



OFFICE OF SPECIAL EDUCATION
CHIEF OF SPECIAL EDUCATION SERVICES
Room 309 EB, 89 Washington Avenue • Albany, NY 12234
www.p12.nysed.gov/specialed/

Telephone (518) 473-0170
Fax: (518) 473-5387

August 10, 2020

TO: New York City Impartial Hearing Officers

FROM: Louise DeCandia

SUBJECT: Update to the July 17, 2020 Memorandum Regarding the Waitlist and Pendency

On July 17, 2020 I issued a memo to make you aware of the protocols being implemented for the cases awaiting an Impartial Hearing Officer Assignment (the “waitlist”). As explained in that Memorandum, in order to ensure that cases are assigned as fairly as possible, in November 2019, the New York State Education Department (NYSED) directed the New York City Department of Education (NYCDOE) to assign cases by the date of the due process complaint filing, as a general rule, the oldest cases will get assigned first. However, within that general rule, in accordance with the requirements of federal and State law and regulations, there are prioritizations within the waitlist regarding expedited cases, remanded cases, potential consolidation cases and what are referred to as “refiled” cases, which cases fall within 8 NYCRR §200.5(j)(6)(iv).

Consolidation/Refiled Cases

- Several IHOs have asked whether they must place a case back on the waitlist, when they decide not to consolidate. 8 NYCRR §200.5 (j)(3)(ii)(a)(2), allows an IHO to maintain the case and proceed separately. However, we ask that IHOs consider the goal of maintaining a system that is as fair as possible while parents await appointment of an IHO.
- IHOs have asked if they will be paid an administrative fee for determining whether or not to keep a consolidated or refiled case. Upon conferring with the New York City Impartial Hearing Office, the administrative fee will not be paid for determining whether to keep a refiled case. However, IHOs will receive an administrative fee if an order on consolidation is issued and the IHO does not keep the non-consolidated case.
- IHOs have asked why they must recuse if they do not keep a consolidation or refiled case. Under both regulatory sections, the requirement is that the IHO “shall be appointed” to the subsequent due process complaint. Because an appointment is required, it has been determined that a recusal is appropriate. However, in order to avoid IHOs maintaining cases for the sole reason of avoiding a recusal, NYSED suggests that when recusing, the reason provided should be “consolidation declined”

and/or “refiled declined.” This information will assist NYSED as it evaluates recusal data and will not be considered in violation of the November 2019 memorandum provided to IHOs from Assistant Commissioner Christopher Suriano.

- One IHO asked whether the New York City Impartial Hearing Office is reviewing the due process complaints to determine if they are substantially similar to a previously withdrawn complaint. The New York City Impartial Hearing Office’s paralegals and attorneys review all filings submitted to the office, irrespective of the high volume of impartial hearings filed. If an IHO is assigned to a case that they believe is not the same or substantially similar as a previously withdrawn due process complaint, then the New York City Impartial Hearing Office requests that the IHO email management for review and clarification.

Pendency

- IHOs have asked whether they may keep a case after being assigned pendency. There is no mechanism to ensure that IHOs are placing their contested pendency matters back on the waitlist. However, I again ask IHOs to consider the goal of maintaining a system that is as fair as possible while parents await appointment of an IHO. Currently, there are parents who have been waiting since March 2020 for an IHO assignment and as many of you know, September is traditionally a month where thousands on new due process complaints are filed. Therefore, IHOs are asked to notify the New York City Impartial Hearing Office after determining pendency so that the appointment may be rescinded, and the case placed on the waitlist. Some IHOs have asked what they will be paid for a contested pendency matter. My office has checked with the New York City Impartial Hearing Office and IHOs will be paid \$150.00 for a pendency order; \$100.00 an hour for a hearing and a \$200.00 administrative fee.
- Finally, IHOs have asked if they must recuse after handling a contested pendency matter. Upon conferring with the New York City Impartial Hearing Office, in these circumstances, when IHOs issue a pendency decision and the case is being placed back on the waitlist, the IHO should email IHORecusals@schools.nyc.gov and state “please rescind me from this case, pendency has been determined.” An IHO will then be rescinded from the case.

I hope this further clarifies some of the questions and concerns raised in response to the July 17, 2020 memorandum. Any further issues or questions concerning compensation may be addressed by contacting the New York City Impartial Hearing Office. If you have any additional questions regarding the waitlist protocols, please contact the due process unit at specedih@nysed.gov.