S T A T E O F N E W Y O R K

S. 6294--A A. 9084--A

S E N A T E - A S S E M B L Y

January 20, 2012

IN SENATE -- Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. MILLMAN -- read once and referred to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to the development of standards for the use of aversive interventions for children in public and private schools and programs, including residential facilities

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

Section 1. Subdivisions 7, 8 and 9 of section 483-d of the social services law are renumbered subdivisions 8, 9 and 10 and a new subdivision 7 is added to read as follows:

7. AVERSIVE INTERVENTIONS. (A) NO PUBLIC FUNDING SHALL SUPPORT PLACEMENT OF A CHILD IN ANY PROGRAM OR SCHOOL THAT ENGAGES IN THE USE OF AVERSIVE INTERVENTIONS ON CHILDREN IN VIOLATION OF THIS SUBDIVISION. A SCHOOL OR PROGRAM USING AVERSIVE INTERVENTIONS IN VIOLATION OF THIS SUBDIVISION SHALL BE REMOVED FROM ANY REGISTRY OF APPROVED SCHOOLS OR PROGRAMS AFTER WRITTEN NOTICE BY THE MEMBER AGENCY.

(B) DEFINITIONS. AS USED IN THIS SUBDIVISION:

(I) "AVERSIVE INTERVENTIONS" MEANS AN INTERVENTION KNOWN OR INTENDED TO INDUCE PAIN OR DISCOMFORT FOR THE PURPOSE OF ELIMINATING OR REDUCING MALADAPTIVE BEHAVIORS, AND INCLUDE BUT ARE NOT LIMITED TO:

(1) CONTINGENT APPLICATION OF NOXIOUS, PAINFUL, INTRUSIVE STIMULI OR ACTIVITIES;

(2) ANY FORM OF NOXIOUS, PAINFUL, OR INTRUSIVE TASTE, SPRAY, OR INHALANT;

(3) WITHHOLDING SLEEP, SHELTER, BEDDING, BATHROOM FACILITIES OR CLOTHING;

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

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(4) CONTINGENT FOOD PROGRAMS THAT INCLUDE DENIAL OR DELAY OF MEALS OR INTENTIONALLY ALTERING STAPLE FOOD OR DRINK IN ORDER TO MAKE IT DISTASTEFUL;

(5) MOVEMENT LIMITATION USED AS A PUNISHMENT, INCLUDING BUT NOT LIMITED TO USE OF HELMETS AND MECHANICAL RESTRAINT DEVICES;

(6) ELECTRIC SHOCK THERAPY; AND

(7) OTHER SIMILAR STIMULI, TREATMENTS, INTERVENTIONS, OR ACTIONS.

THE FOREGOING TO THE CONTRARY NOTWITHSTANDING, AVERSIVE INTERVENTIONS DO NOT INCLUDE INTERVENTIONS SUCH AS VOICE CONTROL, LIMITED TO LOUD, FIRM COMMANDS; TIME-LIMITED IGNORING OF A SPECIFIC BEHAVIOR; TOKEN FINES AS PART OF A TOKEN ECONOMY SYSTEM; BRIEF PHYSICAL PROMPTS TO INTERRUPT OR PREVENT A SPECIFIC BEHAVIOR; INTERVENTIONS MEDICALLY NECESSARY FOR THE TREATMENT OR PROTECTION OF THE STUDENT; OR OTHER SIMILAR INTERVENTIONS.

(II) "CHILD" MEANS AN INDIVIDUAL WHO IS TWENTY-ONE YEARS OF AGE OR LESS, PROVIDED THAT A MEMBER AGENCY MAY UTILIZE AN ALTERNATIVE DEFINITION OF A CHILD, INCLUDING SPECIFYING A DIFFERENT AGE, FOR PURPOSES OF COMPLIANCE WITH THIS SUBDIVISION, SO LONG AS SUCH DEFINITION IS STANDARD AND APPROPRIATE TO ITS PLACEMENT PROCEDURES.

(III) "MEMBER AGENCY" MEANS A STATE AGENCY THAT IS A MEMBER OF THE OUT-OF-STATE PLACEMENT COMMITTEE.

(IV) "PUBLIC FUNDING" MEANS FUNDING FOR CARE, SERVICES, PROGRAMS, AND SERVICES PROGRAMS WHICH ARE PROVIDED OR APPROVED DIRECTLY OR INDIRECTLY BY OR UNDER THE JURISDICTION OF A MEMBER AGENCY, EXCLUSIVE OF FUNDING FOR WHICH FEDERAL REQUIREMENTS OR DIRECTIVES OVERRIDE, SUPERSEDE, OR REQUIRE APPROVAL IN A MANNER CONTRARY TO THE REQUIREMENTS OF THIS SUBDIVISION, OR FOR WHICH, IN THE JUDGMENT OF THE MEMBER AGENCY, COMPLIANCE WITH THIS SUBDIVISION WOULD VIOLATE FEDERAL LAW OR REGULATIONS.

(V) THE TERMS "CARE," "SERVICES," AND "SERVICES PROGRAMS" HAVE THE SAME MEANINGS AS IN SUBDIVISION ONE OF SECTION FOUR HUNDRED EIGHTY-THREE-B OF THIS ARTICLE.

(VI) "SCHOOL" MEANS ANY RESIDENTIAL OR NON-RESIDENTIAL PUBLIC OR PRIVATE SCHOOL LOCATED WITHIN OR OUTSIDE THE STATE THAT PROVIDES INSTRUCTION TO A CHILD AND THAT: (A) IS SUBJECT TO OVERSIGHT, INSPECTION, REGULATION, APPROVAL OR LICENSURE OR CERTIFICATION BY ANY MEMBER AGENCY; OR (B) RECEIVES PUBLIC FUNDING, INCLUDING FUNDING FOR THE PLACEMENT OF ANY CHILD IN SUCH SCHOOL. SCHOOL AS USED HEREIN INCLUDES A PUBLIC SCHOOL, BOCES, CHARTER SCHOOL, PRESCHOOL PROGRAM, PRIVATE SCHOOL, STATE-OPERATED OR STATE-SUPPORTED SCHOOL IN THIS STATE, APPROVED OUT-OF-STATE DAY OR RESIDENTIAL SCHOOL, OR REGISTERED NONPUBLIC NURSERY, KINDERGARTEN, ELEMENTARY OR SECONDARY SCHOOL IN THIS STATE.

(VII) "PROGRAM" MEANS ANY RESIDENTIAL OR NON-RESIDENTIAL PUBLIC OR PRIVATE PROGRAM, OTHER THAN A SCHOOL, THAT PROVIDES CARE, SERVICES, PROGRAMS, AND SERVICES PROGRAMS TO A CHILD AND THAT: (A) IS SUBJECT TO OVERSIGHT, INSPECTION, REGULATION, APPROVAL OR LICENSURE OR CERTIFICATION BY ANY MEMBER AGENCY; OR (B) RECEIVES PUBLIC FUNDING, INCLUDING FUNDING FOR THE PLACEMENT OF ANY CHILD IN SUCH SCHOOL.

S 2. Severability. If any portion of this act or the application thereof to any person or circumstances shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of this act or the application of any part thereof to any other person or circumstances and to this end each of the provisions of this act are hereby declared to be separable.

S 3. This act shall take effect October 1, 2012; provided that, effective immediately, member agencies of the out-of-state placement committee are authorized and directed to promulgate any regulations necessary to implement the provisions of this act on such effective date.