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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. KELLNER, RAIA, McDONOUGH, MENG, ROBINSON, BURLING, RABBITT, WEISENBERG, HOOPER, CORWIN, TOBACCO, ZEBROWSKI, JORDAN, GUNTHER, JAFFEE -- Multi-Sponsored by -- M. of A. CONTE, DUPREY, FINCH, J. MILLER, MOLINARO, SAYWARD -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to eliminating state review officers; and to repeal certain provisions of the education law and the civil practice law and rules relating thereto

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

1 Section 1. Paragraph c of subdivision 1 of section 4404 of the educa-
2 tion law, as amended by chapter 583 of the laws of 2007, is amended to
3 read as follows:
4 c. Individuals so appointed by a board of education or a state agency
5 shall be selected from a list of available impartial hearing officers
6 who have successfully completed an impartial hearing officer training
7 program conducted by the department according to a rotation selection
8 process prescribed in regulations of the commissioner; except that a
9 city school district of a city having a population of more than one
10 million inhabitants shall be exempt from such regulations to the extent
11 it maintains its rotational selection process in effect prior to July
12 first, nineteen hundred ninety-three. A record of proceedings before the
13 impartial hearing officer shall be maintained and made available to the
14 parties, and the hearing shall be conducted in accordance with the regu-
15 lations of the commissioner. The board of education or trustees of the
16 school district or the state agency responsible for providing education
17 to students with disabilities shall have the burden of proof, including
18 the burden of persuasion and burden of production, in any such impartial
19 hearing, except that a parent or person in parental relation seeking
20 tuition reimbursement for a unilateral parental placement shall have the

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

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1 burden of persuasion and burden of production on the appropriateness of
2 such placement. The decision of the impartial hearing officer shall be
3 binding upon both parties unless appealed to the [state review officer]
4 UNITED STATES DISTRICT COURT. The commissioner shall establish a
5 department training program which shall be completed to the satisfaction
6 of the commissioner as a condition of certification. Impartial hearing
7 officers shall have the qualifications specified in subsection (f) of
8 section fourteen hundred fifteen of title twenty of the United States
9 code, the implementing federal regulations and the regulations of the
10 commissioner. The commissioner shall promulgate regulations to ensure
11 that no individual employed by a school district, school or program
12 serving students with disabilities placed by a school district committee
13 on special education acts as an impartial hearing officer and that no
14 individual employed by such schools or programs serves as an impartial
15 hearing officer for two years following the termination of such employ-
16 ment. The commissioner shall promulgate regulations establishing proce-
17 dures for the suspension or revocation of impartial hearing officer
18 certification for good cause. The commissioner shall establish maximum
19 rates for the compensation of impartial hearing officers subject to the
20 approval of the director of the division of the budget.

21 S 2. Subdivision 1 of section 4404 of the education law, as amended by
22 chapter 583 of the laws of 2007, is amended to read as follows:

23 1. If the recommendation of the committee on special education is not
24 acceptable to the parent or person in parental relationship of a
25 student, or if the committee or board of education or trustees fails to
26 make or effectuate such a recommendation within such periods of time as
27 may be required by regulations of the commissioner, such parents or
28 persons in parental relationship shall notify the board of education of
29 this situation and the board shall appoint an impartial hearing officer
30 to hear the appeal and make a determination within such period of time
31 as the commissioner by regulation shall determine, provided that the
32 board of education or trustees shall offer the parent or person in
33 parental relationship the option of mediation pursuant to section
34 forty-four hundred four-a of this article as an alternative to an impar-
35 tial hearing. Individuals so appointed by a board of education shall be
36 selected from a list of available hearing officers who have successfully
37 completed a hearing officer training program conducted by the department
38 according to a rotation selection process prescribed in regulations of
39 the commissioner; except that a city school district of a city having a
40 population of more than one million inhabitants shall be exempt from
41 such regulations to the extent it maintains its rotational selection
42 process in effect prior to July first, nineteen hundred ninety-three. A
43 record of proceedings before the hearing officer shall be maintained and
44 made available to the parties. The board of education or trustees of the
45 school district or the state agency responsible for providing education
46 to students with disabilities shall have the burden of proof, including
47 the burden of persuasion and burden of production, in any such impartial
48 hearing, except that a parent or person in parental relation seeking
49 tuition reimbursement for a unilateral parental placement shall have the
50 burden of persuasion and burden of production on the appropriateness of
51 such placement. The decision of the hearing officer shall be binding
52 upon both parties unless appealed to the [state review officer] UNITED
53 STATES DISTRICT COURT. The commissioner shall establish a department
54 training program which shall be completed to the satisfaction of the
55 commissioner as a condition of certification. The commissioner shall
56 develop and implement a plan to ensure that no individual employed by a

1 school district, school or program serving students with disabilities
2 placed by a school district committee on special education acts as an
3 impartial hearing officer and that no individual employed by such
4 schools or programs serves as an impartial hearing officer for two years
5 following the termination of such employment. Such plan shall be fully
6 implemented no later than July first, nineteen hundred ninety-six. The
7 commissioner shall promulgate regulations establishing procedures for
8 the suspension or revocation of impartial hearing officer certification
9 for good cause. The commissioner shall establish maximum rates for the
10 compensation of impartial hearing officers subject to the approval of
11 the director of the division of the budget. The commissioner shall
12 promulgate regulations establishing procedures and timelines for expe-
13 dited hearings in cases involving: (a) review of a decision that a
14 student with a disability's behavior was not a manifestation of such
15 student's disability, or (b) review of an interim alternative educa-
16 tional setting or other placement to the extent required under federal
17 law, or (c) a request by the school district for a determination that
18 maintaining the current educational placement of the student is substan-
19 tially likely to result in injury to the student or to others.

20 S 3. Subdivisions 2 and 3 of section 4404 of the education law are
21 REPEALED.

22 S 4. Paragraph d of subdivision 7 of section 4410 of the education
23 law is REPEALED.

24 S 5. Subdivision 5 of section 7803 of the civil practice law and rules
25 is REPEALED.

26 S 6. This act shall take effect immediately, provided that the amend-
27 ments to paragraph c of subdivision 1 of section 4404 of the education
28 law made by section one of this act shall be subject to the expiration
29 and reversion of such paragraph pursuant to section 22 of chapter 352 of
30 the laws of 2005, as amended, when upon such date the provisions of
31 section two of this act shall take effect.