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I N   S E N A T E

May 17, 2016

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Introduced by Sen. AVELLA -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act, in relation to truancy allegations in persons in need of supervision and child protective proceedings in family court

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

1     Section 1. Paragraph (iii) of subdivision (d) and paragraph (ii) of  
2     subdivision (g) of section 735 of the family court act, as added by  
3     section 7 of part E of chapter 57 of the laws of 2005, are amended to  
4     read as follows:  
5     (iii) where the entity seeking to file a petition is a school district  
6     or local educational agency OR WHERE THE PARENT OR OTHER POTENTIAL PETI-  
7     TIONER INDICATES THAT THE PROPOSED PETITION WILL INCLUDE TRUANCY AND/OR  
8     CONDUCT IN SCHOOL AS AN ALLEGATION, the designated lead agency shall  
9     review the steps taken by the school district or local educational agen-  
10    cy to improve the youth's attendance and/or conduct in school and  
11    attempt to engage the school district or local educational agency in  
12    further diversion attempts, if it appears from review that such attempts  
13    will be beneficial to the youth. WHERE THE SCHOOL DISTRICT OR LOCAL  
14    EDUCATIONAL AGENCY IS NOT THE POTENTIAL PETITIONER, THE DESIGNATED LEAD  
15    AGENCY SHALL PROVIDE NOTICE TO IT OF ANY CONFERENCE WITH THE POTENTIAL  
16    PETITIONER IN ORDER TO ENABLE THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL  
17    AGENCY TO ASSIST THE DESIGNATED LEAD AGENCY TO RESOLVE THE TRUANCY OR  
18    SCHOOL BEHAVIORAL PROBLEMS OF THE YOUTH SO AS TO OBVIATE THE NEED TO  
19    FILE A PETITION OR, AT MINIMUM, TO RESOLVE THE EDUCATION-RELATED ALLEGA-  
20    TIONS OF THE PROPOSED PETITION.  
21    (ii) The clerk of the court shall accept a petition for filing only if  
22    it has attached thereto the following:  
23    (A) if the potential petitioner is the parent or other person legally  
24    responsible for the youth, a notice from the designated lead agency  
25    indicating there is no bar to the filing of the petition as the poten-

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

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1 tial petitioner consented to and actively participated in diversion  
2 services; and

3 (B) a notice from the designated lead agency stating that it has  
4 terminated diversion services because it has determined that there is no  
5 substantial likelihood that the youth and his or her family will benefit  
6 from further attempts, and that the case has not been successfully  
7 diverted; AND

8 (C) WHERE THE PROPOSED PETITION CONTAINS ALLEGATIONS OF TRUANCY AND/OR  
9 SCHOOL MISBEHAVIOR, WHETHER OR NOT THE SCHOOL DISTRICT OR LOCAL EDUCA-  
10 TIONAL AGENCY IS THE PROPOSED PETITIONER, A NOTICE FROM THE DESIGNATED  
11 LEAD AGENCY REGARDING THE DIVERSION EFFORTS UNDERTAKEN AND/OR SERVICES  
12 PROVIDED BY THE DESIGNATED LEAD AGENCY AND/OR BY THE SCHOOL DISTRICT OR  
13 LOCAL EDUCATIONAL AGENCY TO THE YOUTH AND THE GROUNDS FOR CONCLUDING  
14 THAT THE EDUCATIONAL PROBLEMS COULD NOT BE RESOLVED ABSENT THE FILING OF  
15 A PETITION UNDER THIS ARTICLE.

16 S 2. Section 736 of the family court act is amended by adding a new  
17 subdivision 4 to read as follows:

18 (4) WHERE THE PETITION CONTAINS ALLEGATIONS OF TRUANCY AND/OR SCHOOL  
19 MISBEHAVIOR AND WHERE THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY IS  
20 NOT THE PETITIONER, THE COURT SHALL CAUSE A COPY OF THE PETITION AND  
21 NOTICE OF THE TIME AND PLACE TO BE HEARD TO BE SENT TO THE SCHOOL  
22 DISTRICT OR LOCAL EDUCATIONAL AGENCY IDENTIFIED BY THE DESIGNATED LEAD  
23 AGENCY IN ITS NOTICE PURSUANT TO SUBPARAGRAPH (C) OF PARAGRAPH (II) OF  
24 SUBDIVISION (G) OF SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS PART.  
25 WHERE THE COURT DETERMINES THAT PARTICIPATION AND/OR ASSISTANCE BY THE  
26 SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY WOULD AID IN THE RESOLUTION  
27 OF THE PETITION, THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY MAY BE  
28 JOINED BY THE COURT AS A NECESSARY PARTY AND MAY BE ASKED TO PROVIDE  
29 ASSISTANCE IN ACCORDANCE WITH SECTION TWO HUNDRED FIFTY-FIVE OF THIS  
30 ACT.

