§ 4404. Appeal procedures for children with disabilities. * 1. a. If the parent or person in parental relation of a student, the board of education or trustees of a school district or a state agency responsible for providing education to students with disabilities presents a complaint with respect to any matter relating to the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student or a manifestation determination or other matter relating to placement upon discipline of a student with a disability that may be the subject of an impartial hearing pursuant to subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations, and the party presenting the complaint or their attorney provides a due process complaint notice in accordance with federal law and regulations and such complaint sets forth an alleged violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis for the complaint, the board or agency shall appoint an impartial hearing officer to review the due process complaint notice when challenged and, if the matter is not resolved in a resolution session that has been convened as required by federal law, to preside over an impartial due process hearing and make a determination within such period of time as the commissioner by regulation shall determine, provided that the board of education or trustees shall offer the parent or person in parental relation the option of mediation pursuant to section forty-four hundred four-a of this article as an alternative to an impartial hearing. Where the parent or person in parental relation or a school district or public agency presents a complaint, the school district or public agency responsible for appointing the impartial hearing officer shall provide the parent or person in parental relation with a procedural safeguards notice as required pursuant to subsection (d) of section fourteen hundred fifteen of title twenty of the United States code and the implementing federal regulations. Notwithstanding any provision of this subdivision to the contrary, the time limitation on presenting a complaint shall not apply to a parent or person in parental relation to the student if the parent or person in parental relation was prevented from requesting the impartial hearing due to specific misrepresentations by the school district or other public

agency that it had resolved the problem forming the basis of the complaint or due to the school district's or other public agency's withholding of information from the parent or person in parental relation that was required under federal law to be provided. Nothing in this subdivision shall be construed to authorize the board of education or trustees to bring an impartial hearing to override the refusal of a parent or person in parental relation to consent where a local educational agency is prohibited by federal law from initiating such a hearing.

b. If a resolution session resolves the complaint, the parties shall execute a legally binding agreement that is signed by both the parent or person in parental relation and a representative of the school district or public agency who has the authority to bind such district or agency and shall be enforceable in any state court of competent jurisdiction or a United States district court. A party may void such agreement within three business days of the agreement's execution.

c. Individuals so appointed by a board of education or a state agency shall be selected from a list of available impartial hearing officers who have successfully completed an impartial hearing officer training program conducted by the department according to a rotation selection process prescribed in regulations of the commissioner; except that a city school district of a city having a population of more than one million inhabitants shall be exempt from such regulations to the extent it maintains its rotational selection process in effect prior to July first, nineteen hundred ninety-three. A record of proceedings before the impartial hearing officer shall be maintained and made available to the parties, and the hearing shall be conducted in accordance with the regulations of the commissioner. The board of education or trustees of the school district or the state agency responsible for providing education to students with disabilities shall have the burden of proof, including the burden of persuasion and burden of production, in any such impartial hearing, except that a parent or person in parental relation seeking tuition reimbursement for a unilateral parental placement shall have the burden of persuasion and burden of production on the appropriateness of such placement. The decision of the impartial hearing

officer shall be binding upon both parties unless appealed to the state review officer. The commissioner shall establish a department training program which shall be completed to the satisfaction of the commissioner as a condition of certification. Impartial hearing officers shall have the qualifications specified in subsection (f) of section fourteen hundred fifteen of title twenty of the United States code, the implementing federal regulations and the regulations of the commissioner. The commissioner shall promulgate regulations to ensure that no individual employed by a school district, school or program serving students with disabilities placed by a school district committee on special education acts as an impartial hearing officer and that no individual employed by such schools or programs serves as an impartial hearing officer for two years following the termination of such employment. The commissioner shall promulgate regulations establishing procedures for the suspension or revocation of impartial hearing officer certification for good cause. The commissioner shall establish maximum rates for the compensation of impartial hearing officers subject to the approval of the director of the division of the budget.

d. The commissioner shall promulgate regulations establishing procedures and timelines for expedited hearings in cases involving: (1) review of a decision that a student with a disability's behavior was not a manifestation of such student's disability, or (2) review of an interim alternative educational setting or other placement to the extent required under federal law, or (3) a request by the school district for a determination that maintaining the current educational placement of the student is substantially likely to result in injury to the student or to others.

