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

7079

I N S E N A T E

March 22, 2016

Introduced by Sen. FELDER -- read twice and ordered printed, and when printed to be committed to the Committee on Cities

AN ACT to amend the general city law and the education law, in relation to the duration of settlement agreements in a school district in a city having a population of one million or more

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

Section 1. The general city law is amended by adding a new section 9 to read as follows:

S 9. DURATION OF SETTLEMENT AGREEMENTS INVOLVING APPROPRIATE EDUCATIONAL PROGRAMS. IN THE EVENT THAT AN APPEAL OF A RECOMMENDATION MADE PURSUANT TO ITEM (I) OF CLAUSE (B) OF SUBPARAGRAPH THREE OF PARAGRAPH B OF SUBDIVISION ONE OF SECTION FORTY-FOUR HUNDRED TWO OF THE EDUCATION LAW, IS RESOLVED BY THE SIGNING OF A SETTLEMENT AGREEMENT BETWEEN THE CHILD'S PARENT OR PERSON IN PARENTAL RELATION AND THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE, PURSUANT TO ITEM (II) OF CLAUSE (B) OF SUBPARAGRAPH THREE OF PARAGRAPH B OF SUBDIVISION ONE OF SECTION FORTY-FOUR HUNDRED TWO OF THE EDUCATION LAW, THEN SUCH SETTLEMENT AGREEMENT SHALL BE FOR A TERM OF NOT LESS THAN THREE YEARS, CONTINGENT UPON THERE BEING NO SUBSTANTIAL CHANGE IN THE CHILD'S INDIVIDUALIZED EDUCATION PROGRAM, AND CONSISTENT WITH ANY OTHER APPLICABLE TIME PERIODS PRESCRIBED BY FEDERAL LAW.

S 2. 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:

(b) (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

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

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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.

(II) If such recommendation MADE IN ACCORDANCE WITH ITEM (I) OF THIS CLAUSE 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] ARTICLE. PROVIDED, FURTHER, THAT IN A SCHOOL DISTRICT IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE:

(A) 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 OF THE SCHOOL DISTRICT IN THE CITY HAVING A POPULATION OF ONE MILLION OR MORE OR A STATE AGENCY, WITHIN ANY APPLICABLE TIME PERIODS PRESCRIBED BY FEDERAL LAW; AND

(B) THAT THE APPLICABLE TIME PERIODS ESTABLISHED IN A SIGNED SETTLEMENT AGREEMENT, MADE PURSUANT TO SUBITEM (A) OF THIS ITEM, SHALL ALSO BE IN ACCORDANCE WITH SECTION NINE OF THE GENERAL CITY LAW;

(C) THAT NOTHING IN THIS ITEM SHALL BE DEEMED TO PROHIBIT ANY PARENT OR THE SCHOOL DISTRICT FROM SEEKING JUDICIAL REVIEW BY ANY COURT OF COMPETENT JURISDICTION;

(D) UPON THE SIGNING OF A WRITTEN SETTLEMENT AGREEMENT BETWEEN A CHILD'S PARENT OR PERSON IN PARENTAL RELATION AND THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE 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 TIMELINE OR SCHEDULE FOR MAKING SUCH PAYMENT SHALL BE SET FORTH IN ANY SUCH SETTLEMENT OR DECISION, ORDER, OR JUDGMENT.

[(ii)] (III) Notwithstanding any provisions of this clause or clause (a) of this subparagraph to the contrary, in making changes to a student's individualized education program after the annual review has been conducted, the parent or person in parental relation to the student and the school district may agree not to convene a meeting of the committee on special education for the purpose of making those changes, and instead may develop a written document to amend or modify the student's current individualized education program under the following circumstances:

(A) The parent or person in parental relation makes a request to the school district for an amendment to the individualized education program and the school district and such parent or person in parental relation agree in writing; or

(B) The school district provides the parent or person in parental relation with a written proposal to amend a provision or provisions of the individualized education program that is conveyed in language understandable to the parent or person in parental relation in such parent's or such person's native language or other [dominate] DOMINANT mode of communication, informs and allows the parent or person in parental relation the opportunity to consult with the appropriate personnel or

related service providers concerning the proposed changes and the parent or person in parental relation agrees in writing to such amendments.

(C) If the parent or person in parental relation agrees to amend the individualized education program without a meeting, the parent or person in parental relation shall be provided prior written notice of the changes to the individualized education program resulting from such written document and the special education committee shall be notified of such changes. If the school district makes such changes by rewriting the entire individualized education program, it shall provide the parent or person in parental relation with a copy of the rewritten individualized education program. If the school district amends the individualized education program without rewriting the entire document, the school district shall provide the parent or person in parental relation with a copy of the document that amends or modifies the individualized education program or, upon request of the parent or person in parental relation, a revised copy of the individualized education program with the amendments incorporated.

Amendments to an individualized education program pursuant to this subitem shall not affect the requirement that the special education committee review the individualized education program at the annual meeting, or more often if necessary.

S 3. 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, IN A SCHOOL DISTRICT IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE, UPON 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 THIS SECTION.

S 4. This act shall take effect immediately; provided, 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 two of this act, shall not affect the expiration of such clause and shall expire therewith; and provided, further, that the amendments to subdivision 1 of section 4404 of the education law, made by section three of this act, shall not affect the expiration of such subdivision and shall expire therewith.