

- Required
- Local
- Notice

### **IMPARTIAL HEARING OFFICER APPOINTMENT AND COMPENSATION**

In the event of a hearing called as a result of the initial identification or change in identification, evaluation or educational placement of a child with a disability or the provision of a free appropriate public education to the child, an Impartial Hearing Officer (IHO) shall be appointed by the Board of Education. Individuals so appointed shall be selected from a list is available hearing officers in accordance with a rotational selection process as described in regulations of the Commissioner of Education.

The IHO must be certified by the Commissioner of Education, in accordance with the New York State laws and regulations, 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 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 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 otherwise been involved in the decision to be reviewed by the impartial hearing officer, shall not be involved in the selection of the hearing officer.

#### Appointment

The updated list of certified IHOs for this county promulgated by the New York State Education Department will be used in connection with requests for impartial hearings. The list shall include the names of those other certified IHOs whose names appear on the state list and who have indicated to the district their interest in serving as an IHO in the district.

Upon receipt of a request for an impartial hearing, the Board President, or on the occasion of his/her absence or inability, the Vice President, shall appoint

an impartial hearing officer from the district's alphabetical rotational list previously adopted by the Board.

The District Clerk or other person so designated, under the direction of the Board President, shall initiate the selection process by contacting the impartial hearing officer whose name first appears after the impartial hearing officer who last served. The District Clerk or designee shall canvass the list in alphabetical order as prescribed by the Regulations of the Commissioner of Education until an appointment is accepted.

Upon receipt of a request for an impartial hearing, the rotational selection process for the IHO shall be initiated immediately and always within two (2) business days after receipt of the district of such written request. Should an IHO decline appointment, or if within 24 hours the IHO fails to respond or is unreachable after reasonable efforts by the District Clerk or designee, such efforts will be documented through independently verifiable efforts. The district representative shall then proceed through the list to determine availability of the next successive IHO.

If the IHO is unable to initiate the hearing within the first 14 days of being appointed by the school district, the IHO cannot accept the appointment. The District Clerk shall then proceed through such list to determine availability of the next successive IHO.

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.

#### Compensation

The district shall compensate an impartial hearing officer for his or her services at the maximum rate established for such purpose by the 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 annually notify each impartial hearing officer of this policy and of the current rates set by the district for travel reimbursement, overnight lodging, meal expenses and mailing costs.

#### Use of Guardians Ad Litem at Impartial Hearings

An impartial hearing officer, duly designated by the Board of Education, is authorized to appoint a guardian ad litem, unless a surrogate parent has previously been assigned, whenever the impartial hearing officer determines that the interests of the parent are opposed to or inconsistent with those of the child, or that any reason the child's interest would be best to be protected by the appointment of a guardian ad litem.

The guardian ad litem must be familiar with the provisions of Part 200 of the Commissioner's Regulations and must be appointed from the list of surrogate parents or be a pro bono attorney appointed to represent the interests of the child in an impartial hearing. A guardian ad litem represents the student's interests for the duration of the hearing and has the right to fully participate in the hearing to the extent indicated in the Commissioner's Regulations. However, the guardian ad litem may not initiate an appeal to the State Review Officer, but may join an appeal initiated by the parent of the Board of Education.

The impartial hearing officer must ensure that the procedural due process rights of the child's parents are fully preserved and protected throughout the hearing whenever a guardian ad litem is appointed.

Ref: 8 NYCRR §§200.2; 200.5; 200.21

Adoption date: September 10, 2009