§ 764. Court-ordered consolidation; mediation; judicial hearing officer. 1. If the governing body or bodies of local government entities with a duty to prepare and approve a proposed elector initiated consolidation plan pursuant to section seven hundred sixty of this title fail to prepare and approve such plan or are otherwise unable or unwilling to accomplish and complete the consolidation pursuant to the provisions of this title, then any five electors who signed the petition seeking consolidation may commence a special proceeding against the entities pursuant to article seventy-eight of the civil practice law and rules, in the supreme court within the judicial district in which the consolidated local government entity or the greater portion of its territory will be located, to compel compliance with the provisions of this article.

2. If the court finds that the governing body or bodies attempted in good faith to prepare and approve a proposed elector initiated consolidation plan but were nevertheless unsuccessful, then the court may refer such matter to mediation pursuant to law, with costs of such mediation to be borne by the entities in such proportion as the court shall determine based on appropriate factors including population and the good faith efforts of the respective entities. If the governing body or bodies thereupon prepare and approve a proposed elector initiated consolidation plan conforming to the requirements of subdivision two of section seven hundred sixty of this title, then the provisions of sections seven hundred sixty-one, seven hundred sixty-two and seven hundred sixty-three of this title shall apply as if the governing body or bodies had proposed such plan without the benefit of court-ordered mediation.

3. In all other cases, if the petitioners in such special proceeding shall substantially prevail, then the court shall issue an injunction ordering the governing body or bodies of the local government entities to comply with the applicable provisions of this article. If the governing body or bodies shall violate the injunction, then the court shall appoint a judicial hearing officer pursuant to article forty-three of the civil practice law and rules to hear and determine an elector initiated consolidation plan for the entities that complies with the

provisions of subdivision two of section seven hundred sixty of this title.

4. The final determination of the judicial hearing officer shall constitute final approval of the elector initiated consolidation plan and provide such plan takes effect forty five days after the filing of such determination with the clerk of the court, unless a petition for a permissive referendum is properly filed pursuant to section seven hundred sixty-three of this title.

5. In any proceeding pursuant to this section in which the petitioners substantially prevail, the costs of such proceeding, including the costs of any judicial hearing officer appointed pursuant to subdivision three of this section, shall be borne by the local government entities proportionately, at the rate provided for in article twenty-two of the judiciary law and regulations promulgated pursuant thereto based on appropriate factors, including, but not limited to, population and the court's findings regarding the good faith efforts of the respective entities.