

STATE OF NEW YORK

8486--B

Cal. No. 297

2021-2022 Regular Sessions

IN ASSEMBLY

November 17, 2021

Introduced by M. of A. ABINANTI, HEVESI, STIRPE, FAHY, McDONALD, CUSICK, THIELE, ZEBROWSKI, PAULIN, WALSH -- read once and referred to the Committee on People with Disabilities -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the mental hygiene law, in relation to due process procedures for certain persons who will become eligible to receive transitional care or certain care at a future date

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

1 Section 1. Subdivision (e) of section 13.38 of the mental hygiene law,
2 as amended by chapter 106 of the laws of 2015, is amended to read as
3 follows:

4 (e) 1. Upon making a determination that a person who is receiving
5 transitional care or care pursuant to subdivision (g) of this section,
6 or who has received an offer for care from the office prior to becoming
7 eligible to receive transitional care or care pursuant to subdivision
8 (g) of this section, can be appropriately cared for in an available
9 adult care facility or service licensed, certified or approved by the
10 office, and whose removal from a child care facility is not required on
11 an expedited basis, the office shall notify in writing the person and
12 the person's guardian, if one has been appointed, or another individual
13 who has been involved in the care of the person and who may represent
14 the person's interests, of the description of the proposed new place-
15 ment, the availability of an administrative appeal to review the deter-
16 mination and of the need to request such an appeal in writing within
17 thirty days of the notice. If the person, guardian or other individual
18 requests an administrative appeal within the time required, the office
19 shall schedule a hearing providing no less than ten days notice to the
20 objecting party and the commissioner or his or her designee shall issue
21 a written determination to the objecting party within thirty days of the

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

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1 adjournment of the hearing, on whether the adult placement identified by
2 the office is appropriate to the needs of the person and is available or
3 will become available on an identified date certain. If the person,
4 guardian or other individual does not request a hearing within the time
5 required, or if the hearing results in a determination that the proposed
6 adult services or placement is appropriate to the needs of the person
7 and is available or will be available on an identified date certain, the
8 office shall discontinue care funding for the person as of a date
9 certain. The written determination shall be the final administrative
10 remedy available and shall be subject to review in accordance with the
11 provisions of article seventy-eight of the civil practice law and rules.

12 2. If the office makes an offer of placement to a person prior to the
13 expiration of the person's right to a Free and Appropriate Public Educa-
14 tion (FAPE), the person shall not be required to terminate their educa-
15 tional program prematurely.

16 § 2. This act shall take effect immediately.