STATE OF NEW YORK

3480

2023-2024 Regular Sessions

IN SENATE

January 31, 2023

Introduced by Sens. HELMING, BORRELLO, GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health

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:

Section 1. Short title. This act shall be known and may be cited as the "employment first choice act".

§ 2. Legislative intent. The legislature hereby supports increasing access to integrated employment settings for individuals with developmental disabilities. The legislature additionally finds, however, that the policy to increase integrated employment opportunities shall not preclude an individual's right to choose either an integrated or nonintegrated setting in accordance with such individual's personal wishes. Furthermore, the legislature supports an individual's informed choice to remain in a nonintegrated setting in order to, among other personal priorities, retain friendships, continue their participation in their community as they so choose, and, in some instances, maintain their ability to earn a paycheck.

The legislature, therefore, finds that individuals with developmental disabilities, who currently participate in a nonintegrated setting, should be allowed to choose to remain in such a setting. To require such individuals to transition out of this chosen environment undermines the guiding Supreme Court decision in Olmstead v. L.C., which held that the Americans with Disabilities Act of 1990 requires placement of individuals with developmental disabilities in integrated settings rather than nonintegrated settings, but only when such a transfer is not opposed by the affected individual. The legislature, therefore, declares this act

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

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to be a priority of the state's actions affecting individuals with developmental disabilities.

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

§ 16.02 Individual's right of choice.

Any individual with a developmental disability who is participating in a nonintegrated setting including, but not limited to, a sheltered workshop, and who makes an informed choice to remain in a nonintegrated setting may seek accommodation from the commissioner to allow such placement, provided that pending such request the individual may remain in the nonintegrated setting. For purposes of this section, an "informed choice" includes the informed choice of an individual or of an individual's personal representative.

(a) Accommodations shall be granted at the discretion of the commissioner, who may also require that the individual has completed at least one of the following:

(1) Participation in at least one vocational assessment every five years in accordance with regulations promulgated by the commissioner. The primary purpose of a vocational assessment shall be to determine an individual's interests, strengths and abilities, in order to identify a suitable match between the individual and a competitive integrated employment setting;

(2) Completion of one trial integrated work experience every five years, which can include any work experience with or without pay in which the individual works alongside non-disabled coworkers, customers or peers, with the appropriate services and supports for a sufficient period of time to establish whether an individual's interests, skills and abilities are well-suited for the particular job. The trial integrated work experience shall be selected through a person-centered planning process and shall be individually tailored to each person. Alternatively, the commissioner may consider the individual's demonstration of an inability to participate in an integrated work setting due to a documented medical condition that poses an immediate and serious threat to the individual's health or safety, or the health or safety of others in an integrated work setting;

(3) Receipt of outreach, education and support services in accordance with regulations promulgated by the commissioner. Outreach, education and support services are services designed to explain the benefits of supported employment, as defined in subdivision eleven of section one thousand two of the education law, that address concerns of families and perceived obstacles to participation, and are designed to encourage individuals in day activity service programs, including in sheltered workshops and facility-based day programs, and their families to seek supported employment services, as defined under subdivision twelve of section one thousand two of the education law; or

(4) Involvement in a benefits counseling consultation in accordance with regulations promulgated by the commissioner. A benefit counseling consultation shall provide information to the individual and his or her family or guardian about the impact of earned income on the individual's public benefits.

(b) The office shall ensure that individuals who are granted accommodation to participate in a nonintegrated setting shall continue to receive services and any additional services the office determines are necessary to enable the individual's meaningful participation in the chosen setting.

(c) The procedures for obtaining accommodation to remain in a nonintegrated setting shall not supersede nor bar the individual's choice to remain in a nonintegrated setting.

(d) The accommodation to remain in a nonintegrated setting shall not diminish the individual's eligibility for receipt of services under title eleven of article five of the social services law, and such individual's eligibility to receive such services shall be substantially similar to benefits that would have been received had the individual chosen to participate in an integrated setting.

(e) The commissioner is authorized to issue, amend or repeal any regulations as necessary to implement the provisions of this section.

(f) The commissioner, in consultation with stakeholders, shall take such actions as shall be necessary to comply with federal law, obtain federal funding, and assist work settings to remain eligible for federal funding, in order to enable each individual's choice, for the purpose of this section, on and after May first, two thousand twenty-seven.

§ 4. This act shall take effect immediately.