

SUBJECT: IMPARTIAL HEARINGS/SELECTION OF IMPARTIAL HEARING OFFICERS

The South Huntington School District is committed to making every effort to amicably resolve differences involving the educational programs for students with disabilities. When outside assistance is needed to aid in resolving a disagreement about the identification, evaluation, educational placement or provision of a free appropriate education for a student with a disability, mediation is encouraged. For those exceptional circumstances where a more formal method is required, the impartial hearing process will be utilized.

The impartial hearing officer (IHO) must be certified by the Commissioner of Education as a hearing officer eligible to conduct hearings and may not have a personal or professional interest, which would conflict with his/her objectivity in the hearing. Furthermore, the District shall take steps to ensure that any hearing officer who is appointed pursuant to this policy is not currently employed by this or any other school district, school or program serving students with disabilities placed by any school district CSE; or if formerly so employed, that such employment was terminated at least two years prior to the hearing officer's appointment by the Board. District employees who may be called as witnesses at an impartial hearing, or who may have been otherwise involved in the decision to be reviewed by the impartial hearing officer, shall not be involved in the selection of the hearing officer.

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 Hearing Process/Pre-hearing Conference

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

- a) Either the parent or the District may request an impartial hearing. If a parent makes the request, it must be in writing to the Board of Education describing the nature of the dispute and a proposed resolution of the problem. The District will provide a form for this purpose. However, the District may not deny or delay a parent's right to an impartial hearing if the written request is not complete.

If the District is the party initiating an impartial hearing, the District will provide prior written notice to the parent including a statement of the action proposed and any explanation of why the District proposes to take such action.

- b) Upon receipt of or initiation of a request for an impartial hearing, the District will inform the parent of the availability of mediation, of any free or low-cost legal and other relevant services available in the area, and provide the parent with a copy of the District's Procedural Safeguards Notice.

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- c) The District must immediately (but not later than two (2) business days after receipt of the written request for the hearing) initiate the process to select an IHO. The District selects the IHO through a rotational selection process in accordance with regulatory timelines. The office of the Assistant Superintendent for Student Services will be responsible for contacting IHOs and maintaining appropriate records.
- d) 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 may designate one (1) or more of its members to appoint the IHO on behalf of the Board.
- e) The IHO may not accept appointment unless he/she is available to initiate the hearing within the first fourteen (14) days of being appointed.
- f) The hearing, or a prehearing conference, shall be scheduled to begin within the first fourteen (14) days of the IHO's appointment, unless an extension is granted pursuant to Commissioner's Regulations.
- 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 and District Policy.
- i) The student remains 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.
- 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.
- k) The decision of the IHO is final and binding on both parties unless appealed to the State Review Officer (SRO).

Recordkeeping and Reporting

The District will utilize the District's specific list as maintained by the New York State Education Department's Impartial Hearing Reporting System in order to arrange an IHO. 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.

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Students

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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 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.

Mediation

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.

Individuals with Disabilities Education Act (IDEA)
20 United States Code (USC) Sections 1400-1485
34 Code of Federal Regulations (CFR) Part 300
Education Law Sections 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

Adopted: 10/02/02
Amended: 6/2/04; 9/8/04