

IMPARTIAL HEARING OFFICER APPOINTMENT AND COMPENSATION

The Board of Education acknowledges that pursuant to the Education Law and the Regulations of the Commissioner of Education (“Commissioner’s Regulations”), only a duly qualified hearing officer may preside over an appeal concerning a child with a disability. Pursuant to such statute and regulations, the Board establishes the following policy to govern the appointment of impartial hearing officers.

Qualifications of Impartial Hearing Officers

Every impartial hearing officer appointed by the Board must be certified by the Commissioner of Education in accordance with Education Law §4404(1) and shall be subject to suspension or revocation of such certification by the Commissioner for good cause. In order to be qualified, an impartial hearing officer must:

- Be admitted to the practice of law in the State of New York and be in good standing with a minimum of two years practice and/or experience in the areas of education, special education, disability rights or civil rights; or be an individual certified by the State of New York as an impartial hearing officer on September 1, 2001;
- Have access to the support and equipment necessary to perform the duties of an impartial hearing officer;
- Be independent, meaning not be an officer, employee or agent of the school district or of the BOCES of which such school district is a component, or an employee of the New York State Education Department,
- Be impartial, meaning shall not have any personal or professional interest which would conflict with his or her objectivity in the hearing, and shall not have participated in any manner in the formulation of the recommendation sought to be reviewed.

In addition, the impartial hearing officer shall possess knowledge of and the ability to: (1) understand the provisions of federal and state laws and regulations pertaining to IDEA and their legal interpretations by federal and state courts; and (2) conduct hearings in accordance with appropriate, standard legal practice and render and write decisions in accordance with appropriate standard legal practice.

It is against Board policy to appoint any individual employed by a school district, school or program serving students with disabilities placed there by the school district's CSE/CPSE education to serve as an impartial hearing officer. Moreover, no individual employed by such schools or programs may serve as an impartial hearing officer for two years following the termination of such employment, provided that a person who otherwise qualifies to conduct a hearing under this section shall not be deemed an employee of the school district, school or program serving students with disabilities solely because he or she is paid by such schools or programs to serve as an impartial hearing officer.

Appointment of Impartial Hearing Officers

The updated list of certified impartial hearing officers for this County promulgated by the State Education Department will be used in connection with all requests for impartial hearings. The list shall include the names of those certified impartial hearing officers who appear on the state list for the County.

The District Clerk or his or her designee shall be responsible for contacting impartial hearing officers. Upon receipt of a request for an impartial hearing, the District Clerk or a designee not involved in the hearing process shall canvass the list in alphabetical order as prescribed by the Commissioner's Regulations to ascertain the willingness and availability of the next listed individual to serve as an impartial hearing officer for the particular matter. The District Clerk or a designee shall initiate the rotational selection process immediately but no later than two business days after receipt by the district of a hearing request. Pursuant to the Regulations of the Commissioner of Education, if an impartial hearing is currently pending for the same student when a new hearing request is received, the district will appoint the same IHO, if available, who will determine whether or not to consolidate the hearings. Additionally, if the new hearing request concerns an issue which had been previously withdrawn in the 12 months prior, the district shall appoint the same IHO, if available. Should an impartial hearing officer decline appointment, or if within 24 hours the impartial hearing officer fails to respond or is unreachable after reasonable efforts by the District Clerk or a designee, such district representative shall then proceed through the list to determine availability of the next successive impartial hearing officer. Upon identifying the next impartial hearing officer on the list who is available to serve, a subcommittee of the Board of Education, consisting of the Board President or in his or her absence, the Board Vice President, shall appoint such person to serve as the impartial hearing officer in accordance with this policy.

An impartial hearing officer may not accept an appointment unless he or she is available:

1. To make a determination of sufficiency of a due process complaint notice within five days of receiving such request; and
2. To initiate the hearing within the first 14 days of the following (unless an extension to the timeline is granted):

- the date upon which the impartial hearing officer receives the parties' written waiver of the resolution session; or
- the date upon which the impartial hearing officer receives the parties' written confirmation that a resolution session was held but no agreement could be reached; or
- the expiration of the 30 day period beginning with receipt of the due process complaint notice, whichever occurs first

Records relating to the impartial hearing officer selection process including, but not limited to, the request for availability, initiation and completion of such impartial hearing will be maintained by the district and such information will be reported to the Office of Vocational and Educational Services for Individual with Disabilities of the State Education Department as required by Commissioner's Regulations.

Compensation of Impartial Hearing Officers

The District shall compensate an impartial hearing officer for his or her services at the maximum rate established for such purpose by the New York State Education Department Director of the Division of the Budget. Currently, this rate is \$100.00 per hour for pre-hearing, hearing and post-hearing activities. In addition, impartial hearing officers may be reimbursed for reasonable, actual and necessary expenses for automobile travel, meals and overnight lodging in accordance with the current District reimbursement rate set for District employees. Mailing costs associated with the hearing will also be reimbursed.

The District shall not be responsible for the impartial hearing officer's fee due to a late cancellation unless said cancellation is made by the District less than two (2) calendar weeks from the date the impartial hearing officer is scheduled to serve.

The District shall annually notify each impartial hearing officer certified to serve in the District of this policy and of the current rates set by the district for travel reimbursement, overnight lodging, meal expenses and mailing costs.

Cancellation

The district shall attempt to provide an Impartial Hearing Officer with two (2) business days' advance notice of the cancellation or re-scheduling of an impartial hearing. Should the district request the cancellation or re-scheduling of a hearing date and fail to provide an Impartial Hearing Officer with two (2) days' notice, the district agrees to pay the Impartial Hearing Officer

a fee of \$100. The district shall not be responsible for costs associated with a parent or guardian's cancellation or adjournment of a hearing.

A copy of this policy will be forwarded to the impartial hearing officer at the time of appointment.

Records relating to the IHO process including, but not limited to, the request for initiation and completion of each impartial hearing will be maintained by the district and such information will be reported to the Office of Vocational and Educational Services for Individuals with Disabilities of SED as required by Commissioner's regulations.

Ref: 8 NYCRR §§200.2; 200.5; 200.21

Legal References: 8 N.Y.C.R.R. §§200.1(x); 200.2(b)(9); 200.2(e)(1); 200.5(j)(3); 200.21(a)
Education Law §4404(1)(c)

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