

Sections 200.1, 200.5 and 200.16 of the Regulations of the Commissioner of Education Relating to Special Education Impartial Hearings (underlined language is new)

(Readers are advised to consult Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (8 NYCRR), published by the Department of State, and the State Register for the official exposition of the text of these amendments and any subsequent changes or revisions.)

Section 200.1

- (x) *Impartial hearing officer* means an individual assigned by a board of education pursuant to Education Law, section 4404(1), or by the commissioner in accordance with section 200.7(d)(1)(i) of this Part, to conduct a hearing and render a decision. No individual employed by a school district, school or program serving students with disabilities placed there by a school district committee on special education may serve as an impartial hearing officer and 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. An impartial hearing officer shall:
- (1) be an individual admitted to the practice of law in the State of New York who is currently in good standing and who has 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;
 - (2) have access to the support and equipment necessary to perform the duties of an impartial hearing officer;
 - (3) be independent, shall not be an officer, employee or agent of the school district or of the board of cooperative educational services of which such school district is a component, or an employee of the Education Department, shall not have a 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; and
 - (4) be certified by the commissioner as an impartial hearing officer eligible to conduct hearings pursuant to Education Law, section 4404(1) and subject to suspension or revocation of such certification by the commissioner for good cause in accordance with the provisions of section 200.21 of this Part. In order to obtain and retain such a certificate, an individual shall:
 - (i) successfully complete a training program, conducted by the department, which program provides information regarding State and Federal laws and

regulations relating to the education of students with disabilities, the needs of such students, and the procedures involved in conducting a hearing, and in reaching and writing a decision;

- (ii) attend such periodic update programs as may be scheduled by the commissioner;
- (iii) annually submit, in a format and by a date prescribed by the commissioner, a certification that the impartial hearing officer meets the requirements of paragraphs (1), (2) and (3) of this subdivision;
- (iv) possess knowledge of, and the ability to understand, the provisions of Federal and State law and regulations pertaining to the Individuals with Disabilities Education Act and legal interpretations of such law and regulations by Federal and State courts;
- (v) possess knowledge of, and the ability to conduct hearings in accordance with appropriate, standard legal practice and to render and write decisions in accordance with appropriate standard legal practice;
- (vi) be willing and available to accept appointment to conduct impartial hearings. Notwithstanding the provisions of section 200.21 of this Part, unless good cause has been provided to the commissioner including, but not limited to, cause resulting from poor health as certified by a physician, active military services or other similar extenuating circumstances, the certification of an impartial hearing officer shall be rescinded upon a finding that the impartial hearing officer was not willing or available to conduct an impartial hearing within a two-year period of time.

Section 200.5(j)

- (j) *Impartial due process hearings.* (1) A parent or a school district must submit a complete due process complaint notice pursuant to subdivision (i) of this section prior to initiation of an impartial due process hearing on matters relating to the identification, evaluation or educational placement of a student with a disability, or the provision of a free appropriate public education to the child.
 - (i) Timeline for requesting an impartial hearing. The request for an impartial due process hearing must be submitted within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, except that the two-year timeline shall not apply to a parent if the parent was prevented from requesting the impartial hearing due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint or the school district's withholding of information from the parent that was required to be provided to the parent under this Part or under Part 201 of this Title.

- (ii) Subject matter of the impartial due process hearing. The party requesting the impartial due process hearing shall not be allowed to raise issues at the impartial due process hearing that were not raised in the notice filed under subdivision (i) of this section, unless the other party agrees otherwise.
 - (iii) The school district shall inform the parent in writing of the availability of mediation and of any free or low-cost legal and other relevant services, such as parent centers, available in the area:
 - (a) when an impartial due process hearing is requested; or
 - (b) at the parent's request.
- (2) Resolution process. (i) Resolution meeting. Prior to the opportunity for an impartial due process hearing under paragraph (1) of this subdivision, the school district shall, within 15 days of receiving the due process complaint notice from the parent, convene a meeting with the parents and the relevant member or members of the committee on special education, as determined by the school district and the parent, who have specific knowledge of the facts identified in the complaint, which shall include a representative of the school district who has decision-making authority on behalf of the school district and may not include an attorney of the school district unless the parent is accompanied by an attorney, where the parents of the student discuss their complaint and the facts that form the basis of the complaint, and the school district has the opportunity to resolve the complaint. The school district shall take steps to ensure that one 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.
- (ii) When conducting meetings and carrying out administrative matters (such as scheduling) under this paragraph, the parent and the school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.
 - (iii) Waiver of resolution process. The parent and the school district may agree, in writing, to waive the resolution process or agree to use the mediation process described in subdivision (h) of this section to resolve the dispute.
 - (iv) Written settlement agreement. If, during the resolution process, the parent and school district reach an agreement to resolve the complaint, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the school district who has the authority to bind the school district. Such agreement shall be enforceable in any State court of competent jurisdiction or in a district court of the United States. A party may void such agreement within three business days of the agreement's execution.

