

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 3214, 4403, 4404, and 4410 of the Education Law and Chapter 812 of the Laws of 2021.

1. Clause (a) of subparagraph (i) of paragraph (3) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education, is amended to read as follows:

(a) (1) The rotational selection process must be initiated immediately, but not later than two business days after receipt by the school district of the due process complaint notice or mailing of the due process complaint notice to the parent.

(2) Notwithstanding subclause (1) of this clause, pursuant to Education Law §4404(1-a), if an impartial hearing officer is not appointed within one hundred ninety six days from receipt by the district of a due process complaint filed by the parent regarding the evaluation, educational placement, provision of a free appropriate public education to the student or in accordance with Education Law §3602-c, an opportunity to seek accelerated relief pursuant to subdivision (o) of this section shall be provided. Temporary appointment of an impartial hearing officer to determine the student's placement during the pendency of a proceeding brought pursuant to this Part, consolidation of cases, or provision of an independent educational evaluation, or when a refiled case is assigned pursuant to subparagraph (iv) of paragraph (6) of this subdivision and subsequently placed back on the list of due process complaint notices awaiting appointment of an impartial hearing officer shall not constitute appointment of an impartial hearing officer for the purposes of the paragraph above.

2. Section 200.5 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (o) to read as follows:

(o) Accelerated review and order of relief.

(1) Pursuant to Education Law §4404(1-a) a district shall notify a parent in writing no later than five business days after one hundred ninety days have elapsed since the filing of the due process complaint. Thereafter, the parent may request immediate appointment of an impartial hearing officer to undertake an accelerated review, under the following circumstances:

(i) the complaint does not involve a claim regarding initial identification as a student with a disability or a manifestation determination;

(ii) the parent requests initiation of accelerated review; and

(iii) the parent agrees that the review will be conducted based exclusively on the written record developed pursuant to this section.

(2) When accelerated review is sought, the district shall be deemed to have denied the student a free appropriate public education by virtue of the delay in the appointment of an impartial hearing officer. This finding is binding and shall not be subject to appeal to a State review officer of the State Education Department pursuant to subdivision (k) of this section.

(3) The accelerated review shall be conducted in place of the hearing procedures specified in subdivision (j) of this section and shall be conducted in accordance with the following schedule:

(i) Within one business day of receipt of a parent's request for accelerated review, an impartial hearing officer shall be appointed pursuant to subdivision (e) of section 200.2 of this Part to conduct the accelerated review.

(ii) Within two business days of appointment, the impartial hearing officer shall notify the parties via email of the schedule for the electronic submission by the parent of a proposed order of relief and supporting written documentation pursuant to this section; such documentation may include affidavits, affirmations, and/or declarations as well as exhibits.

(iii) The schedule must require completion of the parent's submission of all documentation via email to the impartial hearing officer and to the district's representative no later than 10 business days after the date of the impartial hearing officer's notification pursuant to subparagraph (ii) of this paragraph.

(iv) Within two business days after receipt of the parents' electronic submission, the school district may file objections to the proposed relief together with a proffer of any documentation it wishes to be permitted to enter into the record for review by the impartial hearing officer. The district's objections and any supporting documentation must be submitted via email to the impartial hearing officer and the parent.

(v) Within two business days after receipt of the school district's objections to the proposed relief, if any, the parent may submit a written response via email to the impartial hearing officer and to the district's representative.

(vi) Within two business days after receipt of the parent's response, if any, or two business days after receipt of the parents' proposed order and evidence, if no objections and supporting documentation are submitted, the impartial hearing officer

shall determine what documents are to be admitted, and shall certify the record that forms the basis for the order of relief or finding.

(vii) Within two business days after certification of the record, the impartial hearing officer shall issue a final determination in the form of:

(a) the order of relief proposed by the parents;

(b) the order of relief proposed by the parents as modified by the impartial hearing officer based upon the written record; or

(c) a finding that no relief is warranted based upon the written record.

(vii) If either party disagrees with the impartial hearing officer's order of relief or finding, they retain the right to appeal to a State review officer of the State Education Department consistent with paragraph two of this subdivision and with the procedures outlined in subdivision (k) of this section, except that a parent cannot appeal a final determination in the form of the order of relief proposed by the parent.

(4) School districts that have had due process complaint notices resolved pursuant to this subdivision shall report annually, on a form and in a format prescribed by the Commissioner, the number of complaints that sought accelerated relief, the nature of the particular relief sought, and the resolution of such complaints, to the governor, the Commissioner, the temporary president of the senate, the speaker of the assembly, the chair of the senate education committee, the chair of the senate city of New York education committee and the chair of the assembly education committee.

3. Subdivision (a) of section 200.21 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) *Impartial hearing officer rates.* Commencing July 1, 1995, impartial hearing officers shall be compensated in an amount not to exceed the applicable rate prescribed in a schedule of maximum rates approved by the director of the Division of the Budget. Provided, however, that any impartial hearing officers, other than impartial hearing officers assigned by a permanent, standing administrative tribunal in a city school district having a population of one million or more inhabitants, who are appointed to conduct an accelerated review as outlined in subdivision (o) of section 200.5 of this Part shall be compensated at a flat rate of \$500 per case.