

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

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.