

STATE OF NEW YORK

8351

2025-2026 Regular Sessions

IN ASSEMBLY

May 13, 2025

Introduced by M. of A. SANTABARBARA -- read once and referred to the Committee on People with Disabilities

AN ACT to amend the mental hygiene law, the education law and the surrogate's court procedure act, in relation to establishing the right of non-speaking developmentally and otherwise disabled persons to advocate for themselves in educational, medical, legal, and other decisions by using alternative forms of communication

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

Section 1. Paragraphs 12 and 13 of subdivision (a) of section 33.02 of the mental hygiene law, as amended by chapter 306 of the laws of 1995, are amended and a new paragraph 14 is added to read as follows:

12. bring any questions or complaints, including complaints regarding any orders limiting such residents' rights, to the facility director, the mental hygiene legal service, the board of visitors if applicable, and the commission on quality of care for the mentally disabled; ~~and~~

13. authorize those family members and other adults who will be given priority to visit consistent with the patient's ability to receive visitors; and

14. rights enumerated in section 13.45 of this chapter.

§ 2. The mental hygiene law is amended by adding a new section 13.45 to read as follows:

§ 13.45 Communication rights for individuals with disabilities.

In order to ensure that each person with a disability is able to lead a life of dignity, the commissioner shall include in rules and regulations a statement of the rights of such persons to communicate in their preferred manner and the obligations of all staff and providers under this section, which shall include, but not be limited to:

(a) the right to utilize any validated communication method that meets the needs of individuals with disabilities, including but not limited to:

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

LBD11950-01-5

(1) augmentative and alternative communication (AAC) techniques and devices;

(2) independent use of spelling board, letterboards, and independent typing-based communication;

(3) sign language and non-verbal gestural systems; and

(4) speech-generating devices or any other validated assistive technology;

(b) the right to have such individual's communication method recognized and supported in schools, community residences, and public institutions;

(c) the right to speech therapy and communication support by duly licensed professionals without arbitrary restrictions;

(d) the right to have at least one trained staff member available in every facility or program to support individuals who require specialized communication assistance;

(e) the right to receive appropriate communication supports from trained staff, including direct support professionals (DSPs), educators, and healthcare providers;

(f) the right to experience no restrictions or bans on an individual with disabilities' validated communication method; and

(g) the right to not have the use of alternative methods of communication used to determine if such person is competent for purposes of surrogate decision-making for medical care and treatment, appointment of a guardian, or placement in adult protective services.

§ 3. Subdivision (c) of section 80.03 of the mental hygiene law, as added by chapter 354 of the laws of 1985, is amended to read as follows:

(c) "Lack of ability to consent to or refuse major medical treatment" means the patient cannot adequately understand and appreciate the nature and consequences of a proposed major medical treatment, including the benefits and risks of and alternatives to such treatment, and cannot thereby reach an informed decision to consent to or to refuse such treatment in a knowing and voluntary manner that promotes the patient's well-being. A patient's inability or difficulty speaking due to developmental or other disability shall not itself determine that a patient is unable to consent, and all providers of services shall respect the communication rights of such individuals pursuant to section 13.45 of this chapter.

§ 4. Paragraph 2 of subdivision (d) of section 81.02 of the mental hygiene law, as added by chapter 698 of the laws of 1992, is amended and a new subdivision (e) is added to read as follows:

2. understanding and appreciation of the nature and consequences of ~~his or her~~ such person's functional limitations.

(e) The determination of incapacity shall not be based on an individual's inability or difficulty speaking due to developmental or other disability, and the court shall respect the communication rights of such individuals pursuant to section 13.45 of this chapter.

§ 5. Subdivision (d) of section 82.03 of the mental hygiene law, as added by chapter 481 of the laws of 2022, is amended to read as follows:

(d) The manner in which an adult communicates with others shall not constitute evidence of incapacity, and the court shall respect the communication rights of such individuals pursuant to section 13.45 of this chapter.

§ 6. Subdivision 2 of section 4401 of the education law is amended by adding a new paragraph o to read as follows:

o. Augmentative and alternative communication (AAC) methods, including, but not limited to, spelling board and other letterboard-based

1 communication methods, pursuant to section 13.45 of the mental hygiene
2 law.

3 § 7. Paragraph a of subdivision 2 of section 4402 of the education
4 law, as amended by section 16-a of part A of chapter 56 of the laws of
5 2014, is amended to read as follows:

6 a. The board of education or trustees of each school district shall
7 ~~[be required to]~~ furnish suitable educational opportunities for students
8 with disabilities by one or more of the special services or programs
9 listed in subdivision two of section forty-four hundred one of this
10 article. The need of the individual child shall determine which of such
11 services shall be rendered. Each district shall provide to the maximum
12 extent appropriate such services in a manner which enables students with
13 disabilities to participate in regular education services when appropri-
14 ate. Such services or programs shall be furnished between the months of
15 September and June of each year, except that for the nineteen hundred
16 eighty-seven--eighty-eight school year and thereafter, with respect to
17 the students whose disabilities are severe enough to exhibit the need
18 for a structured learning environment of twelve months duration to main-
19 tain developmental levels, the board of education or trustees of each
20 school district upon the recommendation of the committee on special
21 education shall also provide, either directly or by contract, for the
22 provision of special services and programs as defined in section forty-
23 four hundred one of this article during the months of July and August as
24 contained in the individualized education program for each eligible
25 student, and with prior approval by the commissioner if required;
26 provided that a student with a disability who is eligible for services,
27 including services during the months of July and August, pursuant to
28 section forty-four hundred ten of this article shall not be eligible to
29 receive services pursuant to this paragraph during the months of July
30 and August.

