



# MEMORANDUM OF OPPOSITION

## A.7786-B (Weinstein)/S.5842-A (Felder)

In relation to determinations of appropriate educational programs for certain students

June 18, 2013

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

The purpose and intent of this bill resembles a bill vetoed by Governor Cuomo last session - A.10722 – and continues to impose a significant and costly mandate on schools.

The amended legislation is still inconsistent with both federal statute and case law and will subject school districts to serious legal challenges and excessive costs. It will have an immediate negative effect on the likelihood that settlements will be reached and creates a new and unprecedented burden on school districts to review parental placements and therefore creates new and fertile ground for due process challenges and costly legal disputes.

This is a burdensome unfunded mandate on schools – at a time when schools are still facing difficult budgeting choices.

As written, this legislation would place a new and never contemplated burden on a district that would require the district Committee on Special Education to make a finding that the parents' unilateral placement was not appropriate to cease payment of ongoing tuition. That is contrary to law as federal law states that if the parent and district agree to a change of placement or if the tribunal determines that the district's IEP was appropriate, then the parent is no longer entitled to reimbursement under pendency. Continued placement may no longer be appropriate and may have negative implications for that child.

It is well documented that the vast majority of special education cases litigated in New York involve tuition reimbursement cases. This proposal guarantees a new line of challenges.

Further, this law would practically ensure that districts never enter into financial settlements with parents in tuition cases. This law creates an automatic pendency in those cases where there is a settlement and settlements would be discouraged, at the disadvantage of both students, parents and districts.

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

The Governor and legislature made great strides in this year's budget to help struggling schools. We commend them for this year's school aid increase. However, despite the positive step forward many districts are still facing difficult budgeting decisions.

Despite the school aid increases of the last two years, 70 percent of districts are still receiving less help from the state than in 2008-2009 – five years ago.

This costly mandate on schools which would severely limit parents rights and have negative consequences on children in private placements should not be passed.

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