- (v) Resolution period. If the school district has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint notice, the impartial due process hearing may occur consistent with the time period provided in section 200.5(j)(3)(iii) of this Part.
 - (vi) Failure to convene or participate. 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.
 - (a) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented), the school district may, at the conclusion of the 30-day period, request that an impartial hearing officer dismiss the parents' due process complaint.
 - (b) If the school district fails to hold the resolution meeting within 15 days of receipt of the parents' due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of the impartial hearing officer to begin the due process hearing timeline.
- (3) Initiation of an impartial due process hearing. Upon receipt of the parent's due process complaint notice, or the filing of the school district's due process complaint notice, the board of education shall arrange for an impartial due process hearing to be conducted in accordance with the following rules:
- (i) Except as provided in subparagraph (ii) of this paragraph and paragraph (6) of this subdivision, appointment from the impartial hearing officer list must be made in accordance with the rotational selection process established in section 200.2(e)(1) of this Part and the administrative procedures established by the board of education pursuant to section 200.2(b)(9) of this Part.
 - (a) The rotational selection process must be initiated immediately, but not later than two business days after receipt by the school district of the due process complaint notice or mailing of the due process complaint notice to the parent.
 - (b) The impartial hearing officer may not accept appointment unless he or she is available to make a determination of sufficiency of a due process complaint notice within five days of receiving such a request and to initiate the hearing within the first 14 days of the time period specified in clause (a) or (b) of subparagraph (iii) of this paragraph.

- (c) The impartial hearing officer shall not accept appointment if he or she is serving as the attorney in a due process complaint in the same school district or has served as the attorney in a due process complaint in the same school district within a two-year period of time preceding the offer of appointment; or if he or she is an individual with special knowledge or training with respect to the problems of children with disabilities who has accompanied and advised a party from the same school district in a due process complaint within a two-year period.
- (ii) The board of education or trustees shall immediately appoint an impartial hearing officer to conduct the hearing. A board of education may designate one or more of its members to appoint the impartial hearing officer.
- (a) Consolidation and multiple due process hearing requests. For a subsequent due process complaint notice filed while a due process complaint is pending before an impartial hearing officer involving the same parties and student with a disability:
- (1) Once appointed to a case in accordance with the rotational selection process established in section 200.2(e)(1) of this Part, the impartial hearing officer with the pending due process complaint shall be appointed to a subsequent due process complaint involving the same parties and student with a disability, unless that impartial hearing officer is unavailable.
- (2) The impartial hearing officer may consolidate the new complaint with the pending complaint or provide that the new complaint proceed separately as an individual complaint before the same impartial hearing officer.
- (3) Consolidation of such complaints or the denial of such consolidation shall be by written order.
- (4) When considering whether to consolidate one or more separate requests for due process, in the interests of judicial economy and the interests of the student, the impartial hearing officer shall consider relevant factors that include, but are not limited to:
- (i) the potential negative effects on the child's educational interests or well-being which may result from the consolidation;
- (ii) any adverse financial or other detrimental consequence which may result from the consolidation of the due process complaints; and
- (iii) whether consolidation would:

(a) impede a party's right to participate in the resolution process prescribed in paragraph (2) of this subdivision;

(b) prevent a party from receiving a reasonable opportunity to present its case in accordance with subparagraph (xiii) of this paragraph; or

(c) prevent the impartial hearing officer from timely rendering a decision pursuant to paragraph (5) of this subdivision.

(5) If the due process complaints are consolidated, the timeline for issuance of a decision in the earliest pending due process complaint shall apply.

(6) Nothing in this section shall be construed to preclude a parent from filing a due process complaint on an issue separate from a due process complaint already filed.

