STATE OF NEW YORK

7261

IN SENATE

January 5, 2018

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to the rights of children and parents of children suspected of being deaf or hard of hearing

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

Section 1. The education law is amended by adding a new section 4202-a to read as follows:

§ 4202-a. Rights of children and parents of children suspected of being deaf or hard of hearing. 1. The following rights are established:

(a) Parents of children suspected of being deaf or hard of hearing, and of those children identified as deaf or hard of hearing, will be provided with comprehensive and neutral, unbiased information regarding:

(i) Hearing technology (hearing aids, bone anchored hearing aids, cochlear implants, remote microphone systems);

(ii) Different communication modes; and

(iii) Services and programs designed to meet the needs of such children.

(b) Parents of children suspected of being deaf or hard of hearing, and of those children identified as deaf or hard of hearing, will be provided comprehensive and unbiased information regarding, and access to, support and advocacy services from public and private agencies and other entities knowledgeable about the needs of children who are deaf or hard of hearing.

(c) Parents of children who are deaf or hard of hearing have the right to choose the communication mode or modes they deem appropriate for their child.

(d) Children who are identified as deaf or hard of hearing will be provided learning environments with services utilizing the family's choice of child's communication mode or modes and delivered by professionals with background, training, and experience in that communication mode or modes.

(e) State agencies will collaborate to provide unified and seamless services from the onset of the Early Hearing Detection and Intervention

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

LBD13993-01-7

(EHDI) process through the child's school career to ensure there are no gaps in service provision.

2. Subject to the rights described in subdivision one of this section, the following goals shall govern all services and interactions regarding each child who is deaf or hard of hearing:

(a) Readiness for kindergarten comparable to children with typical hearing; and

(b) English literacy by end of third grade (expressive, receptive, and written) comparable to children with typical hearing.

3. For the purposes of this section, the following terms shall have the following meanings:

(a) Deaf. Possession of hearing levels that, with or without hearing technology, substantially impact a child's ability to understand spoken language.

(b) Hard of hearing. Possession of hearing levels that, with or without hearing technology, impact a child's ability to understand spoken language.

(c) Language. Method of human communication, whether spoken, written, or signed, consisting of the use of words in a structured and conventional way.

(d) American Sign Language (ASL). A visual, spatial, and tactile language that is three-dimensional. Like all languages, it is rule-governed and has visual phonological, morphological, syntactic, and grammatical properties specific to ASL. It is used predominantly in the United States and in English-speaking parts of Canada.

(e) English. A spoken language that can also be printed and written. When vocalized, English is produced by a naturally evolved system of articulated sounds produced by one's voice for the purpose of easily linking words together to fluently convey meaning. English is the recognized language of the United States and its public schools.

(f) Communication mode. Medium or channel through which communicative intent is expressed and received, including sign, speech, facial expression, gesture, and printed text. Communication generally draws on multiple modes, such as vocalization, speech, gesture, signs, and symbols and is referred to as multimodal. There are three general mechanisms for use of communication modes among people with hearing loss: vocal, visual, and a combination of vocal/visual. The modes of communication used by children who are deaf or hard of hearing are:

(i) Listening and spoken language (LSL). An approach that focuses on maximizing listening through the use of hearing technologies, professional intervention, and family involvement/support to facilitate the acquisition and development of the spoken language or languages of the child's home and community. May also be called "auditory/oral" or "auditory-verbal".

(ii) Bilingual/bicultural (Bi-Bi). A bilingual approach which includes the development of both sign language as the child's mode of receptive and expressive communication and English literacy skills. ASL is viewed as the child's first language, and written English is introduced as a second language. Involvement with the deaf community and immersion in deaf culture are emphasized.

(iii) Cued speech. A visual communication system that uses hand shapes and placements in combination with the mouth movements of speech to identify the phonemes of spoken language that look similar to one another.

(iv) Total communication (combination). The combined use of signs, speech, speech-reading, auditory training, visual aids, manual gestures,

and writing to convey information. This may include Simultaneous Communication (SimCom), a system of communication in which both a spoken language and a manual variant of that language, such as English and manually coded English, are used simultaneously. Total communication may include the use of ASL or English-based sign systems, such as Signed Exact English, a system of manual communication-signs and fingerspelling that is an exact representation of spoken English vocabulary and grammar.

