

8355

IN SENATE

June 18, 2006

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

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

AN ACT to amend the education law, in relation to implementation of the federal individuals with disabilities education improvement act of 2004; to amend chapter 352 of the laws of 2005, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, in relation to extending the effectiveness thereof; to repeal subdivisions 21 and 22 of section 4403 of the education law relating to the collection of data on rates of certain special education placements and declassification rates; and providing for the repeal of certain provisions upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. The legislature finds and declares that Congress has enacted the Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446, amending the Individuals with Disabilities Education Act (IDEA) relating to the provision of special education programs and services, effective July 1, 2005. Whereas the United States Department of Education has required states to provide an assurance in their application for funding under Part B of the IDEA that the state and its local educational agencies will comply with the IDEA as amended on July 1, 2005 and any provisions of the applicable federal regulations not inconsistent with the amended federal statute and whereas new federal regulations to implement the amended IDEA have been proposed but have not been finally adopted in time to develop and adopt permanent state legislation conforming to such federal requirements and the state has now been given until June 30, 2007 to make conforming changes in state law, the legislature finds that it is necessary to enact this temporary transitional legislation containing those amendments to state law necessary to assure that the state of New York will be in compliance with the provisions of the amended IDEA in the 2006-07 school year. Once the final federal implementing regulations are adopted and necessary clarifications are obtained on certain provisions of the amended IDEA, the legislature intends to enact permanent legislation making broader changes in New York state law in response to the amended IDEA and the final federal regulations.

§ 2. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of the education law, as amended by chapter 380 of the laws of 2001, is amended to read as follows:

(1) No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his or her behalf. Where the pupil is a student with a disability or a student presumed to have a disability, the provisions of paragraph g of this subdivision shall also apply. Where a pupil has been suspended in accordance with this ~~[subdivision]~~ subparagraph by a superintendent of schools, district superintendent of schools, or community superintendent, the superintendent shall personally hear and determine the proceeding or may, in his or her discretion, designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him or her. A record of the hearing shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and recommendations as to the appropriate measure of discipline to the superintendent. The report of the hearing officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools. Where the basis for the suspension is, in whole or in part, the possession on school grounds or school property by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

§ 3. Subdivision 2-a of section 3602-c of the education law, as amended by section 1 of part H of chapter 61 of the laws of 2006, is amended to read as follows:

2-a. For the education for students with disabilities provided in the two thousand seven--two thousand eight school year and thereafter, to the extent required by federal law, the school district in which the nonpublic elementary or secondary school attended by the student with a disability is located shall be responsible for compliance with the requirements of paragraph ten of subsection (a) of section fourteen hundred twelve of title twenty of the United States code, including but not limited to, equitable provision of services, child find and consultation requirements. The school district in which the nonpublic school is located shall immediately refer any nonpublic school student who is a resident of this state and has been identified through its child find process as a student suspected of having a disability to the committee on special education of the student's school district of residence for evaluation and possible identification as a student with a disability by the committee on special education of the school district of residence. The school district in which the nonpublic school is located shall expend a proportionate amount of its federal funds made available under part B of the individuals with disabilities education act for the provision of services to students with disabilities attending

such nonpublic schools, provided that such federal funds may not be used for the cost of carrying out the child find requirement.

§ 4. Subdivisions 21 and 22 of section 4403 of the education law are REPEALED.

§ 5. Paragraph a of subdivision 1 of section 4404 of the education law, as amended by chapter 352 of the laws of 2005, is amended to read as follows:

a. If the parent or person in parental relation of a student, the board of education or trustees of a school district or a state agency responsible for providing education to students with disabilities presents a complaint with respect to any matter relating to the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student or a manifestation determination or other matter relating to placement upon discipline of a student with a disability that may be the subject of an impartial hearing pursuant to subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations, and the party presenting the complaint or their attorney provides a due process complaint notice in accordance with federal law and regulations and such complaint sets forth an alleged violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis for the complaint, the board or agency shall appoint an impartial hearing officer to review the due process complaint notice when challenged and, if the matter is not resolved in a resolution session that has been convened as required by federal law, to preside over an impartial due process hearing and make a determination within such period of time as the commissioner by regulation shall determine, provided that the board of education or trustees shall offer the parent or person in parental relation the option of mediation pursuant to section forty-four hundred four-a of this article as an alternative to an impartial hearing. Where the parent or person in parental relation or a school district or public agency presents a complaint, the school district or public agency responsible for appointing the impartial hearing officer shall provide the parent or person in parental relation with a procedural safeguards notice as required pursuant to subsection (d) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations. Notwithstanding any provision of this subdivision to the contrary, the time limitation on presenting a complaint shall not apply to a parent or person in parental relation to the student if the parent or person in parental relation was prevented from requesting the impartial hearing due to specific misrepresentations by the school district or other public agency that it had resolved the problem forming the basis of the complaint or due to the school district's or other public agency's withholding of information from the parent or person in parental relation that was required under federal law to be provided. Nothing in this subdivision shall be construed to authorize the board of education or trustees to bring an impartial hearing to override the refusal of a parent or person in parental relation to consent where a local educational agency is prohibited by federal law from initiating such a hearing.

§ 6. Paragraphs a and b of subdivision 3 of section 4404 of the education law, as amended by section 492 of the laws of 2003, are amended to read as follows:

a. Any final determination or order of a state review officer rendered pursuant to subdivision two of this section may only be reviewed in a proceeding brought in the supreme court pursuant to article four of the civil practice law and rules, and paragraph b of this

subdivision, or in United States district court. Any such proceeding shall be commenced within four months after the determination to be reviewed becomes final and binding on the parties.

b. In any such proceeding under article four of the civil practice law and rules, the court may grant any relief authorized by the provisions of rule four hundred eleven of such law and rules, which shall include any relief available in a civil action under section six hundred fifteen of the individuals with disabilities education act (20 U.S.C. section 1415) and also may, in its discretion remand the proceedings to the state review officer for further consideration upon a finding that any relevant and material evidence is then available which was not previously considered by the state review officer. Such proceeding shall be deemed a proceeding against a body or officer for purposes of ~~[sections two hundred seventeen and]~~ section five hundred six of the civil practice law and rules. The court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

§ 7. Section 22 of chapter 352 of the laws of 2005, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, as amended by section 2 of part H of chapter 61 of the laws of 2006, is amended to read as follows:

§ 22. This act shall take effect July 1, 2005, provided, however, if this act shall become a law after such date it shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2005; and provided further, however, that sections one through four and six through twenty-one of this act shall expire and be deemed repealed June 30, ~~2006~~ 2007, and section five of this act shall expire and be deemed repealed June 30, 2007.

§ 8. This act shall take effect June 30, 2006 and in the event that it shall become a law after such date, this act shall take effect immediately and shall be deemed to have been in full force on and after June 30, 2006; provided, however, that:

(a) sections one, two, and six of this act shall expire and be deemed repealed June 30, 2007;

(b) the amendments to subdivision 2-a of section 3602-c of the education law made by section three of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith; and

(c) the amendments to paragraph a of subdivision 1 of section 4404 of the education law made by section five of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith.