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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO EDUCATION -- CHILDREN WITH DISABILITIES

Introduced By: Senators DiMario, Euer, Murray, and Valverde

Date Introduced: February 16, 2023

Referred To: Senate Education

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 16-24 of the General Laws entitled "Children With Disabilities [See
2 Title 16 Chapter 97 — The Rhode Island Board of Education Act]" is hereby amended by adding
3 thereto the following section:

4 **16-24-1.1. Parental consent.**

5 (a)(1) Parental consent required. Notwithstanding any other federal or state law or
6 regulation, school districts shall obtain written parental consent before conducting an initial
7 evaluation or making an initial placement of a student in a special education program of services.

8 Written parental consent shall also be obtained before:

9 (i) Conducting a reevaluation;

10 (ii) Placing a student in a special education placement subsequent to the initial placement
11 in special education; and

12 (iii) Making any changes to services in an existing special education program of services.

13 (2) A parent may revoke consent at any time for all special education and related services
14 or for any service that is a component of an overall individual education program (IEP). Except for
15 initial evaluation and initial placement, consent may not be required as a condition of any
16 continuing benefit to the student of existing services while disagreements about services are being
17 resolved.

18 (3) In order that parental consent be properly fully informed, parents have the right to
19 observe any program(s) proposed for their child if the child is identified as eligible for special

1 education services.

2 (4) To further ensure informed parental consent, parents have the right to receive
3 evaluations and materials at least seven (7) days prior to attending an IEP meeting at which those
4 materials will be discussed. This includes any proposed goals, objectives or other IEP materials
5 that the district staff will present and discuss at the IEP meeting. To address parental scheduling
6 needs, parents can agree to the sharing of this material less than seven (7) days ahead of the IEP
7 meeting. All materials provided shall comply with legal requirements for language accessibility.

8 (5) Written parental consent required for changes to IEP services or placement: No later
9 than thirty (30) days after receipt of the proposed IEP and proposed placement, the parents shall:

10 (i) Accept or reject the IEP, in whole or in part, in writing;

11 (ii) Accept or reject the proposed placement, in writing;

12 (iii) If the IEP is rejected, in whole or in part, the parents may request a meeting to discuss
13 the rejected portions of the IEP or the overall adequacy of the IEP and/or accept an amended
14 proposal presented by the district; or

15 (iv) Upon receipt of the written parental response to the proposed IEP and proposed
16 placement, the school district shall implement all accepted elements of the IEP without delay. A
17 school district shall not use a parent's refusal to consent to one service or activity or request of
18 additional services, or activities to deny the child any other services or activities to which a parent
19 has consented.

20 (b) Parental consent withheld. If, subsequent to initial evaluation and initial placement, the
21 school district is unable to obtain parental consent to a reevaluation or to placement in a special
22 education program subsequent to the initial placement, or the parent revokes consent to such
23 reevaluation or placement, the school district shall consider with the parent whether such action
24 will result in the denial of a free appropriate public education to the student. If, after consideration,
25 the school district determines that the parent's failure or refusal to consent will result in a denial of
26 a free appropriate public education to the student, it shall seek resolution of the dispute through
27 mediation and/or a hearing. This provision shall not apply if the parent has revoked consent to all
28 special education and related services.

29 (c) Efforts to obtain parental participation. When the participation of the parent is required
30 and the parent fails or refuses to participate, the school district shall make and document multiple
31 efforts to contact the parent. Such efforts may include letters, written notices sent by certified mail,
32 electronic mail (email), telephone call, or, if appropriate, TTY communications to the home, and
33 home visits at such time as the parent is likely to be home. Efforts may include seeking assistance
34 from a community service agency to secure parental participation. The school district shall ensure

1 that its efforts to involve the parent and gain parental consent meet a reasonable efforts requirement
2 as articulated in federal law at 34 CFR § 300.300. If all of these efforts are attempted and
3 documented and the district is unable to secure parental participation and consent to a reevaluation
4 or placement subsequent to the initial placement in a special education program, the school district
5 may, but is not required to, proceed to seek resolution through mediation and/or a hearing. This
6 provision to override the lack of parental consent due to parental non-participation shall not apply
7 if the parent has revoked consent to all special education and related services.

