

5842--A

2013-2014 Regular Sessions

I N   S E N A T E

June 17, 2013

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Introduced by Sen. FELDER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to determinations of appropriate educational programs for certain students

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 A PARENT'S APPEAL OF SUCH RECOMMENDATION  
22    SHALL BE RESOLVED, EITHER THROUGH THE GRANTING OR DENIAL OF THE APPEAL  
23    BY AN IMPARTIAL HEARING OFFICER, OR BY A STATE REVIEW OFFICER, OR THE

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

LBD11316-10-3

1 SIGNING OF A SETTLEMENT AGREEMENT BETWEEN THE PARENT OR PERSON IN  
2 PARENTAL RELATION AND THE BOARD OF EDUCATION OR TRUSTEES OF A SCHOOL  
3 DISTRICT OR A STATE AGENCY, WITHIN ANY APPLICABLE TIME PERIODS  
4 PRESCRIBED BY FEDERAL LAW. PROVIDED, FURTHER, THAT NOTHING HEREIN SHALL  
5 BE DEEMED TO PROHIBIT ANY PARENT OR SCHOOL DISTRICT FROM SEEKING JUDI-  
6 CIAL REVIEW BY ANY COURT OF COMPETENT JURISDICTION.

7 UPON THE SIGNING OF A WRITTEN SETTLEMENT AGREEMENT BETWEEN A CHILD'S  
8 PARENT OR PERSON IN PARENTAL RELATION AND THE BOARD OF EDUCATION OR  
9 TRUSTEES OF A SCHOOL DISTRICT OR A STATE AGENCY, OR THE DECISION, ORDER,  
10 OR JUDGMENT OF AN IMPARTIAL HEARING OFFICER, STATE REVIEW OFFICER OR A  
11 COURT FINDING THAT A UNILATERAL PARENTAL PLACEMENT WAS APPROPRIATE AND  
12 THAT TUITION PAYMENT SHOULD BE GRANTED FOR SUCH UNILATERAL PLACEMENT, AS  
13 PROVIDED BY SECTION 1412(A)(10)(C) OF TITLE 20 OF THE UNITED STATES CODE  
14 AND THE IMPLEMENTING FEDERAL REGULATIONS, THE AMOUNT OF SUCH PAYMENT AND  
15 THE TIME LINE OR SCHEDULE FOR MAKING SUCH PAYMENT SHALL BE SET FORTH IN  
16 ANY SUCH SETTLEMENT OR DECISION, ORDER, OR JUDGMENT.

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

19 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE  
20 CONTRARY, UPON THE SIGNING OF A WRITTEN SETTLEMENT AGREEMENT BETWEEN A  
21 CHILD'S PARENT OR PERSON IN PARENTAL RELATION AND THE BOARD OF EDUCATION  
22 OR TRUSTEES OF A SCHOOL DISTRICT OR A STATE AGENCY, OR THE DECISION OF  
23 AN IMPARTIAL HEARING OFFICER, STATE REVIEW OFFICER OR A COURT FINDING  
24 THAT A UNILATERAL PARENTAL PLACEMENT WAS APPROPRIATE AND THAT TUITION  
25 PAYMENT SHOULD BE GRANTED FOR SUCH UNILATERAL PLACEMENT, SUCH TUITION  
26 PAYMENT SHALL CONTINUE IN FUTURE YEARS, AT THE SAME PERCENTAGE OF THE  
27 TOTAL TUITION COST AS THE PREVIOUS YEAR'S PAYMENT, UNTIL THE COMMITTEE  
28 ON SPECIAL EDUCATION DETERMINES THE CHILD'S NEEDS CAN BE MET IN ANOTHER  
29 PUBLIC OR APPROVED PRIVATE SCHOOL PROGRAM AND REVISES THE CHILD'S INDI-  
30 VIDUALIZED EDUCATION PROGRAM TO RECOMMEND SUCH PLACEMENT; PROVIDED  
31 HOWEVER THAT WHERE THE PARENT OR PERSON IN PARENTAL RELATION BRINGS A  
32 DUE PROCESS PROCEEDING TO CHALLENGE SUCH REVISED PLACEMENT, THE UNILAT-  
33 ERAL PARENTAL PLACEMENT FOR WHICH TUITION PAYMENT WAS GRANTED SHALL BE  
34 THE PENDENCY PLACEMENT, AS PROVIDED IN SUBDIVISION FOUR OF SECTION  
35 FORTY-FOUR HUNDRED FOUR OF THIS ARTICLE.

36 S 3. This act shall take effect immediately; provided, however, that  
37 the amendments to clause (b) of subparagraph 3 of paragraph b of subdi-  
38 vision 1 of section 4402 of the education law, made by section one of  
39 this act, shall not affect the expiration of such clause and shall  
40 expire therewith; provided, further, that the amendments to subdivision  
41 1 of section 4404 of the education law, made by section two of this act,  
42 shall not affect the expiration of such subdivision and shall expire  
43 therewith.