



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

DEPUTY COMMISSIONER FOR VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES  
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February 2004

TO: District Superintendents  
Presidents of Boards of Education  
New York City Department of Education  
Superintendents of Schools  
Superintendents of State-Operated Schools  
Organizations, Parents and Individuals Concerned with Special Education  
Directors of Special Education  
Directors of Pupil Personnel Services  
Chairpersons of Committees on Special Education  
Chairpersons of Committees on Preschool Special Education  
Directors of Approved Preschool Programs and Preschool Educators  
New York City Committee on Preschool Special Education Chairpersons and Administrators  
New York City Committee on Special Education Chairpersons and Administrators  
Early Childhood Direction Centers  
Impartial Hearing Officers  
New York State Community Dispute Resolution Centers  
Commissioner's Advisory Panel for Special Education Services  
SETRC Project Directors and Professional Development Specialists  
Independent Living Centers



FROM: Rebecca Cort, Ed., Interim Deputy Commissioner

SUBJECT: Amendment to Section 200.5 of the Regulations of the Commissioner of Education

On February 23, 2004, the Board of Regents approved amendments to section 200.5 of the Regulations of the Commissioner of Education to prescribe procedures to ensure that impartial hearings are conducted in a timely manner pursuant to the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations (34 CFR Part 300). These regulations are effective on a permanent basis **May 1, 2004**. The amendments are attached and summarized below:



- Section 200.5(i)(3)(i)(b): The impartial hearing officer may not accept appointment unless he or she is available to initiate the hearing within the first 14 days of being appointed by the school district.
- Section 200.5(i)(3)(iii): The hearing or a prehearing conference must be scheduled to begin within the first 14 days of the impartial hearing officer's appointment, unless an extension is granted pursuant to subparagraph (i) of paragraph (4) of this subdivision.
- Section 200.5(i)(3)(vii): At all stages of the hearing, the impartial hearing officer may assist an unrepresented party by providing information relating only to the hearing process. This does not, however, impair or limit the authority of the impartial hearing officer to ask questions of counsel or witnesses to clarify or complete the record.
- Section 200.5(i)(3)(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 must 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.
- Section 200.5(i)(3)(xii)(b): The impartial hearing officer, wherever practicable, must enter into the record a stipulation of facts and/or joint exhibits agreed to by the parties.
- Section 200.5(i)(3)(xii)(c): The impartial hearing officer may receive any oral, documentary or tangible evidence except that the impartial hearing officer must 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 must be made under oath and must be subject to cross examination.
- Section 200.5(i)(3)(xii)(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.
- Section 200.5(i)(3)(xii)(e): The impartial hearing officer may limit the number of additional witnesses to avoid unduly repetitious testimony.

- Section 200.5(i)(3)(xii)(f): The impartial hearing officer may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony must be made available for cross examination.
- Section 200.5(i)(3)(xii)(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.
- Section 200.5(i)(3)(xiii): Each party will 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, must be scheduled on consecutive days wherever practicable.
- Section 200.5(i)(4): 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 must be indicated in the decision.
- Section 200.5(i)(4)(i): An impartial hearing officer may grant specific extensions of time at the request of either the school district or the parent. Each extension must be for no more than 30 days. The reason for each extension must be documented in the hearing record.
- Section 200.5(i)(4)(ii): The impartial hearing officer may grant a request for an extension only after fully considering the cumulative impact of the following factors:
  - (a) the impact on the child's educational interest or well-being which might be occasioned by the delay;
  - (b) the need of a party for additional time to prepare or present the party's position at the hearing in accordance with the requirements of due process;
  - (c) any 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.
- Section 200.5(i)(4)(iii): Absent a compelling reason or a specific showing of substantial hardship, a request for an extension must not be granted because of school vacations, a lack of availability resulting from the parties' and/or representatives' scheduling conflicts, settlement discussions between the parties or other similar reasons. Agreement of the parties is not a sufficient basis for granting an extension.