8 (d) Prior notice of proposed change(s). Parent(s) of a child with a disability shall be notified
9 in writing within a reasonable time, but not less than fourteen (14) days, before the school district
10 proposes to initiate or change, or refuses to initiate or change, the referral, evaluation, determination
11 of eligibility, IEP, or educational placement of the child or the provision of free appropriate public
12 education to the child. The notice shall comply with 34 CFR §§ 300.503 through CFR 300.504.

13 (e) Student's right to IEP services and placement. In accordance with state and federal law,
14 during the pendency of any dispute regarding placement or services, the eligible student shall
15 remain in their then current education program and placement unless the parents and the school
16 district agree otherwise in writing. If the parents have agreed in part to proposed IEP services
17 and/or placement changes, those shall be implemented without delay pursuant to subsection
18 (a)(5)(iv) of this section.

19 (1) If the parents are seeking initial placement in the public school, and the child is at least
20 five (5) years old, the child shall be placed in the public school program.

21 (2) For children three (3) and four (4) years of age, rights to services from the public school
22 district are limited to children who have been found eligible for special education and have an IEP
23 and placement proposed by the public school district and accepted by the parent.

24 (3) A hearing officer may order a temporary change in placement of an eligible student for
25 reasons consistent with federal law, including, but not limited to, when maintaining such student in
26 the current placement is substantially likely to result in injury to the student or others.

27 (f) Rules and regulations. The department of education shall promulgate rules and
28 regulations consistent with this section, in conformance with chapter 35 of title 42 ("administrative
29 procedures").

30 SECTION 2. Section 16-24-1 and 16-24-11 of the General Laws in Chapter 16-24 entitled d
31 "Children With Disabilities [See Title 16 Chapter 97 — The Rhode Island Board of Education
32 Act]" are hereby amended to read as follows:

33 **16-24-1. Duty of school committee to provide special education.**

34 (a) In any city or town where there is a child with a disability within the age range as

1 designated by the regulations of the state board of education who is functionally limited to such an
2 extent that normal educational growth and development is prevented, the school committee of the
3 city or town where the child resides shall provide the type of special education that will best satisfy
4 the needs of the child with a disability, as recommended and approved by the state board of
5 education in accordance with its regulations governing the education of children with disabilities.

6 (b) Notwithstanding any other federal or state law or regulation, the school committee
7 where a parentally placed child who has, or develops, a disability in private school resides, shall
8 provide the child with the same free and appropriate education as it provides to children in public
9 schools. These children shall have the same rights and remedies in the regulations of the board of
10 education governing the education of children with disabilities as children in public school relative
11 to initially determining eligibility, implementation, and/or any other rights and remedies relative to
12 any special education services the child may be eligible to receive from the public school district.

13 (c) For the purpose of this statute, a parentally placed child who has, or develops, a
14 disability in private school is defined as a child enrolled or placed in a private school by the
15 unilateral decision of his or her parents and without consultation of the public school district, who
16 either has, or at some point while at the private school is diagnosed with, a learning disability.
17 Parents who unilaterally enroll their child in a private school are required to pay the tuition costs
18 related to the child's education that are unrelated to the child's disability, and the public school
19 district where the child resides is responsible for payment of the services related to the child's
20 disability as developed and determined in the child's individual education plan.

21 (d) For the purpose of this statute, a free and appropriate education is defined as special
22 education services and related services that:

23 (1) Are provided at public expense, under public supervision and direction, and without
24 charge;

25 (2) Meet all of the standards and requirements of the state of Rhode Island department of
26 education and requirements of the regulations of the board of education governing the education of
27 children with disabilities, which shall include initial evaluation and determination procedures;

28 (3) Include preschool, elementary school, or secondary school education in the state; and

29 (4) Are provided in conformity with an individualized education program that meets the
30 requirements of the regulations of the board of education governing the education of children with
31 disabilities.

32 (e) In those cases that an individual education plan has been adopted for a child and the
33 child moves to another town or city, the plan shall remain in effect until a new plan is adopted for
34 the child in the new town or city.