4. Language development for deaf and hard of hearing children. (a) The department shall select various language developmental milestones from existing standardized norms used for evaluating children with typical hearing, pursuant to the process specified in paragraph (d) of this subdivision, for purposes of developing a resource guide for use by parents to monitor and track deaf and hard of hearing children's expressive and receptive language acquisition, based on the child's preferred communication mode, and developmental stages toward English literacy. For the purposes of this subdivision, the term "language developmental milestones" means milestones of development aligned with the existing state instrument and the child's preferred communication mode used to meet the requirements of federal law for the assessment of children from birth to five years of age, inclusive. This parent resource guide shall:

(i) Include the language developmental milestones selected pursuant to the process specified in paragraph (d) of this subdivision;

(ii) Be appropriate for use, in both content and administration, with deaf and hard of hearing children from birth to five years of age, inclusive, who use one or both of the languages of American Sign Language and English, and based upon the family's preferred communication mode;

(iii) Present the developmental milestones in terms of typical development of all children, by age range;

(iv) Be written for clarity and ease of use by parents;

(v) Be aligned to the department's existing infant, toddler, and preschool guidelines, the existing instrument used to assess the development of children with disabilities pursuant to federal law, and state standards in English language arts;

(vi) Make clear that the parent resource is not a formal assessment of language and literacy development, and that a parent's observations of their children may differ from formal assessment data presented at an individualized family service plan or individualized education program meeting; and

(vii) Make clear that a parent may bring the parent resource to an individualized family service plan or individualized education program meeting for purposes of sharing their observations about their child's development.

(viii) Include the following information:

(A) Comprehensive and unbiased information regarding language acquisition and development;

(B) Types and degrees of hearing loss;

(C) Language options;

(D) Modes of communication;

(E) Technology options;

(F) Developmental milestones of language acquisition (receptive and expressive) for American Sign Language;

(G) Developmental milestones of language acquisition (receptive and expressive) for English language;

(H) Skills necessary for pre-literacy;
(I) Skills necessary for preschool readiness;
(J) Skills necessary for kindergarten readiness;
(K) Skills necessary for third-grade literacy;
(L) Existing state educational and therapy services and programs; and
(M) Support, information, and advocacy services available from state and national public and private agencies and other entities knowledgeable about the needs of children who are deaf or hard of hearing.

(b) The department shall also select recommended tools or assessments for educators, based upon the child's preferred communication mode, that can be used to assess the language and literacy development of deaf and hard of hearing children. These educator tools or assessments:
(i) Shall be in a format that shows stages of language development;
(ii) Shall be selected for use by educators to track the development of deaf and hard of hearing children's expressive and receptive language acquisition and developmental stages toward English literacy;
(iii) Shall be selected from existing instruments or assessments used to assess the development of all children from birth to five years of age, inclusive;
(iv) Shall be appropriate, in both content and administration, for use with deaf and hard of hearing children;
(v) Shall be aligned with the particular child's preferred communication mode;
(vi) May be used, in addition to the assessment required by federal law, by the child's individualized family service plan or individualized education program team, as applicable, to track deaf and hard of hearing children's progress, and to establish or modify individualized family service plans or individualized education program meeting plans; and
(vii) May reflect the recommendations of the advisory committee established pursuant to paragraph (e) of this subdivision.

(c) (i) The department shall disseminate the parent resource guide developed in accordance with paragraph (a) of this subdivision to parents and guardians of deaf and hard of hearing children, and, pursuant to federal law, shall disseminate the educator tools and assessments selected pursuant to paragraph (b) of this subdivision to local educational agencies to assist in the development and modification of individualized family service plans or individualized education program plans, and shall provide materials and training on its use, to assist deaf and hard of hearing children in becoming linguistically ready for kindergarten based on the family's preferred communication mode, and using one or both of the languages of American Sign Language and English as relevant to that communication mode.
(ii) If a deaf or hard of hearing child does not demonstrate progress in expressive and receptive language skills, as measured by one of the educator tools or assessments selected pursuant to paragraph (b) of this subdivision, or by the existing instrument used to assess the development of children with disabilities pursuant to federal law, the child's individualized family service plan or individualized education program team, as applicable, shall, as part of the process required by federal law, analyze the reasons why the child is not meeting the language developmental milestones or progressing towards them, and shall recommend specific strategies, services, and programs that shall be provided to assist the child's success toward English literacy.

