STATE OF NEW YORK

7943

2021-2022 Regular Sessions

IN ASSEMBLY

June 2, 2021

Introduced by M. of A. WEINSTEIN, EICHENSTEIN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to impartial hearings in school districts in cities with a population of one million or more

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

Section 1. Paragraph c of subdivision 1 of section 4404 of the education law, as amended by chapter 583 of the laws of 2007, is amended to read as follows:

c. Individuals so appointed by a **state agency or a** board of education [~~or a state agency~~] **other than the board in a city school district of a city having a population of more than one million inhabitants** shall be selected from a list of available impartial hearing officers who have successfully completed an impartial hearing officer training program conducted by the department according to a rotation selection process prescribed in regulations of the commissioner[~~; except that a city school district of a city having a population of more than one million inhabitants shall be exempt from such regulations to the extent it maintains its rotational selection process in effect prior to July first, nineteen hundred ninety-three~~]. **In a city school district of a city having a population of more than one million inhabitants, impartial hearing officers shall be appointed from among independent adjudicators employed by the office of administrative trials and hearings. An impartial hearing officer may receive evidence, including but not limited to documentary and testimonial evidence. Testimony may be given in person, by telephone or video conference, provided that such testimony shall be made under oath and shall be subject to cross examination, provided further that all personally identifiable data, information or records pertaining to students with disabilities examined during such testimony shall be subject to the confidentiality requirements established by regulations of the commissioner.** A record of proceedings before the

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

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impartial hearing officer shall be maintained and made available to the parties, and the hearing shall be conducted in accordance with the regulations of the commissioner. The board of education or trustees of the school district or the state agency responsible for providing education to students with disabilities shall have the burden of proof, including the burden of persuasion and burden of production, in any such impartial hearing, except that a parent or person in parental relation seeking tuition reimbursement for a unilateral parental placement shall have the burden of persuasion and burden of production on the appropriateness of such placement. The decision of the impartial hearing officer shall be binding upon both parties unless appealed to the state review officer. The commissioner shall establish a department training program which shall be completed to the satisfaction of the commissioner as a condition of certification**, provided that the office of administrative trials and hearings of a city having a population of more than one million inhabitants shall be authorized to grant certification to persons who have completed training required by such office, and to require additional training for persons who have received certification from the state education department**. Impartial hearing officers shall have the qualifications specified in subsection (f) of section fourteen hundred fifteen of title twenty of the United States code, the implementing federal regulations and the regulations of the commissioner. The commissioner shall promulgate regulations to ensure that no individual employed by a school district, school or program serving students with disabilities placed by a school district committee on special education acts as an impartial hearing officer and that no individual employed by such schools or programs serves as an impartial hearing officer for two years following the termination of such employment. The commissioner shall promulgate regulations establishing procedures for the suspension or revocation of impartial hearing officer certification for good cause. The commissioner shall establish maximum rates for the compensation of impartial hearing officers **appointed by a state agency or a board of education other than the board in a city school district of a city having a population of more than one million inhabitants,** subject to the approval of the director of the division of the budget.

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

1. If the recommendation of the committee on special education is not acceptable to the parent or person in parental relationship of a student, or if the committee or board of education or trustees fails to make or effectuate such a recommendation within such periods of time as may be required by regulations of the commissioner, such parents or persons in parental relationship shall notify the board of education of this situation and the board shall appoint an impartial hearing officer to hear the appeal and make a determination within such period of time as the commissioner by regulation shall determine, provided that the board of education or trustees shall offer the parent or person in parental relationship the option of mediation pursuant to section forty-four hundred four-a of this article as an alternative to an impartial hearing. Individuals so appointed by a board of education shall be selected from a list of available hearing officers who have successfully completed a hearing officer training program conducted by the department according to a rotation selection process prescribed in regulations of the commissioner; except that **in** a city school district of a city having a population of more than one million inhabitants [~~**shall be exempt from such regulations to the extent it maintains its rotational selection**~~

~~process in effect prior to July first, nineteen hundred ninety three~~] impartial hearing officers shall be appointed from among independent adjudicators employed by the office of administrative trials and hearings. The impartial hearing officer may receive evidence, including but not limited to documentary and testimonial evidence. Testimony may be given in person, by telephone or video conference, provided that such testimony shall be made under oath and shall be subject to cross examination, provided further that all personally identifiable data, information or records pertaining to students with disabilities examined during such testimony shall be subject to the confidentiality requirements established by regulations of the commissioner. A record of proceedings before the hearing officer shall be maintained and made available to the parties. The board of education or trustees of the school district or the state agency responsible for providing education to students with disabilities shall have the burden of proof, including the burden of persuasion and burden of production, in any such impartial hearing, except that a parent or person in parental relation seeking tuition reimbursement for a unilateral parental placement shall have the burden of persuasion and burden of production on the appropriateness of such placement. The decision of the hearing officer shall be binding upon both parties unless appealed to the state review officer. The commissioner shall establish a department training program which shall be completed to the satisfaction of the commissioner as a condition of certification, provided that the office of administrative trials and hearings of a city having a population of more than one million inhabitants shall be authorized to grant certification to persons who have completed training required by such office, and to require additional training for persons who have received certification from the state education department. The commissioner shall develop and implement a plan to ensure that no individual employed by a school district, school or program serving students with disabilities placed by a school district committee on special education acts as an impartial hearing officer and that no individual employed by such schools or programs serves as an impartial hearing officer for two years following the termination of such employment. Such plan shall be fully implemented no later than July first, nineteen hundred ninety-six. The commissioner shall promulgate regulations establishing procedures for the suspension or revocation of impartial hearing officer certification for good cause. The commissioner shall establish maximum rates for the compensation of impartial hearing officers appointed by a state agency or a board of education other than the board in a city school district of a city having a population of more than one million inhabitants, subject to the approval of the director of the division of the budget. The commissioner shall promulgate regulations establishing procedures and timelines for expedited hearings in cases involving: (a) review of a decision that a student with a disability's behavior was not a manifestation of such student's disability, or (b) review of an interim alternative educational setting or other placement to the extent required under federal law, or (c) a request by the school district for a determination that maintaining the current educational placement of the student is substantially likely to result in injury to the student or to others.

