

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 3214, 4403, 4404 and 4410 of the Education Law.

1. Paragraph (1) of subdivision (x) of section 200.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(1) be an individual admitted to the practice of law [in the State of New York] who is currently in good standing and who has a minimum of [two years] one year of practice and/or experience in the areas of education, special education, disability rights [or], civil rights or administrative law; or be an individual certified by the State of New York as an impartial hearing officer on September 1, 2001;

2. Paragraph (2) of subdivision (e) of section 200.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) Each public school, public agency [and], approved private school, and impartial hearing officer subject to the provisions of this Part shall preserve the confidentiality of personally identifiable data, information or records pertaining to students with disabilities. Such confidentiality must be preserved in a manner consistent with the procedures adopted pursuant to section 200.2(b)(6) of this Part and/or in accordance with 20 USC 1232(g) and the provisions of part 99 of title 34 of the Code of Federal Regulations or its successor and sections 300.610 through 300.625. (United States Code, 2006 edition, volume 12, 2008; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-9328: 2004; Code of Federal Regulations, 2009 edition, title 34, part 99, Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; Code of Federal Regulations, 2009 edition, title 34, sections 300.610-300.625, Superintendent of

Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the Office of Counsel, New York State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234).

3. Clause (c) of subparagraph (xii) of paragraph (3) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(c) The impartial hearing officer may receive any oral, documentary or tangible evidence except that the impartial hearing officer shall exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious. The impartial hearing officer may receive testimony by telephone or video conference, provided that such testimony shall be made under oath and shall be subject to cross examination.

4. Subparagraph (xii) of paragraph (3) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended by adding a new clause (i) to read as follows:

(i) The impartial hearing officer may conduct the impartial hearing by video conference or teleconference with consent of the parent which may be obtained at a pre-hearing conference, or at a minimum of 10 days before the scheduled hearing date, provided that all personally identifiable data, information or records pertaining to students with disabilities during such hearing shall be subject to the requirements of section 200.5(e)(2) of this Part.

5. The opening paragraph of paragraph (5) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education are amended to read as follows:

(5) Timeline to render a decision. Except as provided in section 200.16(h)(9) of this Part and section 201.11 of this Title, if a school district files the due process complaint, the impartial hearing officer shall render a decision and mail a copy of the written, or at the option of the parents, electronic findings of fact and the decision to the parents and to the board of education not later than 45 days from the day after the public agency's due process complaint is received by the other party and the State Education Department. Except as provided in section 200.16(h)(9) of this Part and section 201.11 of this Title, if the parent files the due process complaint notice, the decision is due not later than 45 days from the day after one of the following events, whichever shall occur first: (a) both parties agree in writing to waive the resolution meeting; (b) after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; (c) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process; or (d) the expiration of the 30-day resolution period. In cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the impartial hearing officer closes the record. The date the record is closed shall be indicated in the decision.

Whether the parent or school district filed the due process complaint, the impartial hearing officer shall render a decision in a format consistent with State Education Department guidelines wherein all personally identifiable data, information or records pertaining to students with disabilities shall be subject to the requirements of section 200.5(e)(2) of this Part. After a final decision has been rendered, the impartial hearing

officer shall promptly transmit the record to the school district together with a certification of the materials included in the record. The record of the hearing and the findings of fact and the decision shall be provided at no cost to the parents. Within 15 days of mailing the decision to the parties, the impartial hearing officer shall submit the decision to the Office of Special Education of the State Education Department. All personally identifiable information, in accordance with the guidelines provided by the commissioner, shall be deleted from the copy forwarded to the Office of Special Education.