

# STATE OF NEW YORK

146

2025-2026 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. EICHENSTEIN, HEVESI, SIMON, SAYEGH, CRUZ, COLTON, ROZIC, MEEKS, TAYLOR -- 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

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

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

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

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

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

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