(iii) Timeline for commencing the hearing or pre-hearing conference. Unless an extension is granted pursuant to subparagraph (5)(i) of this subdivision:

(a) when a school district files a due process complaint notice, the hearing or pre-hearing conference shall commence within the first 14 days after the date upon which the impartial hearing officer is appointed.

(b) when a parent files a due process complaint notice, the hearing or a pre-hearing conference shall commence within the first 14 days after:

(1) the date upon which the impartial hearing officer receives the parties' written waiver of the resolution meeting; or

(2) the impartial hearing officer receives the parties' written confirmation that a mediation or resolution meeting was held but no agreement could be reached; or

(3) the expiration of the 30-day resolution period, whichever shall occur first, unless

(4) the parties agree in writing to continue mediation at the end of the 30-day resolution period, in which case, the hearing or pre-hearing conference shall commence within the first 14 days after the impartial hearing officer is notified in writing that either party withdrew from mediation.

- (iv) The impartial hearing officer shall be authorized to administer oaths and to issue subpoenas in connection with the administrative proceedings before him/her.
- (v) A written or, at the option of the parents, electronic verbatim record of the proceedings before the impartial hearing officer shall be maintained and made available to the parties.
- (vi) At all stages of the proceeding, where required, interpreters of the deaf, or interpreters fluent in the native language of the student's parent, shall be provided at district expense.
- (vii) 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. At all stages of the proceeding, the impartial hearing officer may assist an unrepresented party by providing information relating only to the hearing process. Nothing contained in this subparagraph shall be construed to impair or limit the authority of an impartial hearing officer to ask questions of counsel or witnesses for the purpose of clarification or completeness of the record.
- (viii) In the event the impartial hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.
- (ix) In the event the impartial hearing officer determines that the interests of the parent are opposed to or are inconsistent with those of the student, or that for any other reason the interests of the student would best be protected by appointment of a guardian *ad litem*, the impartial hearing officer shall appoint a guardian *ad litem* to protect the interests of such student, unless a surrogate parent shall have previously been assigned. The impartial hearing officer shall ensure that the procedural due process rights afforded to the student's parent pursuant to this section are preserved throughout the hearing whenever a guardian *ad litem* is appointed.
- (x) The hearing shall be conducted at a time and place which is reasonably convenient to the parent and student involved and shall be closed to the public unless the parent requests an open hearing.
- (xi) A prehearing conference with the parties may be scheduled. Such conference may be conducted by telephone. A transcript or a written summary of the prehearing conference shall be entered into the record by the impartial hearing officer. A prehearing conference is for the purposes of:
 - (a) simplifying or clarifying the issues;
 - (b) establishing date(s) for the completion of the hearing;

- (c) identifying evidence to be entered into the record;
 - (d) identifying witnesses expected to provide testimony; and/or
 - (e) addressing other administrative matters as the impartial hearing officer deems necessary to complete a timely hearing.
- (xii) The 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 such party at least five business days before the hearing.
- (a) Additional disclosure of information. Not less than five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. An impartial hearing officer 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.
 - (b) The impartial hearing officer, wherever practicable, shall enter into the record a stipulation of facts and/or joint exhibits agreed to by the parties.
 - (c) The impartial hearing officer may receive any oral, documentary or tangible evidence except that the impartial hearing officer shall exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious. The impartial hearing officer may receive testimony by telephone, provided that such testimony shall be made under oath and shall be subject to cross-examination.
 - (d) The impartial hearing officer may limit examination of a witness by either party whose testimony the impartial hearing officer determines to be irrelevant, immaterial or unduly repetitious.
 - (e) The impartial hearing officer may limit the number of additional witnesses to avoid unduly repetitious testimony.
 - (f) The impartial hearing officer may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony shall be made available for cross-examination.

