

# STATE OF NEW YORK

5714

2017-2018 Regular Sessions

## IN SENATE

April 26, 2017

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, paragraph (iii)  
3 of subdivision (d) and paragraph (ii) of subdivision (g) as added by  
4 section 7 of part E of chapter 57 of the laws of 2005, are amended to  
5 read as follows:

6 (iii) where the entity seeking to file a petition is a school district  
7 or local educational agency or where the parent or other potential peti-  
8 tioner indicates that the proposed petition will include truancy and/or  
9 conduct in school as an allegation, the designated lead agency shall  
10 review the steps taken by the school district or local educational agen-  
11 cy to improve the youth's attendance and/or conduct in school and  
12 attempt to engage the school district or local educational agency in  
13 further diversion attempts, if it appears from review that such attempts  
14 will be beneficial to the youth. Where the school district or local  
15 educational agency is not the potential petitioner, the designated lead  
16 agency shall contact such district or agency to resolve the truancy or  
17 school behavioral problems of the youth in order to obviate the need to  
18 file a petition or, at minimum, to remediate the education-related alle-  
19 gations of the proposed petition.

20 (ii) The clerk of the court shall accept a petition for filing only if  
21 it has attached thereto the following:

22 (A) if the potential petitioner is the parent or other person legally  
23 responsible for the youth, a notice from the designated lead agency

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

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1 indicating there is no bar to the filing of the petition as the poten-  
2 tial petitioner consented to and actively participated in diversion  
3 services; and

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

9 (C) where the proposed petition contains allegations of truancy and/or  
10 school misbehavior, whether or not the school district or local educa-  
11 tional agency is the proposed petitioner, a notice from the designated  
12 lead agency regarding the diversion efforts undertaken and/or services  
13 provided by the designated lead agency and/or by the school district or  
14 local educational agency to the youth and the grounds for concluding  
15 that the education-related allegations could not be resolved absent the  
16 filing of a petition under this article.

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

19 (4) Where the petition contains allegations of truancy and/or school  
20 misbehavior and where the school district or local educational agency is  
21 not the petitioner and where, at any stage of the proceeding, the court  
22 determines that assistance by the school district or local educational  
23 agency may aid in the resolution of the education-related allegations in  
24 the petition, the school district or local educational agency may be  
25 notified by the court and given an opportunity to be heard.

26 § 3. Subdivision (b) of section 742 of the family court act, as  
27 amended by section 9 of part E of chapter 57 of the laws of 2005, is  
28 amended to read as follows:

29 (b) At the initial appearance of the respondent, the court shall  
30 review any termination of diversion services pursuant to such section,  
31 and the documentation of diligent attempts to provide appropriate  
32 services and determine whether such efforts or services provided are  
33 sufficient ~~[and]~~. The court may, at any time, subject to the provisions  
34 of section seven hundred forty-eight of this article, order that addi-  
35 tional diversion attempts be undertaken by the designated lead agency.  
36 The court may order the youth and the parent or other person legally  
37 responsible for the youth to participate in diversion services. If the  
38 designated lead agency thereafter determines that ~~[the]~~ a case referred  
39 for diversion efforts under this section has been successfully resolved,  
40 it shall so notify the court, and the court shall dismiss the petition.

41 § 4. Subparagraph (A) of paragraph (i) of subdivision (f) of section  
42 1012 of the family court act, as amended by chapter 469 of the laws of  
43 1971, is amended to read as follows:

44 (A) in supplying the child with adequate food, clothing, shelter or  
45 education in accordance with the provisions of part one of article  
46 sixty-five of the education law, or medical, dental, optometrical or  
47 surgical care, though financially able to do so or offered financial or  
48 other reasonable means to do so, or, in the case of an alleged failure  
49 of the respondent to provide education to the child, notwithstanding the  
50 efforts of the school district or local educational agency and child  
51 protective agency to ameliorate such alleged failure prior to the filing  
52 of the petition; or

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

55 (g) Where a petition under this article contains an allegation of a  
56 failure by the respondent to provide education to the child in accord-

1 ance with article sixty-five of the education law, regardless of whether  
2 such allegation is the sole allegation of the petition, the petition  
3 shall recite the efforts undertaken by the petitioner and the school  
4 district or local educational agency to remediate such alleged failure  
5 prior to the filing of the petition and the grounds for concluding that  
6 the education-related allegations could not be resolved absent the  
7 filing of a petition under this article.

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

10 (g) Where the petition filed under this article contains an allegation  
11 of a failure by the respondent to provide education to the child in  
12 accordance with article sixty-five of the education law, and where at  
13 any stage of the proceeding, the court determines that assistance by the  
14 school district or local educational agency would aid in the resolution  
15 of the education-related allegation, the school district or local educa-  
16 tional agency may be notified by the court and given an opportunity to  
17 be heard.

18 § 7. This act shall take effect on the ninetieth day after it shall  
19 have become a law.