



MEMORANDUM OF OPPOSITION

A.10722-A (Weinstein)/S.7722-A (Flanagan)

In relation to determinations of appropriate educational programs for certain students

June 20, 2012

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The New York State Council of School Superintendents OPPOSES this legislation, and urges its defeat.

Summary of Provisions

This legislation would require school districts to consider differences between the school environment and the child's home environment and family background, and whether these factors would impact a child's ability to learn when determining placements into special education.

The bill would also require school districts to grant or deny a parent's request for tuition reimbursement within 90 days. Districts would also be required to continue tuition reimbursement for placements made unilaterally by parents until a district committee on special education amends the child's Individualized Education Program (IEP).

Reasons for Opposition

This bill is inconsistent with both federal statute and case law and will subject school districts to serious legal challenges and excessive costs.

This legislation could allow parents to improperly seek to challenge a student's recommended educational placement by using home environment, and family, religious and/or cultural background as a factor to determine placement, rather than the best educational and least restrictive environments for the child. This is inconsistent with federal law (the Individuals with Disabilities Education Act – IDEA).

The bill also would require districts to determine within ninety days whether to grant or deny a parent's request for reimbursement for unilateral placements. Upon granting of the request, payment must be made in thirty days. This timetable is unmanageable for many reasons. By exempting parents of children with disabilities from the IDEA's carefully imposed conditions on tuition reimbursement, the bill contravenes the collaborative intent and framework of the IDEA.

Further, a district has no authority to enter into an agreement with a parent for tuition reimbursement in the absence of a due process complaint. Whether or not a parent's unilateral placement is entitled to reimbursement, is an issue which can only be addressed by a hearing officer, state review officer or court under current state and federal law. The

legislation would mandate districts to enter into agreements with parents to reimburse their child's tuition as a matter of course and creates a clear conflict in law.

This bill would also require districts to maintain a student in their previous placement, instead of leaving that determination to the findings of due process proceedings or reevaluation of the student's IEP. This violates federal case law that requires a district to continue to provide tuition reimbursement following a final decision by the independent hearing officer, State Review Office or court ordering tuition reimbursement; under the pendency provision the parent challenges the new IEP (see, *Pawling Central School District v. Schutz*, 290 F 3d 476 (2d Cir. 2002); *Murphy v. Arlington*, Central School District, 297 F3d 195 (2d Cir. 2002)).

Lastly, the imposition of this special education mandate will have a severe negative consequence to the fiscal stability of schools.

For these reason, The NYS Council of School Superintendents OPPOSES this legislation and urges its defeat.