31 § 8. Section 1750 and section 1750-a of the surrogate's court proce-
32 dure act, as amended by chapter 198 of the laws of 2016, are amended to
33 read as follows:

34 § 1750. Guardianship of persons who are intellectually disabled

35 When it shall appear to the satisfaction of the court that a person is
36 a person who is intellectually disabled, the court is authorized to
37 appoint a guardian of the person or of the property or of both if such
38 appointment of a guardian or guardians is in the best interest of the
39 person who is intellectually disabled. Such appointment shall be made
40 pursuant to the provisions of this article, provided however that the
41 provisions of section seventeen hundred fifty-a of this article shall
42 not apply to the appointment of a guardian or guardians of a person who
43 is intellectually disabled.

44 1. For the purposes of this article, a person who is intellectually
45 disabled is a person who has been certified by one licensed physician
46 and one licensed psychologist, or by two licensed physicians at least
47 one of whom is familiar with or has professional knowledge in the care
48 and treatment of persons with an intellectual disability, having quali-
49 fications to make such certification, as being incapable to manage ~~[him~~
50 ~~or herself]~~ themselves and/or ~~[his or her]~~ their own affairs by reason
51 of intellectual disability and that such condition is permanent in
52 nature or likely to continue indefinitely.

53 2. Every such certification pursuant to subdivision one of this
54 section, made on or after the effective date of this subdivision, shall
55 include a specific determination by such physician and psychologist, or
56 by such physicians, as to whether the person who is intellectually disa-

bled has the capacity to make health care decisions, as defined by subdivision three of section twenty-nine hundred eighty of the public health law, for ~~[himself or herself]~~ themselves. A determination that the person who is intellectually disabled has the capacity to make health care decisions shall not preclude the appointment of a guardian pursuant to this section to make other decisions on behalf of the person who is intellectually disabled. The absence of this determination in the case of guardians appointed prior to the effective date of this subdivision shall not preclude such guardians from making health care decisions.

3. The determination of guardianship shall not be based solely on an individual's inability or difficulty speaking due to developmental or other disability, and the court shall respect the communication rights of such individuals pursuant to section 13.45 of the mental hygiene law.

§ 1750-a. Guardianship of persons who are developmentally disabled

1. When it shall appear to the satisfaction of the court that a person is a person who is developmentally disabled, the court is authorized to appoint a guardian of the person or of the property or of both if such appointment of a guardian or guardians is in the best interest of the person who is developmentally disabled. Such appointments shall be made pursuant to the provisions of this article, provided however that the provisions of section seventeen hundred fifty of this article shall not apply to the appointment of a guardian or guardians of a person who is developmentally disabled. For the purposes of this article, a person who is developmentally disabled is a person who has been certified by one licensed physician and one licensed psychologist, or by two licensed physicians at least one of whom is familiar with or has professional knowledge in the care and treatment of persons with developmental disabilities, having qualifications to make such certification, as having an impaired ability to understand and appreciate the nature and consequences of decisions which result in such person being incapable of managing ~~[himself or herself]~~ themselves and/or ~~[his or her]~~ their own affairs by reason of developmental disability and that such condition is permanent in nature or likely to continue indefinitely, and whose disability:

(a) is attributable to cerebral palsy, epilepsy, neurological impairment, autism or traumatic head injury;

(b) is attributable to any other condition of a person found to be closely related to intellectual disability because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with intellectual disabilities; or

(c) is attributable to dyslexia resulting from a disability described in this subdivision ~~[one]~~ or subdivision two of this section or from intellectual disability; and

(d) originates before such person attains age twenty-two, provided, however, that no such age of origination shall apply for the purposes of this article to a person with traumatic head injury.

2. Notwithstanding any provision of law to the contrary, for the purposes of subdivision two of section seventeen hundred fifty and section seventeen hundred fifty-b of this article, "a person who is intellectually disabled and ~~[his or her]~~ such person's guardian" shall also mean a person and ~~[his or her]~~ such person's guardian appointed pursuant to this section; provided that such person has been certified by the physicians and/or psychologists, specified in subdivision one of this section, as (i) having an intellectual disability, or (ii) having a developmental disability, as defined in section 1.03 of the mental hygiene law, which (A) includes intellectual disability, or (B) results

1 in a similar impairment of general intellectual functioning or adaptive
2 behavior so that such person is incapable of managing [~~himself or~~
3 ~~herself~~] themselves, and/or [~~his or her~~] their own affairs by reason of
4 such developmental disability.

5 3. The determination of guardianship shall not be based solely on an
6 individual's inability or difficulty speaking due to developmental or
7 other disability, and the court shall respect the communication rights
8 of such individuals pursuant to section 13.45 of the mental hygiene law.

9 § 9. This act shall take effect immediately.