§ 3. The New York city charter is amended by adding a new section 1049-c to read as follows:

§ 1049-c. Special education hearings division. a. There shall be in the office of administrative trials and hearings a special education hearings division that shall be responsible for functions conducted by

impartial hearing officers pursuant to sections forty-four hundred four and forty-four hundred ten of the education law for the city school district.

b. The chief administrative law judge shall have authority to:

1. direct the division with respect to its management and structure;

2. appoint a staff of full-time attorneys and maintain a supplemental roster of independent contractors to serve as independent adjudicators with the authority of impartial hearing officers acting under sections forty-four hundred four and forty-four hundred ten of the education law. Such independent adjudicators shall have the qualifications required by such sections and applicable regulations of the state education commissioner, provided that they shall have a minimum of five years experience in the practice of law, including at least one year of practice or experience in the areas of education, special education, disability rights, civil rights or administrative law;

3. train and certify such attorneys and independent contractors as qualified to conduct hearings pursuant to sections forty-four hundred four and forty-four hundred ten of the education law, and require persons who have certification granted by the state education department to receive additional training to supplement the training provided pursuant to the education law and applicable regulations;

4. determine the compensation of such independent adjudicators;

5. assign independent adjudicators to cases on a rotational basis;

6. set deadlines and other requirements for the disposition of cases as needed to comply with applicable mandates;

7. evaluate, discipline and remove independent adjudicators in a manner consistent with sections thirteen-a, three hundred eighty-seven and eight hundred twelve of this charter. Independent adjudicators in the special education division shall not be subject to the provision of section one thousand forty-nine of this chapter that requires administrative law judges to be appointed for a term of five years, and shall not be required to reside within the city;

8. promulgate regulations concerning the conduct of impartial hearings that supplement regulations of the state education commissioner in order to promote the fair and efficient resolution of cases; and

9. take such other actions consistent with state regulations as the chief administrative law judge determines necessary to effectuate the prompt and efficient resolution of cases.

c. Independent adjudicators shall conduct hearings in a manner consistent with regulations issued by the state education commissioner pursuant to section forty-four hundred four and forty-four hundred ten of the education law, and any additional regulations issued by the chief administrative law judge. They may receive evidence, including but not limited to documentary and testimonial evidence. Testimony may be given in person, by telephone or video conference, provided that such testimony shall be made under oath and shall be subject to cross examination, provided further that all personally identifiable data, information or records pertaining to students with disabilities examined during such testimony shall be subject to the confidentiality requirements established by regulations of the state education commissioner and any additional confidentiality requirements established by the chief administrative law judge.

§ 4. No existing right or remedy of any character shall be lost, impaired or affected by reason of the adoption of this act.

§ 5. No action or proceeding, administrative, civil or criminal, pending at the time when this act shall take effect, brought by or against

the city school district of the city of New York or any agency or officer of such city school district, or any impartial hearing officer, shall be affected or abated by the adoption of this act or by anything contained herein.

§ 6. The state education commissioner, the chief administrative judge of the New York city office of administrative trials and hearings, and the chancellor of the New York city school district shall promulgate such regulations as are necessary to effectuate the purposes of this act consistent with applicable requirements of federal law, and shall take such other steps as are necessary to implement the requirements of this act.

§ 7. This act shall take effect immediately, provided that:

1. Impartial hearing officers assigned prior to the conclusion of the transition period described in subdivision two of this section to review a due process complaint or preside over a due process hearing pursuant to sections 4404 and 4410 of the education law shall continue to have jurisdiction with respect to such cases. After the conclusion of the transition period, impartial hearing officers shall not be assigned new cases arising from the city school district of the city of New York except by the office of administrative trials and hearings of the city of New York.

2. A transition period shall commence upon the effective date of this act. During such transition period, the city school district of the city of New York may refer cases to impartial hearing officers in accordance with provisions of the education law in effect prior to the transition period, or to the office of administrative trials and hearings of the city of New York. Such referrals shall be made in accordance with a random assignment system agreed upon between the city school district and such office. Such transition period shall end on the later of January 1, 2022 or 30 days after the date when the chief administrative law judge of the New York city office of administrative trials and hearings certifies to the state education commissioner that such office has taken all steps necessary to assume the responsibilities conferred on such office by this act.

3. The amendments to paragraph c of subdivision 1 of section 4404 of the education law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 22 of chapter 352 of the laws of 2005, as amended, when upon such date the provisions of section two of this act shall take effect.