

3893--B

2015-2016 Regular Sessions

I N S E N A T E

February 20, 2015

Introduced by Sens. YOUNG, BOYLE, CARLUCCI, GALLIVAN, LIBOUS, MURPHY, O'MARA, ORTT, RITCHIE, SEWARD, VALESKY -- (at request of the Legislative Commission on Rural Resources) -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law, in relation to directing the commissioner of developmental disabilities to establish a procedure through which persons with developmental disabilities may choose to remain in a nonintegrated setting

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "employment first choice act".
3 S 2. Legislative intent. The legislature hereby supports increasing
4 access to integrated employment settings for individuals with develop-
5 mental disabilities. The legislature additionally finds, however, that
6 the policy to increase integrated employment opportunities shall not
7 preclude an individual's right to choose either an integrated or nonin-
8 tegrated setting in accordance with such individual's personal wishes.
9 Furthermore, the legislature supports an individual's informed choice to
10 remain in a nonintegrated setting in order to, among other personal
11 priorities, retain friendships, continue their participation in their
12 community as they so choose, and, in some instances, maintain their
13 ability to earn a paycheck.
14 The legislature, therefore, finds that individuals with developmental
15 disabilities, who currently participate in a nonintegrated setting,
16 should be allowed to choose to remain in such a setting. To require such

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

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1 individuals to transition out of this chosen environment undermines the
2 guiding Supreme Court decision in *Olmstead v. L.C.*, which held that the
3 Americans with Disabilities Act of 1990 requires placement of individ-
4 uals with developmental disabilities in integrated settings rather than
5 nonintegrated settings, but only when such a transfer is not opposed by
6 the affected individual. The legislature, therefore, declares this act
7 to be a priority of the state's actions affecting individuals with
8 developmental disabilities.

9 S 3. The mental hygiene law is amended by adding a new section 16.02
10 to read as follows:

11 S 16.02 INDIVIDUAL'S RIGHT OF CHOICE.

12 ANY INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY WHO IS PARTICIPATING IN
13 A NONINTEGRATED SETTING INCLUDING, BUT NOT LIMITED TO, A SHELTERED WORK-
14 SHOP, AND WHO MAKES AN INFORMED CHOICE TO REMAIN IN A NONINTEGRATED
15 SETTING MAY SEEK ACCOMMODATION FROM THE COMMISSIONER TO ALLOW SUCH
16 PLACEMENT, PROVIDED THAT PENDING SUCH REQUEST THE INDIVIDUAL MAY REMAIN
17 IN THE NONINTEGRATED SETTING. FOR PURPOSES OF THIS SECTION, AN "INFORMED
18 CHOICE" INCLUDES THE INFORMED CHOICE OF AN INDIVIDUAL OR OF AN INDIVID-
19 UAL'S PERSONAL REPRESENTATIVE.

20 (A) ACCOMMODATIONS SHALL BE GRANTED AT THE DISCRETION OF THE COMMIS-
21 SIONER, WHO MAY ALSO REQUIRE THAT THE INDIVIDUAL HAS COMPLETED AT LEAST
22 ONE OF THE FOLLOWING:

23 (1) PARTICIPATION IN AT LEAST ONE VOCATIONAL ASSESSMENT EVERY FIVE
24 YEARS IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE COMMISSIONER.
25 THE PRIMARY PURPOSE OF A VOCATIONAL ASSESSMENT SHALL BE TO DETERMINE AN
26 INDIVIDUAL'S INTERESTS, STRENGTHS AND ABILITIES, IN ORDER TO IDENTIFY A
27 SUITABLE MATCH BETWEEN THE INDIVIDUAL AND A COMPETITIVE INTEGRATED
28 EMPLOYMENT SETTING;

29 (2) COMPLETION OF ONE TRIAL INTEGRATED WORK EXPERIENCE EVERY FIVE
30 YEARS, WHICH CAN INCLUDE ANY WORK EXPERIENCE WITH OR WITHOUT PAY IN
31 WHICH THE INDIVIDUAL WORKS ALONGSIDE NON-DISABLED COWORKERS, CUSTOMERS
32 OR PEERS, WITH THE APPROPRIATE SERVICES AND SUPPORTS FOR A SUFFICIENT
33 PERIOD OF TIME TO ESTABLISH WHETHER AN INDIVIDUAL'S INTERESTS, SKILLS
34 AND ABILITIES ARE WELL-SUITED FOR THE PARTICULAR JOB. THE TRIAL INTE-
35 GRATED WORK EXPERIENCE SHALL BE SELECTED THROUGH A PERSON-CENTERED PLAN-
36 NING PROCESS AND SHALL BE INDIVIDUALLY TAILORED TO EACH PERSON. ALTERNA-
37 TIVELY, THE COMMISSIONER MAY CONSIDER THE INDIVIDUAL'S DEMONSTRATION OF
38 AN INABILITY TO PARTICIPATE IN AN INTEGRATED WORK SETTING DUE TO A DOCU-
39 MENTED MEDICAL CONDITION THAT POSES AN IMMEDIATE AND SERIOUS THREAT TO
40 THE INDIVIDUAL'S HEALTH OR SAFETY, OR THE HEALTH OR SAFETY OF OTHERS IN
41 AN INTEGRATED WORK SETTING;

