STATE OF NEW YORK

3177

2023-2024 Regular Sessions

IN SENATE

January 30, 2023

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

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:

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

(e) **1.** Upon making a determination that a person who is receiving transitional care or care pursuant to subdivision (g) of this section**, or who has received an offer for care from the office prior to becoming eligible to receive transitional care or care pursuant to subdivision (g) of this section,** can be appropriately cared for in an available adult care facility or service licensed, certified or approved by the office, and whose removal from a child care facility is not required on an expedited basis, the office shall notify in writing the person and the person's guardian, if one has been appointed, or another individual who has been involved in the care of the person and who may represent the person's interests, of the description of the proposed new placement, the availability of an administrative appeal to review the determination and of the need to request such an appeal in writing within thirty days of the notice. If the person, guardian or other individual requests an administrative appeal within the time required, the office shall schedule a hearing providing no less than ten days notice to the objecting party and the commissioner or his or her designee shall issue a written determination to the objecting party within thirty days of the adjournment of the hearing, on whether the adult placement identified by the office is appropriate to the needs of the person and is available or will become available on an identified date certain. If the person,

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

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

2. If the office makes an offer of placement to a person prior to the expiration of the person's right to a Free and Appropriate Public Education (FAPE), the person shall not be required to terminate their educational program prematurely.

§ 2. This act shall take effect immediately.