* NB Effective until June 30, 2027

* 1. If the recommendation of the committee on special education is not acceptable to the parent or person in parental relationship of a student, or if the committee or board of education or trustees fails to make or effectuate such a recommendation within such periods of time as may be required by regulations of the commissioner, such parents or persons in parental relationship shall notify the board of education of this situation and the board shall appoint an impartial hearing officer to hear the appeal and make a determination within such period of time

as the commissioner by regulation shall determine, provided that the board of education or trustees shall offer the parent or person in parental relationship the option of mediation pursuant to section forty-four hundred four-a of this article as an alternative to an impartial hearing. Individuals so appointed by a board of education shall be selected from a list of available hearing officers who have successfully completed a hearing officer training program conducted by the department according to a rotation selection process prescribed in regulations of the commissioner; except that a city school district of a city having a population of more than one million inhabitants shall be exempt from such regulations to the extent it maintains its rotational selection process in effect prior to July first, nineteen hundred ninety-three. A record of proceedings before the hearing officer shall be maintained and made available to the parties. The board of education or trustees of the school district or the state agency responsible for providing education to students with disabilities shall have the burden of proof, including the burden of persuasion and burden of production, in any such impartial hearing, except that a parent or person in parental relation seeking tuition reimbursement for a unilateral parental placement shall have the burden of persuasion and burden of production on the appropriateness of such placement. The decision of the hearing officer shall be binding upon both parties unless appealed to the state review officer. The commissioner shall establish a department training program which shall be completed to the satisfaction of the commissioner as a condition of certification. The commissioner shall develop and implement a plan to ensure that no individual employed by a school district, school or program serving students with disabilities placed by a school district committee on special education acts as an impartial hearing officer and that no individual employed by such schools or programs serves as an impartial hearing officer for two years following the termination of such employment. Such plan shall be fully implemented no later than July first, nineteen hundred ninety-six. The commissioner shall promulgate regulations establishing procedures for the suspension or revocation of impartial hearing officer certification for good cause. The commissioner shall establish maximum rates for the compensation of impartial hearing officers subject to the approval of the director of the division of the budget. The commissioner shall

promulgate regulations establishing procedures and timelines for expedited hearings in cases involving: (a) review of a decision that a student with a disability's behavior was not a manifestation of such student's disability, or (b) review of an interim alternative educational setting or other placement to the extent required under federal law, or (c) a request by the school district for a determination that maintaining the current educational placement of the student is substantially likely to result in injury to the student or to others.

* NB Effective June 30, 2027

1-a. If the parent or person in parental relation of a student files a due process complaint notice seeking an impartial due process hearing with respect to the evaluation, educational placement, provision of a free appropriate public education to the student or in accordance with section thirty-six hundred two-c of this chapter and an impartial hearing officer is not appointed within one hundred ninety-six days after filing such due process complaint notice with the local school district, in accordance with regulations promulgated pursuant to this section by the commissioner, an impartial hearing officer may then be immediately appointed to issue an order based upon a proposed order of relief submitted by the parent or person in parental relation of the student identifying appropriate and individualized programs and services for the student. School districts subject to this subdivision shall annually report, on a form prescribed by the commissioner, on the number of complaints that seek this relief, the 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.

2. Review by state review officer. A state review officer of the education department shall review and may modify, in such cases and to the extent that the review officer deems necessary, in order to properly effectuate the purposes of this article, any determination of the impartial hearing officer relating to the determination of the nature of a child's disability, selection of an appropriate special education

program or service and the failure to provide such program and require such board to comply with the provisions of such modification. The commissioner shall adopt regulations governing the practice and procedure in such appeals to the state review officer; provided, however, that in no event shall any fee or charge whatsoever be imposed for any appeal taken pursuant to this subdivision. The state review officer is empowered to make all orders which are proper or necessary to give effect to the decision of the review officer.

3. Review of the determination of a state review officer regarding children with disabilities.

* a. Any final determination or order of a state review officer rendered pursuant to subdivision two of this section may only be reviewed in a proceeding brought in the supreme court pursuant to article four of the civil practice law and rules, and paragraph b of this subdivision, or in United States district court. Any such proceeding shall be commenced within four months after the determination to be reviewed becomes final and binding on the parties.

* NB Effective until June 30, 2027

* a. Any final determination or order of a state review officer rendered pursuant to subdivision two of this section may only be reviewed in a proceeding brought in the supreme court pursuant to article four of the civil practice law and rules, and paragraph b of this subdivision, or in United States district court.