42 (3) RECEIPT OF OUTREACH, EDUCATION AND SUPPORT SERVICES IN ACCORDANCE
43 WITH REGULATIONS PROMULGATED BY THE COMMISSIONER. OUTREACH, EDUCATION
44 AND SUPPORT SERVICES ARE SERVICES DESIGNED TO EXPLAIN THE BENEFITS OF
45 SUPPORTED EMPLOYMENT, AS DEFINED IN SUBDIVISION ELEVEN OF SECTION ONE
46 THOUSAND TWO OF THE EDUCATION LAW, THAT ADDRESS CONCERNS OF FAMILIES AND
47 PERCEIVED OBSTACLES TO PARTICIPATION, AND ARE DESIGNED TO ENCOURAGE
48 INDIVIDUALS IN DAY ACTIVITY SERVICE PROGRAMS, INCLUDING IN SHELTERED
49 WORKSHOPS AND FACILITY-BASED DAY PROGRAMS, AND THEIR FAMILIES TO SEEK
50 SUPPORTED EMPLOYMENT SERVICES, AS DEFINED UNDER SUBDIVISION TWELVE OF
51 SECTION ONE THOUSAND TWO OF THE EDUCATION LAW; OR

52 (4) INVOLVEMENT IN A BENEFITS COUNSELING CONSULTATION IN ACCORDANCE
53 WITH REGULATIONS PROMULGATED BY THE COMMISSIONER. A BENEFIT COUNSELING
54 CONSULTATION SHALL PROVIDE INFORMATION TO THE INDIVIDUAL AND HIS OR HER
55 FAMILY OR GUARDIAN ABOUT THE IMPACT OF EARNED INCOME ON THE INDIVIDUAL'S
56 PUBLIC BENEFITS.

1 (B) THE OFFICE SHALL ENSURE THAT INDIVIDUALS WHO ARE GRANTED ACCOMMO-
2 DATION TO PARTICIPATE IN A NONINTEGRATED SETTING SHALL CONTINUE TO
3 RECEIVE SERVICES AND ANY ADDITIONAL SERVICES THE OFFICE DETERMINES ARE
4 NECESSARY TO ENABLE THE INDIVIDUAL'S MEANINGFUL PARTICIPATION IN THE
5 CHOSEN SETTING.

6 (C) THE PROCEDURES FOR OBTAINING ACCOMMODATION TO REMAIN IN A NONINTE-
7 GRATED SETTING SHALL NOT SUPERSEDE NOR BAR THE INDIVIDUAL'S CHOICE TO
8 REMAIN IN A NONINTEGRATED SETTING.

9 (D) THE ACCOMMODATION TO REMAIN IN A NONINTEGRATED SETTING SHALL NOT
10 DIMINISH THE INDIVIDUAL'S ELIGIBILITY FOR RECEIPT OF SERVICES UNDER
11 TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW, AND SUCH INDI-
12 VIDUAL'S ELIGIBILITY TO RECEIVE SUCH SERVICES SHALL BE SUBSTANTIALLY
13 SIMILAR TO BENEFITS THAT WOULD HAVE BEEN RECEIVED HAD THE INDIVIDUAL
14 CHOSEN TO PARTICIPATE IN AN INTEGRATED SETTING.

15 (E) THE COMMISSIONER IS AUTHORIZED TO ISSUE, AMEND OR REPEAL ANY REGU-
16 LATIONS AS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

17 (F) THE COMMISSIONER, IN CONSULTATION WITH STAKEHOLDERS, SHALL TAKE
18 SUCH ACTIONS AS SHALL BE NECESSARY TO COMPLY WITH FEDERAL LAW, OBTAIN
19 FEDERAL FUNDING, AND ASSIST WORK SETTINGS TO REMAIN ELIGIBLE FOR FEDERAL
20 FUNDING, IN ORDER TO ENABLE EACH INDIVIDUAL'S CHOICE, FOR THE PURPOSE OF
21 THIS SECTION, ON AND AFTER MAY FIRST, TWO THOUSAND TWENTY.

22 S 4. This act shall take effect immediately.