



To: New York State Legislators

From: The Executive Board of the Council of New York Special Education Administrators
(CNYSEA)

Re: A-S.5842-A (Felder) A.7786-B (Weinstein)

We are a membership organization of administrators representing special education in school districts and special act schools throughout the state of New York. Our members bring to the organization, knowledge of education law as well as vast experience working with families on behalf of children with disabilities. We have carefully reviewed this bill and oppose it in its entirety.

Similar to a bill introduced last year and vetoed by the Governor, this proposal inserts into a highly sophisticated, complex, and comprehensive system of federally mandated procedural safeguards and due process, a new set of rules. Additionally, part of the bill proposal is in direct conflict with federal law while other aspects although aligned with the existing law, use language that is redundant and potentially confusing.

For the reasons below, we vehemently oppose this proposal.

First, this proposal disregards entirely important due process rights built into the law by mandating that tuition reimbursement be paid without regard to a district's (and parents') right to appeal an adverse decision and order before an order is final and enforceable. Equally important is the fact that it completely undermines and disregards those aspects of the law specifically designed to encourage the early settlement and resolution of due process complaints without costly hearings and litigation.

The Individuals with Disabilities Education Act (IDEA) is a carefully crafted statute built on a consensus model whereby parents and districts through the IEP process develop appropriate educational plans for children with disabilities. Imbedded in the law, is an intricate system of due process, which provides an avenue for both parties to seek formal review of recommendations, involving a child's right to a free and appropriate public education that is resolved through a formal, systematic process. Inherent in the due process system is a mandatory period of resolution after a Complaint is filed with formal mediation available to both parties upon consent. This

proposed bill completely ignores these two important federally mandated procedures, which were specifically developed to facilitate a quick resolution of IDEA disputes.

Second, in reference to “settlement agreements”, the proposal not only ignores resolution and mediation as a means of early settlement but automatically interjects into all “settlement agreements” pendency rights to guarantee that with any settlement of a tuition reimbursement dispute, a parent will automatically receive future payments in the event of another dispute.

By imposing on parties otherwise interested in settlement, an automatic pendency right to future payments, this proposal abolishes the potential for an amicable settlement. As is customary in a settlement, both parties have the opportunity to consider the risk and benefits of reaching a negotiated agreement. For parents who have incurred the expense of private school tuition, a negotiated agreement is attractive because it offers immediate financial support while eliminating the risk of litigation. For districts, settlement may be attractive because it can eliminate the risk of receiving an order that automatically subjects the district to future tuition payments under the existing pendency provision of the law. Moreover, by extending pendency protections to parents in all settlement agreements, this proposal simultaneously removes one of the major reasons districts agree to monetary settlements in the first place.

This legislative proposal not only imposes a long-term financial liability on any district that enters a settlement under its imposed terms, it all but guarantees more litigation. At a time when our public schools are being forced to divert extraordinary fiscal resources to defend against ever mounting special education litigation; in a fiscal climate where districts are laying off staff and cutting programs, any proposal that foists additional expenditures on a district as an automatic condition of a settlement is contrary to the public interest and the intent of IDEA. Without question, this proposal tips the balance in reaching a negotiated agreement in IDEA cases in ways that undermine the likelihood that a settlement will be reached, leaving litigation the only alternative for resolving disputes.

Based on the above stated reasons, we strongly oppose this legislation and urge the Legislature to consider the implications this bill will have on both parties involved in settlements arising from IDEA disputes.