

5568--A

2013-2014 Regular Sessions

I N S E N A T E

May 21, 2013

Introduced by Sen. FLANAGAN -- (at request of the State Comptroller) -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Paragraph c of subdivision 4 of section 4410 of the educa-
2 tion law, as amended by chapter 474 of the laws of 1996, is amended to
3 read as follows:
4 c. The documentation of the evaluation shall include all assessment
5 reports and a summary report of the findings of the evaluation on a form
6 prescribed by the commissioner including a detailed statement of the
7 preschool child's individual needs. The summary report shall not make
8 reference to any specific provider of special services or programs. In
9 addition, with the consent of the parents, approved evaluators and
10 committees shall be provided with the most recent evaluation report for
11 a child in transition from programs and services provided pursuant to
12 title two-a of article twenty-five of the public health law. Nothing
13 shall prohibit an approved evaluator or the committee from reviewing
14 other assessments or evaluations to determine if such assessments or
15 evaluations fulfill the requirements of the regulations of the commis-
16 sioner. 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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1 committee, in its discretion, may obtain an evaluation of the child from
2 another approved evaluator prior to making any recommendation that would
3 place a child in the approved program that conducted the [initial] eval-
4 uation of the child. IF THE COMMITTEE RECOMMENDS PLACING A CHILD IN AN
5 APPROVED PROGRAM THAT ALSO CONDUCTED AN EVALUATION OF SUCH CHILD IT
6 SHALL INDICATE IN WRITING THAT SUCH PLACEMENT IS AN APPROPRIATE ONE FOR
7 THE CHILD. IN ADDITION, THE COMMITTEE SHALL PROVIDE NOTICE TO THE
8 COMMISSIONER OF SUCH RECOMMENDATION.

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

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

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

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

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

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

42 C. ALL AUDITS SHALL INCLUDE ANY APPROPRIATE FINDINGS AND RECOMMENDA-
43 TIONS OF THE COMPTROLLER REGARDING THE PROPRIETY OF THE AMOUNTS REPORTED
44 AS EXPENSES TO THE DEPARTMENT AS WELL AS ANY OTHER FINDINGS DEEMED
45 APPROPRIATE WITH RESPECT TO THE PUBLIC FUNDING OF THE SPECIAL EDUCATION
46 SERVICES.

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

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

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

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

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

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