

STATE OF NEW YORK

9287

IN ASSEMBLY

February 23, 2022

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

AN ACT to amend the education law, in relation to the appointment of impartial hearing officers to hear appeals of determinations regarding children with handicapping conditions

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 section 1 of chapter 583 of the laws of 2007, is
3 amended to 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. Individuals so
9 appointed shall not be an employee of the state educational agency or
10 the local educational agency involved in the education or care of the
11 child, or of any public agency or a person having a personal or profes-
12 sional interest that conflicts with the person's objectivity in the
13 hearing; nor may the impartial hearing officer be an employee of a muni-
14 cipality in which the school district is located or of any of its agen-
15 cies or instrumentalities; except that a city school district of a city
16 having a population of more than one million inhabitants shall be exempt
17 from such regulations to the extent it maintains its rotational
18 selection process in effect prior to July first, nineteen hundred nine-
19 ty-three. A record of proceedings before the impartial hearing officer
20 shall be maintained and made available to the parties, and the hearing
21 shall be conducted in accordance with the regulations of the commission-
22 er. The board of education or trustees of the school district or the
23 state agency responsible for providing education to students with disa-
24 bilities shall have the burden of proof, including the burden of persua-
25 sion and burden of production, in any such impartial hearing, except
26 that a parent or person in parental relation seeking tuition reimburse-
27 ment for a unilateral parental placement shall have the burden of

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

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

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

27 1. If the recommendation of the committee on special education is not
28 acceptable to the parent or person in parental relationship of a
29 student, or if the committee or board of education or trustees fails to
30 make or effectuate such a recommendation within such periods of time as
31 may be required by regulations of the commissioner, such parents or
32 persons in parental relationship shall notify the board of education of
33 this situation and the board shall appoint an impartial hearing officer
34 to hear the appeal and make a determination within such period of time
35 as the commissioner by regulation shall determine, provided that the
36 board of education or trustees shall offer the parent or person in
37 parental relationship the option of mediation pursuant to section
38 forty-four hundred four-a of this article as an alternative to an impar-
39 tial hearing. Individuals so appointed by a board of education shall be
40 selected from a list of available hearing officers who have successfully
41 completed a hearing officer training program conducted by the department
42 according to a rotation selection process prescribed in regulations of
43 the commissioner; except that a city school district of a city having a
44 population of more than one million inhabitants shall be exempt from
45 such regulations to the extent it maintains its rotational selection
46 process in effect prior to July first, nineteen hundred ninety-three.
47 Individuals so appointed shall not be an employee of the state educa-
48 tional agency or the local educational agency involved in the education
49 or care of the child, or of any public agency or a person having a
50 personal or professional interest that conflicts with the person's
51 objectivity in the hearing; nor may the impartial hearing officer be an
52 employee of a municipality in which the school district is located or of
53 any of its agencies or instrumentalities. A record of proceedings before
54 the hearing officer shall be maintained and made available to the
55 parties. The board of education or trustees of the school district or
56 the state agency responsible for providing education to students with

1 disabilities shall have the burden of proof, including the burden of
2 persuasion and burden of production, in any such impartial hearing,
3 except that a parent or person in parental relation seeking tuition
4 reimbursement for a unilateral parental placement shall have the burden
5 of persuasion and burden of production on the appropriateness of such
6 placement. The decision of the hearing officer shall be binding upon
7 both parties unless appealed to the state review officer. The commis-
8 sioner shall establish a department training program which shall be
9 completed to the satisfaction of the commissioner as a condition of
10 certification. The commissioner shall develop and implement a plan to
11 ensure that no individual employed by a school district, school or
12 program serving students with disabilities placed by a school district
13 committee on special education acts as an impartial hearing officer,
14 that no individual employed, controlled, managed or supervised by a
15 municipality or any department or agency therein shall serve as an
16 impartial hearing officer to preside over hearings in or concerning a
17 school district located within that municipality and that no individual
18 employed by such schools or programs serves as an impartial hearing
19 officer for two years following the termination of such employment. Such
20 plan shall be fully implemented no later than July first, nineteen
21 hundred ninety-six. The commissioner shall promulgate regulations estab-
22 lishing procedures for the suspension or revocation of impartial hearing
23 officer certification for good cause. The commissioner shall establish
24 maximum rates for the compensation of impartial hearing officers subject
25 to the approval of the director of the division of the budget. The
26 commissioner shall promulgate regulations establishing procedures and
27 timelines for expedited hearings in cases involving: (a) review of a
28 decision that a student with a disability's behavior was not a manifes-
29 tation of such student's disability, or (b) review of an interim alter-
30 native educational setting or other placement to the extent required
31 under federal law, or (c) a request by the school district for a deter-
32 mination that maintaining the current educational placement of the
33 student is substantially likely to result in injury to the student or to
34 others.

35 § 3. This act shall take effect immediately; provided, however, that
36 the amendments to paragraph c of subdivision 1 of section 4404 of the
37 education law made by section one of this act shall be subject to the
38 expiration and reversion of such subdivision pursuant to section 22 of
39 chapter 352 of the laws of 2005, as amended, when upon such date the
40 provisions of section two of this act shall take effect.