

STATE OF NEW YORK

7183

2021-2022 Regular Sessions

IN SENATE

June 4, 2021

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

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:

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 state agency or a board of education
5 ~~[or a state agency]~~ other than the board in a city school district of a
6 city having a population of more than one million inhabitants shall be
7 selected from a list of available impartial hearing officers who have
8 successfully completed an impartial hearing officer training program
9 conducted by the department according to a rotation selection process
10 prescribed in regulations of the commissioner~~;~~ ~~except that a city~~
11 ~~school district of a city having a population of more than one million~~
12 ~~inhabitants shall be exempt from such regulations to the extent it main-~~
13 ~~tains its rotational selection process in effect prior to July first,~~
14 ~~nineteen hundred ninety-three~~. In a city school district of a city
15 having a population of more than one million inhabitants, impartial
16 hearing officers shall be appointed from among independent adjudicators
17 employed by the office of administrative trials and hearings. An impar-
18 tial hearing officer may receive evidence, including but not limited to
19 documentary and testimonial evidence. Testimony may be given in person,
20 by telephone or video conference, provided that such testimony shall be
21 made under oath and shall be subject to cross examination, provided
22 further that all personally identifiable data, information or records
23 pertaining to students with disabilities examined during such testimony
24 shall be subject to the confidentiality requirements established by
25 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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1 impartial hearing officer shall be maintained and made available to the
2 parties, and the hearing shall be conducted in accordance with the regu-
3 lations of the commissioner. The board of education or trustees of the
4 school district or the state agency responsible for providing education
5 to students with disabilities shall have the burden of proof, including
6 the burden of persuasion and burden of production, in any such impartial
7 hearing, except that a parent or person in parental relation seeking
8 tuition reimbursement for a unilateral parental placement shall have the
9 burden of persuasion and burden of production on the appropriateness of
10 such placement. The decision of the impartial hearing officer shall be
11 binding upon both parties unless appealed to the state review officer.
12 The commissioner shall establish a department training program which
13 shall be completed to the satisfaction of the commissioner as a condi-
14 tion of certification, provided that the office of administrative trials
15 and hearings of a city having a population of more than one million
16 inhabitants shall be authorized to grant certification to persons who
17 have completed training required by such office, and to require addi-
18 tional training for persons who have received certification from the
19 state education department. Impartial hearing officers shall have the
20 qualifications specified in subsection (f) of section fourteen hundred
21 fifteen of title twenty of the United States code, the implementing
22 federal regulations and the regulations of the commissioner. The commis-
23 sioner shall promulgate regulations to ensure that no individual
24 employed by a school district, school or program serving students with
25 disabilities placed by a school district committee on special education
26 acts as an impartial hearing officer and that no individual employed by
27 such schools or programs serves as an impartial hearing officer for two
28 years following the termination of such employment. The commissioner
29 shall promulgate regulations establishing procedures for the suspension
30 or revocation of impartial hearing officer certification for good cause.
31 The commissioner shall establish maximum rates for the compensation of
32 impartial hearing officers appointed by a state agency or a board of
33 education other than the board in a city school district of a city
34 having a population of more than one million inhabitants, subject to the
35 approval of the director of the division of the budget.

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

38 1. If the recommendation of the committee on special education is not
39 acceptable to the parent or person in parental relationship of a
40 student, or if the committee or board of education or trustees fails to
41 make or effectuate such a recommendation within such periods of time as
42 may be required by regulations of the commissioner, such parents or
43 persons in parental relationship shall notify the board of education of
44 this situation and the board shall appoint an impartial hearing officer
45 to hear the appeal and make a determination within such period of time
46 as the commissioner by regulation shall determine, provided that the
47 board of education or trustees shall offer the parent or person in
48 parental relationship the option of mediation pursuant to section
49 forty-four hundred four-a of this article as an alternative to an impar-
50 tial hearing. Individuals so appointed by a board of education shall be
51 selected from a list of available hearing officers who have successfully
52 completed a hearing officer training program conducted by the department
53 according to a rotation selection process prescribed in regulations of
54 the commissioner; except that in a city school district of a city having
55 a population of more than one million inhabitants ~~[shall be exempt from~~
56 ~~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 hear-
ings. 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 exam-
ination, provided further that all personally identifiable data, infor-
mation or records pertaining to students with disabilities examined
during such testimony shall be subject to the confidentiality require-
ments 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 inhabit-
ants 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 educa-
tional 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 substan-
tially 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

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

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

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

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

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

22 4. determine the compensation of such independent adjudicators;

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

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

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

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

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

39 c. Independent adjudicators shall conduct hearings in a manner
40 consistent with regulations issued by the state education commissioner
41 pursuant to section forty-four hundred four and forty-four hundred ten
42 of the education law, and any additional regulations issued by the chief
43 administrative law judge. They may receive evidence, including but not
44 limited to documentary and testimonial evidence. Testimony may be given
45 in person, by telephone or video conference, provided that such testimo-
46 ny shall be made under oath and shall be subject to cross examination,
47 provided further that all personally identifiable data, information or
48 records pertaining to students with disabilities examined during such
49 testimony shall be subject to the confidentiality requirements estab-
50 lished by regulations of the state education commissioner and any addi-
51 tional confidentiality requirements established by the chief administra-
52 tive law judge.

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

55 § 5. No action or proceeding, administrative, civil or criminal, pend-
56 ing at the time when this act shall take effect, brought by or against

1 the city school district of the city of New York or any agency or offi-
2 cer of such city school district, or any impartial hearing officer,
3 shall be affected or abated by the adoption of this act or by anything
4 contained herein.

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

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

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

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

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