

5112

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. DESTITO, BOYLAND, BROOK-KRASNY, CARROZZA, GUNTHER, KAVANAGH, KOON, PHEFFER, J. RIVERA, SCHROEDER, STIRPE, TITUS, ERRIGO, FINCH, MOLINARO, TOWNSEND, WALKER, EDDINGTON -- Multi-Sponsored by -- M. of A. ABBATE, AMEDORE, BACALLES, CALHOUN, CHRISTENSEN, CLARK, CROUCH, GALEF, GLICK, JACOBS, JOHN, V. LOPEZ, LUPARDO, MAGEE, MAISEL, McENENY, MILLMAN, PERRY, RABBITT, REILLY, ROBINSON, ROSENTHAL, SALADINO, SAYWARD, SCOZZAFAVA, SWEENEY, TOWNS, WEISENBERG -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to enabling individuals with disabilities to have the right to choose and receive services in the most integrated setting appropriate for the needs of the individual and to ensure that state agencies promote such integration through a plan and annual report

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. The purposes of this act are:
2 (a) to empower individuals with disabilities, including the elderly,
3 to maximize employment, economic and social self sufficiency, independ-
4 ence, and inclusion and integration into society, through
5 (1) statewide systems, policies and regulations implemented in accord-
6 ance with Title II of the Americans with Disabilities Act that include,
7 as integral components, comprehensive and coordinated demonstration
8 projects;
9 (2) the guarantee of equal opportunity; and
10 (b) to ensure that the New York state government plays a leadership
11 role in promoting the integration of individuals with disabilities,
12 especially individuals with significant disabilities, into every aspect
13 of their communities and in assisting agencies and providers of services
14 in fulfilling the aspirations of such individuals with disabilities for
15 meaningful independent living.

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

LBD08901-01-9

1 S 2. The executive law is amended by adding a new section 296-b to
2 read as follows:

3 S 296-B. MOST INTEGRATED SERVICES. 1. DEFINITIONS. WHEN USED IN THIS
4 SECTION:

5 (A) THE TERM "INDIVIDUAL" INCLUDES A PERSON OF ANY AGE WHO PARTIC-
6 IPATES IN A STATE-FUNDED OR STATE-ADMINISTERED PROGRAM.

7 (B) THE TERM "COMMUNITY-BASED SETTING" INCLUDES A SETTING WHICH
8 PROVIDES THE OPPORTUNITY TO LIVE, SOCIALIZE, RECREATE, LEARN, AND WORK
9 IN AN ENVIRONMENT THAT DOES NOT SEGREGATE BASED ON DISABILITY. A COMMU-
10 NITY-BASED SETTING IS NOT A CONGREGATE INSTITUTION.

11 (C) THE TERM "INSTITUTIONALIZATION" INCLUDES SEGREGATION IN A CONGRE-
12 GATE LIVING FACILITY BASED ON DISABILITY OR SEGREGATED SERVICES BASED ON
13 DISABILITY.

14 (D) THE TERM "MOST INTEGRATED" SETTING INCLUDES A SETTING THAT ENABLES
15 PEOPLE WITH DISABILITIES TO RECEIVE SERVICES IN AN ENVIRONMENT THAT DOES
16 NOT SEGREGATE PEOPLE BASED ON DISABILITY. SEPARATE FACILITIES OR
17 SERVICES FOR PEOPLE WITH DISABILITIES SHALL OCCUR ONLY WHEN THE NATURE
18 OR SEVERITY OF THE DISABILITY IS SUCH THAT A PERSON CAN NOT BENEFIT FROM
19 COMMUNITY-BASED SERVICES EVEN WITH THE USE OF SUPPLEMENTARY AIDS AND
20 SERVICES.

21 (E) THE TERM "SERVICES" INCLUDES ANY STATE-SPONSORED PROGRAM OR
22 SUPPORT PROVIDED TO AN ELIGIBLE INDIVIDUAL.

23 2. MOST INTEGRATED SERVICES. AN INDIVIDUAL SHALL HAVE THE RIGHT TO
24 CHOOSE AND RECEIVE SERVICES INCLUDING BUT NOT LIMITED TO HOUSING, EDUCA-
25 TION, TRANSPORTATION, EMPLOYMENT, AND MEDICAL ASSISTANCE FROM A GOVERN-
26 MENTAL AGENCY OR A PROVIDER THAT CONTRACTS WITH A GOVERNMENT AGENCY IN
27 THE MOST INTEGRATED SETTING APPROPRIATE TO THE NEEDS OF THE INDIVIDUAL.

28 3. COMMUNITY-BASED SETTING. AN INDIVIDUAL SHALL HAVE A PRESUMPTIVE
29 RIGHT TO INTEGRATED, INDIVIDUALIZED SERVICES IN A COMMUNITY-BASED
30 SETTING AND THAT EVERYONE CAN BE PRESUMED TO BE CAPABLE OF BENEFITING
31 FROM THESE SERVICES.

32 4. STATE AGENCIES. EACH STATE AGENCY RESPONSIBLE FOR DELIVERING
33 SERVICES AND/OR WHO CONTRACTS WITH PROVIDERS TO DELIVER SERVICES MUST
34 DEVELOP AN ASSESSMENT THAT PRESUMES EACH INDIVIDUAL IS ABLE TO RECEIVE
35 SERVICES IN A COMMUNITY-BASED SETTING WITH APPROPRIATE, INDIVIDUALIZED
36 ACCOMMODATIONS. EACH STATE AGENCY MUST DETERMINE WHAT SERVICES ARE
37 NECESSARY TO ENABLE THE INDIVIDUAL TO LIVE IN THE COMMUNITY.