1 (f) A child with a disability as referenced in subsection (a) of this section shall have
2 available to them any benefits provided by this section up to their ~~twenty-first~~ twenty-second
3 birthday, in accordance with the student's individualized education program (IEP). Provided, in the
4 event such a child with a disability is enrolled in a postsecondary or transitional educational
5 program as part of the services provided to the child by the school committee or local education
6 agency (LEA), and such child reaches ~~twenty-one (21)~~ twenty-two (22) years of age during a school
7 or program year, then the school committee's or LEA's obligation to pay for the postsecondary or
8 transitional program shall continue through to the conclusion of the school or program's academic
9 year, in accordance with the student's individualized education program. Not later than sixty (60)
10 calendar days prior to the child turning ~~twenty-one (21)~~ twenty-two (22) years of age, the local
11 educational agency (LEA) shall provide the child and the parent or guardian with notice explaining
12 the rights under this section that remain in effect at age ~~twenty-one (21)~~ twenty-two (22). Further,
13 not later than sixty (60) calendar days prior to the child turning ~~twenty-one (21)~~ twenty-two (22)
14 years of age, the state adult service agencies responsible for planning, funding and providing
15 services and supports for adults with developmental disabilities, including the state office of
16 rehabilitation services (ORS) and the state department of behavioral healthcare, developmental
17 disabilities and hospitals (BHDDH), shall provide the child and the parent or guardian with notice
18 of the obligations and responsibilities that the respective agency owes to eligible recipients along
19 with a level of funding and/or an individual support plan for the child ~~twenty-one (21)~~ twenty-two
20 (22) years of age to receive. This section shall not be used to delay or defer the obligation of a state
21 agency responsible for providing services to this population.

22 (g) For purposes of providing services under this chapter, "special education" shall have
23 the same meaning as used in 34 C.F.R. § 300.39 and includes speech-language pathology services
24 for students among the other services and supports provided for therein. The provision of speech-
25 language pathology services shall not cease or be terminated solely because a child has attained
26 nine (9) years of age or greater, if those services are still warranted.

27 **16-24-11. ~~Transportation for retarded children.~~ Transportation for children with**
28 **disabilities.**

29 Transportation shall be provided for all pupils attending a special class or suitable day
30 schools.

31 SECTION 3. Sections 16-24-7 and 16-24-10 of the General Laws in Chapter 16-24 entitled d
32 "Children With Disabilities [See Title 16 Chapter 97 — The Rhode Island Board of Education
33 Act]" are hereby repealed.

34 **16-24-7. "Mentally retarded minors" defined.**

1 ~~The term “mentally retarded minors” means all children between the age of three (3) and~~
2 ~~twenty one (21) who because of retarded intellectual development, as determined by an individual~~
3 ~~multidisciplinary evaluation, require specialized instruction appropriate to their individual~~
4 ~~capacity.~~

5 ~~**16-24-10. Arrangements by cities and towns having small numbers of retarded**~~
6 ~~**children.**~~

7 ~~Each city and town which contains fewer than eight (8) mentally retarded minors may~~
8 ~~contract with another city or town for the education of the minors or may establish a special class~~
9 ~~pursuant to the previous provision with the consent of the board of regents for elementary and~~
10 ~~secondary education. In the event that a city or town does not establish a class for fewer than eight~~
11 ~~(8) mentally retarded minors or contract with another city or town, then the city or town shall~~
12 ~~contract with a suitable day school for instruction adapted to the mental attainments of the minors;~~
13 ~~provided that the day schools shall be subject to the regulations and supervision of the state board~~
14 ~~of regents for elementary and secondary education.~~

15 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO EDUCATION -- CHILDREN WITH DISABILITIES

1 This act would require parental consent prior to conducting an initial evaluation or making
2 an initial placement of a student in a special education program, as well as prior to changes being
3 made to any IEP services or placement. If a parent refuses consent and the school district determines
4 that the refusal to consent will result in a denial of a free appropriate public education to the student,
5 then the school district shall seek resolution through mediation or a hearing. This act would further
6 extend a student's right to receive special education services from the student's twenty-first
7 birthday to the student's twenty-second birthday. Lastly, this act would repeal any reference to
8 children with disabilities as "retarded children".

9 This act would take effect upon passage.

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