

5842--A

2013-2014 Regular Sessions

I N S E N A T E

June 17, 2013

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.