



Legislation Text

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Res. No. 338

Resolution calling upon the New York City Department of Education and the New York State Education Department to meet their obligations under state and federal law to provide impartial due process hearings in a timely manner as they relate to resolving complaints filed by families of students with disabilities.

By the Public Advocate (Mr. Williams) and Council Member Bottcher

Whereas, Under the federal Individuals with Disabilities Education Act (IDEA), New York State (NYS) must provide a free and appropriate public education (FAPE) to all students residing in the State, including students with disabilities, between the ages of 3 and 21; and

Whereas, In NYS, for any disputes that arise between the student's family and the school district regarding matters relating to the identification, evaluation or educational placement of a student with a disability or the provision of FAPE to the student, both parties must have an opportunity for an impartial due process hearing; and

Whereas, The hearing must be conducted by the New York State Education Department (NYSED) and an impartial hearing officer must be appointed to hear and decide the dispute between the family and the school district; and

Whereas, While the IDEA requires a final decision in non-disciplinary cases to be reached and mailed to each of the parties within 75 days, the average complaint against the New York City Department of Education (DOE) was open for 225 days during the 2018-19 school year; and

Whereas, According to the NYSED Office of Special Education DOE Compliance Assurance Plan, as of 2019, the DOE has been out of compliance with IDEA on its delivery of services for special education students for at least thirteen consecutive school years; and

Whereas, Noncompliance includes failure to provide related services to students with disabilities as recommended on students' Individualized Education Programs (IEP) and failure to provide families access to adequate due process after a complaint has been filed; and

Whereas, On January 6, 2020, NYSED records indicated approximately 10,000 open special education due process complaints in New York City, as compared to 209 in the rest of NYS; and

Whereas, According to the NYSED External Review of The New York City Impartial Hearing Office Report, due process complaints increased 42% from the 2014-15 to the 2018-19 school years; and

Whereas, On June 29, 2021, special education advocates from nine legal services organizations sent a letter to NYSED and DOE officials reiterating NYSED's and DOE's legal obligations to provide due process hearings in a timely matter and recommending solutions to the hearing delays; and

Whereas, The letter also highlighted that low-income children whose families cannot afford the cost of required services on their own while waiting for their claims to be processed are disproportionately impacted; and

Whereas, Further, these delays cause students to miss out on critical services, such as not receiving physical therapy or other services listed on a student's IEP, which are necessary to their development and learning process; and

Whereas, NYSED and DOE should enhance resources such as additional hearing spaces and impartial hearing officers and make efforts to increase their capacity to conduct timely due process hearings; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York City Department of Education and New York State Education Department to meet their obligations under state and federal law to provide impartial due process hearings in a timely manner as they relate to resolving complaints filed by families of students with disabilities.

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