

## Instruction

**SUBJECT: IMPARTIAL DUE PROCESS HEARINGS/SELECTION OF IMPARTIAL HEARING OFFICERS**

The parent/person in parental relation of a student with a disability may file a written request with the Board for an impartial due process hearing with respect to any matter relating to the identification, evaluation, educational placement, provision of a free appropriate public education, manifestation determination or other matter relating to discipline. The Board may also initiate such hearing.

The School District is committed to making every effort to amicably resolve differences involving the educational programs for students with disabilities. Mediation will be available to resolve disputes involving any matter, including matters arising prior to the filing of a request for an impartial hearing. In addition, the District may establish procedures providing the opportunity to meet with a disinterested party from a community dispute resolution center for an explanation of the benefits of the mediation process.

For those exceptional circumstances where a more formal method is required, the impartial hearing process will be utilized. The Impartial Hearing Officer (IHO) renders a written decision after the parties present and refute evidence before him/her. The decision of the IHO is final and binding on both parties unless appealed to the State Review Officer (SRO).

**Impartial Due Process Hearing Process**

The request for an impartial due process hearing must be submitted within two (2) years of the date the parent or the District knew or should have known about the alleged action forming the basis of the complaint. However, the two (2) year timeline does not apply if the parent was prevented from requesting the hearing due to specific misrepresentations by the District that it had resolved the problem or the District's withholding of information from the parent that is required by Commissioner's Regulations.

The following is an overview of the impartial hearing process/prehearing conference:

**Due Process Complaint Notification**

- a) The parent or the School District may request an impartial hearing by first submitting a due process complaint notice.

A hearing may not be held until a due process complaint notice is filed. Either the parent, the District, or the attorney representing either party may present a complaint with respect to any matter relating to the identification, evaluation or educational placement of a student with a disability or a student suspected of having a disability, or the provision of a free appropriate public education to such student.

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This written due process complaint notice must include:

1. The name of the student;
  2. The address of the student's residence or, in the case of a homeless student, available contact information;
  3. The name of the school the child is attending;
  4. A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and
  5. A proposed resolution of the problem to the extent known and available to the party at the time.
- b) The due process complaint notice will be deemed sufficient unless the party receiving the notice notifies the other party and the IHO in writing within fifteen (15) days of receiving the notice that they believe the notice requirements have not been met.
- c) Within five (5) days of the receipt of the notice of insufficiency, the IHO shall make a determination on the face of the notice of whether the notification meets the notice requirements and shall immediately notify the parties in writing of the determination.
- d) If the District has not sent a prior written notice to the parent (notice of recommendation) regarding the subject matter of the complaint notice, the District will send a response to the parent within ten (10) days of receiving the complaint which includes:
1. An explanation of why the District proposed or refused to take the action raised in the complaint;
  2. A description of other options the CSE/CPSE considered and why those options were rejected;
  3. A description of each evaluation procedure, assessment, record, or report the District used as a basis for the proposed or refused action; and
  4. A description of the factors relevant to the District's proposal or refusal.

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- e) Upon receipt or filing of the due process complaint notice, the District will provide the procedural safeguards notice to the parents. The District will also inform parents in writing of the availability of mediation and of any free or low-cost legal and other relevant services available in the area.
- f) Within ten (10) days of receiving the complaint notice, the non-complaining party must send a response specifically addressing the issues raised in the notice.
- g) A party may amend its due process complaint notice only if:
  - 1. The other party consents in writing and is given the opportunity to resolve the complaint through a resolution process;
  - 2. The IHO grants permission, but not later than five (5) days before the impartial due process hearing commences.

Applicable timelines for the impartial due process hearing will recommence at the time of the filing of the amended notice.

- h) No issues may be raised at the impartial due process hearing that were not raised in the due process complaint notice.

**Resolution Process**

- a) Within fifteen (15) days of receiving the due process complaint notice from the parent and prior to the due process hearing itself, the District shall convene a meeting with the parents and relevant members of the CSE/CPSE, as determined by the District and the parent, who have specific knowledge of the facts identified in the complaint. A representative of the District who has decision-making authority must attend. The attorney for the District may not attend unless the parent is accompanied by an attorney. At this resolution meeting, the District has the opportunity to resolve the complaint after the parents discuss their complaint and the facts forming its basis.

The District will take steps to ensure that one (1) or both of the parents of the student with a disability are present at the resolution meeting, including notifying parents of the meeting early enough to ensure that they will have the opportunity to attend and scheduling the resolution meeting at a mutually agreed on time and place and in a location that is physically accessible to the parents.