38 5. TRANSITIONS TO MOST INTEGRATED SETTING. (A) FOR PEOPLE WANTING TO
39 MOVE TO A MOST INTEGRATED SETTING:

40 (1) STATE AGENCIES SHOULD DEVELOP A PLAN TO TRANSITION THE INDIVIDUAL
41 FROM A COMMUNITY-BASED SETTING IN CONSULTATION WITH THE INDIVIDUAL
42 AND/OR THE INDIVIDUAL'S REPRESENTATIVE.

43 (2) THE PLAN SHALL SPECIFY

44 A. THE NECESSARY SERVICES AND SUPPORTS TO ENABLE THE PERSON TO RECEIVE
45 INTEGRATED, COMMUNITY-BASED SERVICES; AND

46 B. THE METHODS TO ACCESS THESE SERVICES; AND

47 C. WHICH AGENCIES AND/OR REPRESENTATIVES WILL BE RESPONSIBLE FOR
48 PROVIDING THESE COMMUNITY SERVICES AND SUPPORTS; AND

49 D. A TIMELINE TO COMPLETE THIS PLAN; AND

50 E. THE MEANS BY WHICH THE INDIVIDUAL MAY EXPRESS, AND SEEK A REMEDY
51 FOR, ANY DISSATISFACTION WITH THE PLAN OR THE IMPLEMENTATION OF THE
52 PLAN, INCLUDING THE PROCEDURES TO SEEK REVIEW BY THE STATE AGENCY.

53 (3) THE STATE AGENCY SHALL PROVIDE THE INDIVIDUAL, OR, AS APPROPRIATE,
54 THE INDIVIDUAL'S REPRESENTATIVE, WITH A COPY OF THIS PLAN, SUPPLEMENTED
55 AS NECESSARY BY OTHER APPROPRIATE MODES OF COMMUNICATION CONSISTENT WITH
56 THE INFORMED CHOICE OF THE INDIVIDUAL.

1 (B) FOR PEOPLE WANTING TO PREVENT PLACEMENT IN A MORE RESTRICTIVE
2 SETTING:

3 IN ORDER TO PLACE AN INDIVIDUAL IN A MORE RESTRICTIVE SETTING THAN THE
4 ONE IN WHICH THE INDIVIDUAL CURRENTLY RESIDES OR RECEIVES SERVICES, THE
5 STATE AGENCY MUST

6 (1) STATE THE SPECIFIC CIRCUMSTANCES WHY A MORE RESTRICTIVE PLACEMENT
7 IS NECESSARY;

8 (2) STATE THE STRATEGIES AND SUPPORTS THAT HAVE BEEN UTILIZED AND DID
9 NOT BENEFIT THE INDIVIDUAL;

10 (3) STATE THE DESIRED PLACEMENT AND PLAN TO ACHIEVE IT WITH AN EXPLA-
11 NATION OF WHY IT IS BELIEVED THE INDIVIDUAL WILL BENEFIT FROM THIS
12 RESTRICTIVE PLACEMENT;

13 (4) PROVIDE THE INDIVIDUAL WITH THE MEANS BY WHICH THE INDIVIDUAL MAY
14 EXPRESS, AND SEEK A REMEDY FOR, ANY DISSATISFACTION WITH THE RESTRICTIVE
15 PLACEMENT, INCLUDING THE PROCEDURES TO SEEK REVIEW BY THE STATE AGENCY.

16 6. ANNUAL REPORTS. ALL STATE AGENCIES AND DEPARTMENTS SHALL SUBMIT
17 ANNUAL REPORTS TO THE LEGISLATURE AND GOVERNOR WHICH DETAIL THEIR
18 EFFORTS TO PROVIDE SERVICES AND SUPPORTS IN A COMMUNITY-BASED SETTING
19 AND STATE HOW THE AGENCY HAS SOUGHT TO EXPAND OPPORTUNITIES FOR INTE-
20 GRATED COMMUNITY-BASED PARTICIPATION FOR INTEGRATED OPPORTUNITIES IN
21 SERVICE AND PROGRAM ADMINISTRATION.

22 7. SUBSTANTIAL AND ACTUAL PARTICIPATION. ALL STATE AGENCIES MUST
23 PROVIDE OPPORTUNITIES FOR SUBSTANTIAL AND ACTIVE PARTICIPATION BY PEOPLE
24 WITH DISABILITIES, ELDERLY PEOPLE AND PARENT ADVOCATES IN THE DEVELOP-
25 MENT OF REGULATIONS, POLICIES AND GUIDELINES CONCERNING THIS LAW. EACH
26 STATE AGENCY WILL PROMULGATE REGULATIONS DEFINING "SUBSTANTIAL AND
27 ACTIVE PARTICIPATION" THAT ARE CONSISTENT WITH THIS LAW. ALL STATE AGEN-
28 CIES AND DEPARTMENTS SHALL PROMULGATE RULES, REGULATIONS AND POLICIES
29 CONSISTENT WITH THIS STATUTE WITHIN ONE YEAR OF ENACTMENT.

30 S 3. This act shall take effect on the one hundred eightieth day after
31 it shall have become a law.