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

7786--B

2013-2014 Regular Sessions

I N A S S E M B L Y

June 4, 2013

Introduced by M. of A. WEINSTEIN, SILVER, CYMBROWITZ, GOLDFEDER, HIKIND, JACOBS, KELLNER, LENTOL, SIMANOWITZ, TITONE, WEISENBERG, WEPRIN, TITUS, BRENNAN -- read once and referred to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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:

Section 1. Item (i) of clause (b) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law, as amended by chapter 378 of the laws of 2007, is amended to read as follows:

(i) Make recommendations based upon a written evaluation setting forth the reasons for the recommendations, to the child's parent or person in parental relation and board of education or trustees as to appropriate educational programs and placement in accordance with the provisions of subdivision six of section forty-four hundred one-a of this article, and as to the advisability of continuation, modification, or termination of special class or program placements which evaluation shall be furnished to the child's parent or person in parental relation together with the recommendations provided, however that the committee may recommend a placement in a school which uses psychotropic drugs only if such school has a written policy pertaining to such use that is consistent with subdivision four-a of section thirty-two hundred eight of this chapter and that the parent or person in parental relation is given such written policy at the time such recommendation is made. If such recommendation is not acceptable to the parent or person in parental relation, such parent or person in parental relation may appeal such recommendation as provided for in section forty-four hundred four of this [chapter] ARTI-

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

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CLE. PROVIDED, FURTHER, THAT A PARENT'S APPEAL OF SUCH RECOMMENDATION SHALL BE RESOLVED, EITHER THROUGH THE GRANTING OR DENIAL OF THE APPEAL BY AN IMPARTIAL HEARING OFFICER, OR BY A STATE REVIEW OFFICER, OR THE SIGNING OF A SETTLEMENT AGREEMENT BETWEEN THE PARENT OR PERSON IN PARENTAL RELATION AND THE BOARD OF EDUCATION OR TRUSTEES OF A SCHOOL DISTRICT OR A STATE AGENCY, WITHIN ANY APPLICABLE TIME PERIODS PRESCRIBED BY FEDERAL LAW. PROVIDED, FURTHER, THAT NOTHING HEREIN SHALL BE DEEMED TO PROHIBIT ANY PARENT OR SCHOOL DISTRICT FROM SEEKING JUDICIAL REVIEW BY ANY COURT OF COMPETENT JURISDICTION.

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

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

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

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