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- b) When conducting meetings and carrying out administrative matters (such as scheduling), the parent and District may agree to use alternative means of meeting participation such as video conferences or conference calls.
- c) The parent and District may agree in writing to waive the resolution process or agree to use the mediation process to resolve the dispute.
- d) If a settlement is reached, the parties shall execute a legally binding agreement signed by the parent and the representative of the District who has authority to bind the District. This agreement is enforceable in court. However, either party may void the agreement within three (3) business days of the agreement's execution.
- e) If the District has not resolved the due process complaint to the satisfaction of the parents within thirty (30) days of receipt of the complaint notice, the impartial hearing process may begin.
- f) Except where the parties have jointly agreed to waive the resolution process or use mediation, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timeline for the resolution process and due process hearing until the meeting is held:
  - 1. If the District is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented), the District may, at the conclusion of the thirty-day period, request that an IHO dismiss the parents' due process complaint.
  - 2. If the District fails to hold the resolution meeting within fifteen (15) days of receipt of the parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of the IHO to begin the due process hearing timeline.

Pre-Hearing Conference

A pre-hearing conference (which may take place via telephone) may be scheduled by the IHO to simplify or clarify issues; establish dates for the completion of the hearing; identify evidence to be entered into the record; identify witnesses expected to provide testimony; and/or address other administrative issues. A transcript or written summary shall be entered into record by the IHO.

Impartial Due Process Hearing

In the event the complaint is not resolved in a resolution process, the Board will arrange for an impartial hearing to be conducted. When carrying out administrative matters relating to an impartial due process hearing, such as scheduling, exchange of witness lists and status conferences, the parent

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and District may agree to use alternative means of meeting participation such as video conferences or conference calls.

- a) The District must immediately (but not later than two (2) business days after receipt of the due process complaint notice or mailing of the due process complaint notice to the parent) initiate the process to select an IHO. ~~The District selects the IHO through a rotational selection process in accordance with regulatory timelines.~~ **The IHO is selected online, by using the Impartial Hearing Reporting System ("IHRS") on the State Education Departments Website. The IHRS is accessed through the following website: [http://portal.nysed.gov/pls/pref/IHO MAIN MENU.show](http://portal.nysed.gov/pls/pref/IHO_MAIN_MENU.show).** The Superintendent's Secretary/District Clerk ~~and/or the District's Director of Special Education~~ will be responsible for contacting IHOs and maintaining appropriate records.
- b) The IHO must be certified by the Commissioner of Education, be independent and have access to the support and equipment necessary to perform the duties of an IHO. When the selected IHO indicates availability, the Board of Education must immediately appoint him/her. To expedite this process, the Board designates the President or Vice President to appoint the IHO on behalf of the Board.
- c) The IHO may not accept appointment unless he/she is available to make a determination of sufficiency of a due process complaint notice within five (5) days of receiving such a request and (unless an extension is granted) to initiate the hearing in a timely fashion.
  1. When the District files the due process complaint notice, the hearing or pre-hearing conference must commence within the first fourteen (14) days after the date the IHO is appointed;
  2. When a parent files the due process complaint notice, the hearing or pre-hearing conference must commence within the first fourteen (14) days after whichever of the following occurs first:
    - (a) The date the IHO receives the parties' written waiver of the resolution meeting; or
    - (b) The IHO receives the parties' written confirmation that a mediation or resolution meeting was held but no agreement could be reached; or
    - (c) The expiration of the thirty-day resolution period unless the parties agree in writing to continue mediation at the end of the thirty-day resolution period. In such case, the hearing or pre-hearing conference will commence within the first fourteen (14) days after the IHO is notified in writing that either party withdrew from mediation.

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- d) The hearing, or a prehearing conference, shall commence within the timeframe specified in c) above, unless an extension is granted pursuant to Commissioner's Regulations. The parties to the proceeding may be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities. Notably, if a parent prevails at an impartial due process hearing, he/she is entitled to reasonable attorney's fees, but not fees for his/her non-attorney advocate. Such fees are considered "expert fees" and are not recoverable under the current IDEA.
- e) Each party must disclose to all parties all evaluations completed by that date and recommendations based on the offering party's evaluation that they intends to use at the hearing not less than five (5) days prior to the hearing. The IHO may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
- f) In New York State, a party to an impartial due process hearing may be "represented" by a non-attorney. Commissioner's Regulation directs that parents, school authorities, and their respective counsel or "representative" shall have an opportunity to present evidence, compel the attendance of witnesses and to confront and question all witnesses at the hearing. Each party shall have the right to prohibit the introduction of any evidence, the substance of which has not been disclosed to all parties at least five (5) business days prior to the due process hearing.
- g) The hearing will be conducted at a time and location that is reasonable and convenient to the parent and the student involved. The hearing shall be closed to the public unless the parent requests an open hearing.
- h) The role and responsibilities of the IHO will be as enumerated in Commissioner's Regulations. At all stages of the proceeding, the IHO may assist an unrepresented party by providing information relating only to the hearing process. However, nothing shall impair or limit the authority of the IHO to ask questions of counsel or witnesses for the purpose of clarification or completeness of the record.
- i) The student shall remain in his/her current placement during the pendency of the impartial hearing unless both parties agree or except as otherwise provided for expedited impartial hearings for certain disciplinary suspensions or removals of a student. For a preschool child not currently receiving special education services and programs, he/she may, during any impartial due process hearings or appeals, receive special education services and programs if the parent/person in parental relation and the District agree. However, during the pendency of an appeal for a preschool child who is transitioning from an Early Intervention (EI) program and is

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no longer eligible for the EI program due to age, the District is not required to provide the services the child had been receiving under EI. If found eligible for special education as a preschool student with a disability, and if the parent consents to the initial provision of services, the District will provide those programs and services that are not in dispute.