31 S 3. Subdivision (b) of section 742 of the family court act, as  
32 amended by section 9 of part E of chapter 57 of the laws of 2005, is  
33 amended to read as follows:

34 (b) At the initial appearance of the respondent, the court shall  
35 review any termination of diversion services pursuant to such section,  
36 and the documentation of diligent attempts to provide appropriate  
37 services and determine whether such efforts or services provided are  
38 sufficient [and]. THE COURT may, AT ANY TIME, subject to the provisions  
39 of section seven hundred forty-eight of this article, order that addi-  
40 tional diversion attempts be undertaken by the designated lead agency.  
41 The court may order the youth and the parent or other person legally  
42 responsible for the youth to participate in diversion services. If the  
43 designated lead agency thereafter determines that [the] A case REFERRED  
44 FOR DIVERSION EFFORTS UNDER THIS SECTION has been successfully resolved,  
45 it shall so notify the court, and the court shall dismiss the petition.

46 S 4. Subparagraph (A) of paragraph (i) of subdivision (f) of section  
47 1012 of the family court act, as amended by chapter 469 of the laws of  
48 1971, is amended to read as follows:

49 (A) in supplying the child with adequate food, clothing, shelter or  
50 education in accordance with the provisions of part one of article  
51 sixty-five of the education law, or medical, dental, optometrical or  
52 surgical care, though financially able to do so or offered financial or  
53 other reasonable means to do so , OR, IN THE CASE OF AN ALLEGED FAILURE  
54 OF THE RESPONDENT TO PROVIDE EDUCATION TO THE CHILD, NOTWITHSTANDING THE  
55 EFFORTS OF THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY AND CHILD

1 PROTECTIVE AGENCY TO AMELIORATE SUCH ALLEGED FAILURE PRIOR TO THE FILING  
2 OF THE PETITION; or

3 S 5. Section 1031 of the family court act is amended by adding a new  
4 subdivision (g) to read as follows:

5 (G) WHERE A PETITION UNDER THIS ARTICLE CONTAINS AN ALLEGATION OF A  
6 FAILURE BY THE RESPONDENT TO PROVIDE EDUCATION TO THE CHILD IN ACCORD-  
7 ANCE WITH ARTICLE SIXTY-FIVE OF THE EDUCATION LAW, REGARDLESS OF WHETHER  
8 SUCH ALLEGATION IS THE SOLE ALLEGATION OF THE PETITION, THE PETITION  
9 SHALL RECITE THE EFFORTS UNDERTAKEN BY THE PETITIONER AND THE SCHOOL  
10 DISTRICT OR LOCAL EDUCATIONAL AGENCY TO AMELIORATE SUCH ALLEGED FAILURE  
11 PRIOR TO THE FILING OF THE PETITION AND THE GROUNDS FOR CONCLUDING THAT  
12 THE EDUCATIONAL PROBLEMS COULD NOT BE RESOLVED ABSENT THE FILING OF A  
13 PETITION UNDER THIS ARTICLE.

14 S 6. Section 1035 of the family court act is amended by adding a new  
15 subdivision (g) to read as follows:

16 (G) WHERE THE PETITION FILED UNDER THIS ARTICLE CONTAINS AN ALLEGATION  
17 OF A FAILURE BY THE RESPONDENT TO PROVIDE EDUCATION TO THE CHILD IN  
18 ACCORDANCE WITH ARTICLE SIXTY-FIVE OF THE EDUCATION LAW, THE COURT SHALL  
19 CAUSE A COPY OF THE PETITION AND NOTICE OF THE TIME AND PLACE TO BE  
20 HEARD TO BE SENT TO THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY  
21 IDENTIFIED BY THE PETITIONER IN THE PETITION IN ACCORDANCE WITH SUBDIVI-  
22 SION (G) OF SECTION ONE THOUSAND THIRTY-ONE OF THIS ARTICLE. WHERE THE  
23 COURT DETERMINES THAT PARTICIPATION AND/OR ASSISTANCE WOULD AID IN THE  
24 RESOLUTION OF THE PETITION, SUCH SCHOOL DISTRICT OR LOCAL EDUCATIONAL  
25 AGENCY MAY BE JOINED BY THE COURT AS A NECESSARY PARTY AND MAY BE ASKED  
26 TO PROVIDE ASSISTANCE IN ACCORDANCE WITH SECTION TWO HUNDRED FIFTY-FIVE  
27 OF THIS ACT.

28 S 7. This act shall take effect on the ninetieth day after it shall  
29 have become a law.