STATE OF NEW YORK

195

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

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:

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 amended to read as follows:

c. Individuals so appointed by a board of education or a state agency 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**. Individuals so appointed shall not be an employee of the state educational agency or the local educational agency involved in the education or care of the child, or of any public agency or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing; nor may the impartial hearing officer be an employee of a municipality in which the school district is located or of any of its agencies or instrumentalities**; 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. A record of proceedings before the 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 disa-

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

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bilities 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. 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, controlled, managed or supervised by a municipality or any department or agency therein, shall serve as an impartial hearing officer to preside over hearings in or concerning a school district located within that municipality,** 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 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 section 2 of 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 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. **Individuals so appointed shall not be an employee of the state educational agency or the local educational agency involved in the education or care of the child, or of any public agency or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing; nor may the impartial hearing officer be an employee of a municipality in which the school district is located or of**

any of its agencies or instrumentalities. 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. 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, that no individual employed, controlled, managed or supervised by a municipality or any department or agency therein shall serve as an impartial hearing officer to preside over hearings in or concerning a school district located within that municipality 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 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. This act shall take effect immediately; provided, however, that 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.