- j) The IHO renders and forwards the finding of fact and decision to the parties and to the State Education Department in accordance with regulatory timelines but not later than forty-five (45) days after the date required for commencement of the impartial hearing specified in c) above. For expedited hearings the deadline is with ten (10) school days after the hearing; for preschool hearings the timeframe is thirty (30) days after the receipt by the Board of a request for a hearing or after the initiation of such hearing by the Board.
- k) The decision of the IHO is final and binding on both parties unless appealed to the State Review Officer (SRO).

**Burden of Proof**

In accordance with New York State law, the burden of proof and persuasion in an impartial due process hearing dispute relative to a student's special education placement rests upon the School District. However, a parent/person in parental relation seeking tuition reimbursement for a unilateral parental placement shall have the burden of persuasion as to the appropriateness of the placement.

**Recordkeeping and Reporting**

The District will utilize the New York State Education Department's Impartial Hearing Reporting System (IHRS) to access the alphabetical list of the names of each IHO who is certified in New York State and available to serve in the District. The District will record and report to the State Education Department required information relating to the selection of IHOs and the conduct of impartial hearings according to the manner and schedule specified by the Department. The Superintendent shall designate a staff member(s) who will be responsible for reporting such information as required relating to the impartial hearing process into the State Education Department's web-based reporting system.

**Compensation of Impartial Hearing Officers**

~~The District will be responsible for compensating the IHO for prehearing, hearing and post-hearing activities at the rate agreed upon at the time of the IHO's appointment. The rate of compensation may not exceed the maximum rate approved by the Director of the Division of the~~

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~~Budget. The District will also reimburse the IHO for travel and other hearing related expenses (e.g., duplication and telephone costs) pursuant to an annually determined schedule. On an annual basis, the District will forward a copy of its compensation rates to each IHO on the District's rotational list.~~

~~At the completion of the impartial due process hearing, the IHO shall submit an itemized bill of hourly charges and expenses, which will be promptly paid by the District.~~

The Board of Education of the Homer Central School District upon recommendation of the Superintendent of Schools, shall compensate Impartial Hearing Officers who have been certified by the Commissioner of Education of the State of New York to serve as Impartial Hearing Officers in accordance with Education Law Section 4404(1) and 8 NYCRR Section 200.1(x), at the following rates for services and expenses:

1. Certified Impartial Hearing Officers shall be compensated at the rate of one hundred dollars (\$100) per hour for time spent in pre hearing, hearing, and post hearing activities of researching and writing a decision. The district does not and will not pay for hearing dates which are adjourned or cancelled, regardless of the reason, when the adjournment or cancellation is on two or more business days' notice.
2. Certified Impartial Hearing Officers will be reimbursed for automobile travel at the then current IRS per diem rate and receipted tolls.
3. Meals and consecutive overnight lodging will be reimbursed in accordance with the current U.S. General Services Administration (GSA) reimbursement rates for Cortland County, New York.
4. Travel by airplane or train will be reimbursed at the lower of the mileage cost (if travel had been by automobile) or the airplane/train ticket.
5. Mailing costs associated with the hearing will also be reimbursed.

**Mediation:**

The District will inform the parent in writing of the availability of mediation and any free or low-cost legal and other relevant services available in the area at the request of the parent or when an impartial due process hearing is requested.

Mediation is voluntary and does not deny or delay a parent's right to an impartial hearing. If mediation is initiated after a request for an impartial hearing has been received, the impartial hearing must continue unless the request for the impartial hearing is withdrawn. However, a party may request an extension to an impartial hearing in order to pursue mediation.

**Guardians ad Litem at Impartial Hearings**

Unless a surrogate parent has been previously appointed, the IHO must appoint a guardian ad litem when he/she determines that the interests of the parent(s) are opposed to or are inconsistent with those of the student or whenever the interests of the student would be best protected by such appointment.

**Confidentiality**

All issues relating to a request for and conduct of an impartial hearing must be kept confidential by all District staff.

**Administrative Procedures**

Administrative procedures will be developed for the selection and appointment of an IHO consistent with regulatory requirements.

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Individuals with Disabilities Education Act (IDEA)

20 United States Code (USC) Section 1400 et seq.

34 Code of Federal Regulations (CFR) Part 300

Education Law Sections 4005, 4202, 4404(1) and 4410(7)

8 New York Code of Rules and Regulations (NYCRR) Sections 200.1, 200.2, 200.5, 200.16, 200.21 and 201.11

NOTE: Refer also to Policy #8561 -- Special Education Mediation

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