- Section 200.5(i)(4)(iv): The impartial hearing officer must respond in writing to each request for an extension. The response must become part of the record. The impartial hearing officer may render an oral decision to an oral request for an extension, but must subsequently provide that decision in writing and include it as part of the record. For each extension granted, the impartial hearing officer must set a new date for rendering his or her decision, and notify the parties in writing of such date.
- Section 200.5(i)(4)(v): The impartial hearing officer must determine when the record is closed and notify the parties of the date the record is closed. The decision must reference the hearing record to support the findings of fact. The impartial hearing officer must attach to the decision a list identifying each exhibit admitted into evidence. Such list must identify each exhibit by date, number of pages and exhibit number or letter. In addition, the decision must include an identification of all other items the impartial hearing officer has entered into the record.

If you have any questions regarding these regulatory changes, please contact the Special Education Policy Unit at (518) 473-2878 or your Regional Associate at one of the following Special Education Quality Assurance Regional Offices:

Central Regional Office	(315) 428-3287
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(914) 245-0010
Long Island Regional Office	(631) 884-8530
New York City Regional Office	(718) 722-4544
Western Regional Office	(585) 344-2002

Attachment

Repealed language is in brackets [ ]

Added language is underlined \_\_\_\_\_

## AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 4402, 4403 and 4404 of the Education Law.

1. Paragraph (3) of subdivision (i) of section 200.5 of the Regulations of the Commissioner is amended, effective May 1, 2004, as follows:

(3) The board of education shall arrange for such a hearing to be conducted in accordance with the following rules:

(i) 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 written request for the hearing.

(b) The impartial hearing officer may not accept appointment unless he or she is available to initiate the hearing within the first 14 days of being appointed [contacted] by the school district.

(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.

(iii) The hearing, or a prehearing conference, shall be scheduled to begin within the first 14 days of the impartial hearing officer's appointment, unless an extension is granted pursuant to subparagraph (i) of paragraph (4) of this subdivision.

(iv) The impartial hearing officer shall be authorized to administer oaths and to issue subpoenas in connection with the administrative proceedings before him/her.

~~[(iv)]~~(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.

[(v)] (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.

[(vi) The impartial hearing officer shall preside at the hearing and shall provide all parties an opportunity to present evidence and testimony.]

(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 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. [At] Except as provided for in section 201.11 of this Title, at least 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.

[(xii)](xiv) The parents shall have the right to determine whether the student shall attend the hearing.

[(xiii)](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.

[(xiv)](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 Vocational and Educational Services for Individuals with Disabilities of the State Education Department in a format and at an interval prescribed by the commissioner.

2. Paragraph (4) of subdivision (i) of section 200.5 of the Regulations of the Commissioner is amended, effective May 1, 2004, as follows:

(4) Except as provided in section [200.16(g)(a)] 200.16(g)(9) of this Part and section 201.11 of this Title, 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, to the board of education, and to the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) of the State Education Department, not later than 45 days after the receipt by the board of education of a request for a hearing or after the initiation of such a hearing by the board. 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. The record of the hearing and the findings of fact and the decision shall be provided at no cost to the parents. All personally identifiable information shall be deleted from the copy forwarded to VESID.

(i) An impartial hearing officer may grant specific extensions of time beyond the periods set out in this paragraph, in subparagraph (iii) of paragraph (3) of this subdivision, or in

section 200.16(g)(9) of this Part at the request of either the school district or the parent. Each extension shall be for no more than 30 days. The reason for [the] each extension must be documented in the hearing record. [In such case, the impartial hearing officer shall render the 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, to the board of education, and to VESID no later than 14 days from the date the record is closed, including any post hearing submissions, and the transcript is received by the impartial hearing officer.]

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

(a) the impact on the child's educational interest or well-being which might be occasioned by the delay;

(b) the need of a party for additional time to prepare or present the party's position at the hearing in accordance with the requirements of due process;

(c) any 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, settlement discussions between the parties or other similar reasons. Agreement of the parties is not a sufficient basis for granting an extension.

(iv) The impartial hearing officer shall respond in writing to each request for an extension. The response shall become part of the record. The impartial hearing officer may render an oral decision to an oral request for an extension, 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, and notify the parties in writing of such 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 (j) of this section. The decision of the impartial hearing officer shall be binding upon both parties unless appealed to the State review officer.