

STATE OF NEW YORK

8720

IN SENATE

March 4, 2024

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

AN ACT to amend the education law, in relation to the burden of proof for appeal procedures for 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 education law, as amended by section 1 of chapter 583 of the laws of 2007, is
2 amended to read as follows:

3 c. Individuals so appointed by a board of education or a state agency
4 shall be selected from a list of available impartial hearing officers
5 who have successfully completed an impartial hearing officer training
6 program conducted by the department according to a rotation selection
7 process prescribed in regulations of the commissioner; except that a
8 city school district of a city having a population of more than one
9 million inhabitants shall be exempt from such regulations to the extent
10 it maintains its rotational selection process in effect prior to July
11 first, nineteen hundred ninety-three. A record of proceedings before the
12 impartial hearing officer shall be maintained and made available to the
13 parties, and the hearing shall be conducted in accordance with the regulations of the commissioner. The [~~board of education or trustees of the~~
14 ~~school district or the state agency responsible for providing education~~
15 ~~to students with disabilities~~] parent or person in parental relationship
16 shall have the burden of proof, including the burden of persuasion and
17 burden of production, in any such impartial hearing[~~, except that a~~
18 ~~parent or person in parental relation seeking tuition reimbursement for~~
19 ~~a unilateral parental placement shall have the burden of persuasion and~~
20 ~~burden of production on the appropriateness of such placement~~]. The
21 decision of the impartial hearing officer shall be binding upon both
22 parties unless appealed to the state review officer. The commissioner
23 shall establish a department training program which shall be completed
24 to the satisfaction of the commissioner as a condition of certification.
25 Impartial hearing officers shall have the qualifications specified in
26 subsection (f) of section fourteen hundred fifteen of title twenty of
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 the United States code, the implementing federal regulations and the
2 regulations of the commissioner. The commissioner shall promulgate regu-
3 lations to ensure that no individual employed by a school district,
4 school or program serving students with disabilities placed by a school
5 district committee on special education acts as an impartial hearing
6 officer and that no individual employed by such schools or programs
7 serves as an impartial hearing officer for two years following the
8 termination of such employment. The commissioner shall promulgate regu-
9 lations establishing procedures for the suspension or revocation of
10 impartial hearing officer certification for good cause. The commissioner
11 shall establish maximum rates for the compensation of impartial hearing
12 officers subject to the approval of the director of the division of the
13 budget.

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

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

1 first, nineteen hundred ninety-six. The commissioner shall promulgate
2 regulations establishing procedures for the suspension or revocation of
3 impartial hearing officer certification for good cause. The commissioner
4 shall establish maximum rates for the compensation of impartial hearing
5 officers subject to the approval of the director of the division of the
6 budget. The commissioner shall promulgate regulations establishing
7 procedures and timelines for expedited hearings in cases involving: (a)
8 review of a decision that a student with a disability's behavior was not
9 a manifestation of such student's disability, or (b) review of an inter-
10 im alternative educational setting or other placement to the extent
11 required under federal law, or (c) a request by the school district for
12 a determination that maintaining the current educational placement of
13 the student is substantially likely to result in injury to the student
14 or to others.

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