

## Mandate Review Request #2012040022

**Note:** All information below was provided by the local government/Mandate Relief Council Member requesting that a mandate be reviewed. Neither the Council nor its staff has verified the accuracy of the information provided or made any other edits.

**Name of Local Government:** Mahopac Central School District  
**Type of Local Government:** School District  
**County:** Putnam

**Name of Mandate:** Burden of Proof

**Type of Mandate:** Statute

**Citation for Mandate:** Section 4404 of the Education Law, Laws of New York, 2007, Chapter 583.

**Description of Mandate:** Chapter 583 of the Laws of 2007 was enacted to provide that the burden of proof in an impartial due process hearing pursuant to §4404(1) of Education Law to challenge the recommendation of a Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE), or otherwise challenge actions or omissions relating to the provision of a free appropriate public education (FAPE) to a student with a disability, is generally placed on the school district (or State agency) providing special education to the student. The law creates an exception for impartial hearings in which the parent seeks tuition reimbursement for a unilateral placement in a private school. Chapter 583 took effect 60 days from August 15, 2007.

**Recommended Change:** Amend the Law to shift the burden of proof from schools back to the parent. This Chapter of the Law permits parents to unilaterally place children in private in-state or out-of-state programs, prior to any CSE determination. This forces the District to prove that appropriate in-house programs exist after the unilateral placement, rather than the parents being required to prove that their unilateral placement is appropriate before and if the placement were to be approved by the Committee on Special Education. For example, a child might be placed in a private program for a 12-month period of \$10,000 per month and the District has potential, retroactive liability to reimburse the parent for \$120,000 which may not be eligible for state aid reimbursement. Additional expenses may be incurred by the District should the Impartial Hearing Officer concur with the parent thus requiring the District to pay the parent for legal fees.

**Estimated Savings from the Recommended Change to the Local Government:** Varies on a case-by-case basis. The example used results in a District expense of more than \$120,000 for a 12-month period.

## **Estimated Statewide Savings from the Recommended Change:**

**Description of Methodology Used in Estimating Savings:** A recent case currently under litigation would result in the District having to pay \$10,000 per month for 12 months which includes the ten month regular school year and a two month extended school year program for a total of \$120,000. In addition, if the District were required to pay for the parent's legal fees, the cost to the District could easily double.