- (g) The impartial hearing officer may receive memoranda of law from the parties not to exceed 30 pages in length, with typed material in minimum 12-point type (footnotes minimum 10 point type) and not exceeding 6 1/2 by 9 1/2 inches on each page.
 - (xiii) Each party shall have up to one day to present its case unless the impartial hearing officer determines that additional time is necessary for a full, fair disclosure of the facts required to arrive at a decision. Additional hearing days, if required, shall be scheduled on consecutive days wherever practicable.
 - (xiv) The parents shall have the right to determine whether the student shall attend the hearing.
 - (xv) If, by mutual agreement of the parties, the impartial hearing officer is deemed incapacitated or otherwise unavailable or unwilling to continue the hearing or issue the decision, the board of education shall rescind the appointment of the impartial hearing officer and appoint a new impartial hearing officer in accordance with the procedures as set forth in this subdivision.
 - (xvi) Commencing July 1, 2002, each board of education shall report information relating to the impartial hearing process, including but not limited to the request for, initiation and completion of each impartial hearing, to the Office of Special Education of the State Education Department in a format and at an interval prescribed by the commissioner.
 - (xvii) When carrying out administrative matters relating to an impartial due process hearing, such as scheduling, exchange of witness lists and status conferences, the parent and the school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.
- (4) Decision of the impartial hearing officer. (i) In general. Subject to subparagraph (ii), a decision made by an impartial hearing officer shall be made on substantive grounds based on a determination of whether the student received a free appropriate public education.
- (ii) Procedural issues. In matters alleging a procedural violation, an impartial hearing officer may find that a student did not receive a free appropriate public education only if the procedural inadequacies impeded the student's right to a free appropriate public education, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parent's child, or caused a deprivation of educational benefits. Nothing in this paragraph shall be construed to preclude an impartial hearing officer from ordering a school district to comply with procedural requirements under this Part and Part 201 of this Title.

(iii) Settlement agreements. An impartial hearing officer shall not issue a so-ordered decision on the terms of a settlement agreement reached by the parties in other matters not before the impartial hearing officer in the due process complaint or amended due process complaint. Nothing in this subdivision shall preclude a party from seeking to admit a settlement agreement or administrative decision into evidence.

(5) Timeline to render a decision. Except as provided in section 200.16(h)(9) of this Part and section 201.11 of this Title, if a school district files the due process complaint, the impartial hearing officer shall render a decision, and mail a copy of the written, or at the option of the parents, electronic findings of fact and the decision to the parents and to the board of education not later than 45 days from the day after the public agency's due process complaint is received by the other party and the State Education Department. Except as provided in section 200.16(h)(9) of this Part and section 201.11 of this Title, if the parent files the due process complaint notice, the decision is due not later than 45 days from the day after one of the following events, whichever shall occur first: (a) both parties agree in writing to waive the resolution meeting; (b) after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; (c) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process or (d) the expiration of the 30-day resolution period. In cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the impartial hearing officer closes the record. The date the record is closed shall be indicated in the decision. After a final decision has been rendered, the impartial hearing officer shall promptly transmit the record to the school district together with a certification of the materials included in the record. The record of the hearing and the findings of fact and the decision shall be provided at no cost to the parents. Within 15 days of mailing the decision to the parties, the impartial hearing officer shall submit the decision to the Office of Special Education of the State Education Department. All personally identifiable information, in accordance with the guidelines provided by the commissioner, shall be deleted from the copy forwarded to the Office of Special Education.

(i) An impartial hearing officer may grant specific extensions of time beyond the periods set out in this paragraph, in subparagraph (3)(iii) of this subdivision, or in section 200.16(h)(9) of this Part at the request of either the school district or the parent. The impartial hearing officer shall not solicit extension requests or grant extensions on his or her own behalf or unilaterally issue extensions for any reason. Each extension shall be for no more than 30 days. Not more than one extension at a time may be granted. The reason for each extension must be documented in the hearing record.

(ii) The impartial hearing officer may grant a request for an extension only after fully considering the cumulative impact of the following factors:

- (a) whether the delay in the hearing will positively contribute to, or adversely affect, the child's educational interest or;
 - (b) whether a party has been afforded a fair opportunity to present its case at the hearing in accordance with the requirements of due process;
 - (c) any adverse financial or other detrimental consequences likely to be suffered by a party in the event of delay; and
 - (d) whether there has already been a delay in the proceeding through the actions of one of the parties.
- (iii) Absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted because of school vacations, a lack of availability resulting from the parties' and/or representatives' scheduling conflicts, avoidable witness scheduling conflicts or other similar reasons. Upon a finding of good cause based on the likelihood that a settlement may be reached, an extension may be granted for settlement discussions between the parties. The impartial hearing officer shall not rely on the agreement of the parties as a basis for granting an extension. No extension shall be granted after the record close date.
- (iv) The impartial hearing officer shall promptly respond in writing to each request for an extension and shall set forth the facts relied upon for each extension granted. The response shall become part of the record. The impartial hearing officer may render an oral decision to an oral request for an extension if the discussions are conducted on the record, but shall subsequently provide that decision in writing and include it as part of the record. For each extension granted, the impartial hearing officer shall set a new date for rendering his or her decision, notify the parties in writing of such date, and as required, revise the schedule of remaining hearing dates set forth in the written prehearing order issued pursuant to clause (xi)(b) of paragraph (3) of this subdivision to ensure that the impartial hearing officer's decision is issued by the revised decision due date.
- (v) The impartial hearing officer shall determine when the record is closed and notify the parties of the date the record is closed. The decision of the impartial hearing officer shall be based solely upon the record of the proceeding before the impartial hearing officer, and shall set forth the reasons and the factual basis for the determination. The decision shall reference the hearing record to support the findings of fact. The impartial hearing officer shall attach to the decision a list identifying each exhibit admitted into evidence. Such list shall identify each exhibit by date, number of pages and exhibit number or letter. In addition, the decision shall include an identification of all other items the impartial hearing officer has entered into the record. The decision shall also include a statement advising the

parents and the board of education of the right of any party involved in the hearing to obtain a review of such a decision by the State review officer in accordance with subdivision (k) of this section. The decision of the impartial hearing officer shall be binding upon both parties unless appealed to the State review officer.

(vi) For purposes of this section, the record shall include copies of:

- (a) the due process complaint notice and any response to the complaint pursuant to paragraphs (4) and (5) of subdivision (i) of this Part;
- (b) all briefs, arguments or written requests for an order filed by the parties for consideration by the impartial hearing officer;
- (c) all written orders, rulings or decisions issued in the case including an order granting or denying a party's request for an order and an order granting or denying an extension of the time in which to issue a final decision in the matter;
- (d) any subpoenas issued by the impartial hearing officer in the case;
- (e) all written and electronic transcripts of the hearing;
- (f) any and all exhibits admitted into evidence at the hearing, including documentary, photographic, audio, video, and physical exhibits;
- (g) any other documentation deemed relevant and material by the impartial hearing officer; and
- (h) any other documentation as may be otherwise required by this section.

(6) Withdrawal of a Due Process Complaint. A due process complaint may be withdrawn by the party requesting a hearing as follows:

- (i) Prior to the commencement of the hearing, a voluntary withdrawal by the party requesting the hearing shall be without prejudice unless the parties otherwise agree. For purposes of this paragraph, the commencement of the hearing shall not mean the initial prehearing conference if one is conducted, but shall mean the first date the hearing is held after such conference.
- (ii) Except for withdrawals in accordance with subparagraph (i) of this paragraph, a party seeking to withdraw a due process complaint shall immediately notify the impartial hearing officer and the other party. The impartial hearing officer shall issue an order of termination. A withdrawal shall be presumed to be without prejudice except that the impartial hearing officer may, at the request of the other party and upon notice and an

opportunity for the parties to be heard, issue a written decision that the withdrawal shall be with prejudice. The decision of an impartial hearing officer that a withdrawal shall be with or without prejudice is binding upon the parties unless appealed to the State review officer.

- (iii) The withdrawal of a due process complaint does not alter the timeline pursuant to paragraph (1)(i) of this section for requesting an impartial hearing.
- (iv) If the party subsequently files a due process complaint within one year of the withdrawal of a complaint that is based on or includes the same or substantially similar claims as made in a prior due process complaint that was previously withdrawn by the party, the school district shall appoint the same impartial hearing officer appointed to the prior complaint unless that impartial hearing officer is no longer available to hear the re-filed due process complaint.
- (v) Nothing in this section shall preclude an impartial hearing officer, in his or her discretion, from issuing a decision in the form of a consent order that resolves matters in dispute in the proceeding.

Section 200.16(h)

- (9) Impartial due process hearings. Impartial due process hearings shall be conducted in accordance with section 200.5(j) of this Part, provided that the decision of the impartial hearing officer shall be rendered, in accordance with section 4410 of the Education Law, not later than 30 days after the time period pursuant to section 200.5(j)(5) of this Part or after the initiation of such hearing by the board.