* NB Effective June 30, 2027

* b. In any such proceeding under article four of the civil practice law and rules, the court may grant any relief authorized by the provisions of rule four hundred eleven of such law and rules, which shall include any relief available in a civil action under section six hundred fifteen of the individuals with disabilities education act (20 U.S.C. section 1415) and also may, in its discretion remand the proceedings to the state review officer for further consideration upon a finding that any relevant and material evidence is then available which was not previously considered by the state review officer. Such proceeding shall be deemed a proceeding against a body or officer for purposes of section five hundred six of the civil practice law and rules. The court shall receive the records of the administrative

proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

* NB Effective until June 30, 2027

* b. In any such proceeding under article four of the civil practice law and rules, the court may grant any relief authorized by the provisions of rule four hundred eleven of such law and rules, which shall include any relief available in a civil action under section six hundred fifteen of the individuals with disabilities education act (20 U.S.C. section 1415) and also may, in its discretion remand the proceedings to the state review officer for further consideration upon a finding that any relevant and material evidence is then available which was not previously considered by the state review officer. Such proceeding shall be deemed a proceeding against a body or officer for purposes of sections two hundred seventeen and five hundred six of the civil practice law and rules. The court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

* NB Effective June 30, 2027

4. a. During the pendency of any proceedings conducted pursuant to this section, other than a proceeding subject to paragraph b of this subdivision, and during the initial identification, evaluation and placement procedure pursuant to this section and during the initial identification, evaluation and placement procedure pursuant to section forty-four hundred two of this article, unless the local school district and the parents or persons in parental relationship otherwise agree, the student shall remain in the then current educational placement of such student, or, if applying for initial admission to a public school, shall be placed in the public school program until all such proceedings have been completed.

* b. For students with disabilities placed in an interim alternative educational setting pursuant to clause (iv) or (vii) of subparagraph three of paragraph g of subdivision three of section thirty-two hundred fourteen of this chapter, during the pendency of proceedings conducted

pursuant to this section in which the parents or persons in parental relation challenge the interim alternative educational setting or a manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the impartial hearing officer or until expiration of the time period of the student's placement in an interim alternative educational setting, whichever comes first, unless the local school district and the parents or persons in parental relation otherwise agree. After the expiration of such placement in an interim alternative educational setting, if the school district proposes to change the student's placement, during the pendency of any proceedings to challenge the proposed change in placement, the student shall return to and remain in the current educational placement, which shall be the student's placement prior to the interim alternative educational setting, unless the local school district and the parents or persons in parental relation otherwise agree or unless as a result of a decision by an impartial hearing officer in an expedited hearing, the interim alternative educational setting is extended for a period not to exceed forty-five school days based on a determination that maintaining the current educational placement of the student is substantially likely to result in injury to the student or to others. Such procedure for extension of an interim alternative educational setting may be repeated as necessary.

* NB Effective until June 30, 2027

* b. For students with disabilities placed in an interim alternative educational setting pursuant to clause (iv) or (vii) of subparagraph three of paragraph g of subdivision three of section thirty-two hundred fourteen of this chapter, during the pendency of proceedings conducted pursuant to this section in which the parents or persons in parental relationship challenge the interim alternative educational setting or a manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until expiration of the time period of the student's interim alternative placement, whichever comes first, unless the local school district and the parents or persons in parental relationship otherwise agree. After the expiration of such interim alternative educational placement, if the school district proposes to change the student's placement, during the pendency of any proceedings to challenge the

proposed change in placement, the student shall return to and remain in the current educational placement, which shall be the student's placement prior to the interim alternative educational setting, unless the local school district and the parents or persons in parental relationship otherwise agree or unless as a result of a decision by an impartial hearing officer in an expedited hearing, the interim alternative educational setting is extended or another appropriate placement is ordered for a period not to exceed forty-five days based on a determination that maintaining the current educational placement of the student is substantially likely to result in injury to the student or to others. Such procedure for extension of an interim alternative educational setting may be repeated as necessary.

* NB Effective June 30, 2027

5. For purposes of this section, to the extent required by federal law, a student presumed to have a disability for discipline purposes shall be deemed to be a student with a disability and the parents or persons in parental relationship of a student presumed to have a disability for discipline purposes shall be afforded the procedural rights of the parents or persons in parental relationship of a student with a disability. Nothing in this section shall be construed to confer upon a student presumed to have a disability for disciplinary purposes greater procedural rights than such student would have under the provisions of section six hundred fifteen of the individuals with disabilities education act.