(d) (i) On or before March first, two thousand eighteen, the department shall provide the advisory committee established pursuant to paragraph (e) of this subdivision with a list of recommended existing

language developmental milestones from existing standardized norms, along with any relevant information held by the department regarding those language developmental milestones for possible inclusion in the parent resource guide developed pursuant to paragraph (a) of this subdivision. These language developmental milestones shall be aligned to the department's existing infant, toddler, and preschool guidelines, the existing instrument used to assess the development of children with disabilities pursuant to federal law, the child's preferred communication mode, and the state standards in English language arts.

(ii) On or before June first, two thousand eighteen, the advisory committee shall recommend language developmental milestones for non-exclusive use pursuant to paragraph (a) of this subdivision.

(iii) On or before June thirtieth, two thousand eighteen, the department shall inform the advisory committee of which language developmental milestones were selected from such recommendations.

(e) (i) The commissioner shall establish an ad hoc advisory committee for purposes of soliciting input from various persons, including experts, parents and others, to recommend content for inclusion in the parent resource guide to be developed in accordance with paragraph (a) of this subdivision. The advisory committee may also make recommendations on the selection and administration of the educator tools or assessments selected pursuant to paragraph (b) of this subdivision.

(ii) The advisory committee shall consist of ten volunteers, and shall be comprised of a mix of parents of children who are deaf or hard of hearing, professionals who serve children who are deaf or hard of hearing and adults who are deaf or hard of hearing. The volunteers shall be selected so as to avoid representational bias toward any particular language, communication mode or culture. The committee shall include:

(A) One parent of a child who is deaf or hard of hearing who uses listening and spoken language;

(B) One parent of a child who is deaf or hard of hearing who uses American Sign Language;

(C) One parent of a child who is deaf or hard of hearing who uses Cued Speech;

(D) One parent of a child who is deaf or hard of hearing who uses Total Communication;

(E) One professional who works with children who are deaf or hard or hearing using listening and spoken language;

(F) One professional who works with children who are deaf or hard of hearing using American Sign Language;

(G) One professional who works with children who are deaf or hard of hearing using Cued Speech;

(H) One professional who works with children who are deaf or hard of hearing using Total Communication;

(I) One adult who is deaf or hard of hearing who uses spoken language; and

(J) One adult who is deaf or hard of hearing who uses sign language.

(f) Action by the advisory committee shall be in the form of recommendations, and shall require a two-thirds affirmative vote of the entire committee membership.

(g) The advisory committee established pursuant to paragraph (e) of this subdivision may also advise the department or its contractor on the content and administration of the recommended existing instrument used to assess the development of children with disabilities pursuant to federal law, as used to assess deaf and hard of hearing children's language and literacy development to ensure the appropriate use of that

instrument with those children, and may make recommendations regarding future research to improve the measurement of progress of deaf and hard of hearing children in language and literacy.

(h) Commencing on or before July thirty-first, two thousand eighteen, and on or before each July thirty-first thereafter, the department shall annually produce a report, using existing data reported in compliance with the federally required state performance plan on pupils with disabilities, and applying the children's preferred communication modes, that is specific to language and literacy development of deaf and hard of hearing children from birth to five years of age, inclusive, including those who are deaf or hard of hearing and have other disabilities, relative to their peers who are not deaf or hard of hearing. The department shall make this report available on the department's website.

(i) All activities of the department in implementing this section shall be consistent with federal law regarding the education of children with disabilities and federal law regarding the privacy of pupil information.

(j) This section shall apply only to children from birth to five years of age, inclusive.

(k) The implementation of this section shall be subject to an appropriation made therefor.

§ 2. This act shall take effect immediately. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.