUDITS, AND ANY AUDITS CONDUCTED THEREAFTER, SHALL BE BASED UPON A RISK ASSESSMENT PROCESS CONDUCTED BY THE COMPTROLLER WHICH MAY INCLUDE INVESTIGATIONS OF ALLEGED IMPROPRIETIES, PREVIOUS AUDIT FINDINGS AND RECOMMENDATIONS, OR OTHER FINANCIAL PERFORMANCE INDICATORS.

B. IN UNDERTAKING SUCH AUDITS THE COMPTROLLER'S REVIEW SHALL INCLUDE, BUT NOT BE LIMITED TO, EXAMINING, AUDITING AND EVALUATING RELEVANT FINANCIAL DOCUMENTS AND RECORDS OF PROVIDERS FOR THE PARTICULAR YEARS INCLUDED WITHIN THE SCOPE OF THE AUDIT.

C. ALL AUDITS SHALL INCLUDE ANY APPROPRIATE FINDINGS AND RECOMMENDATIONS OF THE COMPTROLLER REGARDING THE PROPRIETY OF THE AMOUNTS REPORTED AS EXPENSES TO THE DEPARTMENT AS WELL AS ANY OTHER FINDINGS DEEMED APPROPRIATE WITH RESPECT TO THE PUBLIC FUNDING OF THE SPECIAL EDUCATION SERVICES.

D. THE COMPTROLLER SHALL REFER ANY FINDINGS OF FRAUD, ABUSE OR OTHER CONDUCT CONSTITUTING A CRIME THAT ARE UNCOVERED DURING THE COURSE OF AN AUDIT, AS WARRANTED TO AN APPROPRIATE AGENCY OR AGENCIES POSSESSING JURISDICTION.

E. THE FINAL AUDIT REPORT RESULTING FROM AUDITS PERFORMED PURSUANT TO THIS SECTION SHALL BE POSTED TO THE DEPARTMENT'S INTERNET WEBSITE AND OTHERWISE MADE AVAILABLE TO THE PUBLIC UPON REQUEST FOR A PERIOD OF AT LEAST FIVE YEARS. FURTHERMORE, THE AUDITED PROVIDER SHALL BE REQUIRED TO POST THE FINAL AUDIT REPORT ON ITS INTERNET WEBSITE, IF ANY, FOR A PERIOD OF FIVE YEARS.

F. THE COMPTROLLER SHALL INFORM AND ADVISE THE GOVERNOR AND THE LEGISLATURE IN DECEMBER OF EACH YEAR REGARDING ITS AUDITS OF EXPENSES REPORTED TO THE DEPARTMENT BY PROGRAM PROVIDERS OF SPECIAL EDUCATION SERVICES FOR PRESCHOOL CHILDREN WITH DISABILITIES CONDUCTED DURING THE PRECEDING TWELVE MONTHS AND REGARDING ANY OTHER PERTINENT INFORMATION THE COMPTROLLER DEEMS APPROPRIATE.

S 4. The legislature finds that special education services programs for preschool children with disabilities have been susceptible to fraud and abuse. Therefore, the New York state department of education is hereby directed to conduct a comprehensive study of alternative systems of reimbursement methodologies and monitoring protocols for the tuition and maintenance components of special education services programs for preschool children with disabilities.

The results of the study shall be published no later than one year following the effective date of this act. A copy of the results of such study shall be submitted to the governor, the state comptroller, the temporary president of the senate and the speaker of the assembly.

S 5. This act shall take effect immediately; provided, however, that sections one and two of this act shall take effect on the one hundred twentieth day after it shall have become a law; provided, further, that effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for implementation of this act on its effective date is authorized to be made on or before such effective date.