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To: Education Law § 3020-a Hearing Officers

From: Samuel J. Finnessey, Jr., Director & Assistant Counsel

Subject: UPDATED - Education Law § 3020-a Hearing Officer Rates

Date: August 11, 2022

Pursuant to New York State Education Law §3020-a(3)(b)(i)(B), the Commissioner sets the maximum rates of compensation and provides for limitations on the number of study hours that may be claimed for hearing officers adjudicating matters pursuant to such section. The rates and study hour limitations were first imposed for cases commencing on or after April 1, 2012. A September 2, 2015 memo entitled “Education Law §3020-a Hearing Officer Rates” superseded the May 9, 2012 memo to the field entitled “Education Law 3020-a Hearing Officer Rates (effective April 1, 2012 through March 31, 2013)” and set forth new rates and study hour limitations for cases commencing on or after July 1, 2015. This memo supersedes the September 2, 2015 memo.

In accordance with 8 NYCRR §82-3.12(a), hearing officers shall be compensated by the New York State Education Department (“Department”) on a per diem basis, pro-rated for actual time spent as described further herein, and reimbursed for the costs of necessary travel and other reasonable expenses incurred in the performance of their duties in accordance with the December 14, 2012 memo entitled “Hearing Officer Voucher Guidelines.”

In an effort to clarify provisions of the September 2, 2015 memo, and encourage the expeditious conclusion of 3020-a hearings, the Department is providing the following additional guidance.

Maximum Rate of Compensation

Per Diem Fee:

The maximum per diem fee shall be that listed in the biographical profile for the arbitrator that the American Arbitration Association (AAA) submits to the Department pursuant to Education Law §3020-a(3)(a); provided, however, that such per diem fee shall not exceed \$1,400 per day of service (defined below). In no instance will an arbitrator be reimbursed a “special rate” for adjudicating an Education Law §3020-a matter that is higher than the arbitrator’s customary per diem fee for other non-Education Law §3020-a labor arbitration hearings. It is the responsibility of the arbitrator to make sure that both AAA and the Department are aware of any rate changes.

Definition of a Day of Actual Service:

A day of actual service (hereinafter “day”) for per diem purposes is defined in 8 NYCRR § 82-3.12(c) as (7) hours of hearing or study time, exclusive of meal breaks, prorated to the nearest 1/10 of an hour.

Cancellation Fee:

Any late cancellation fee charged by the hearing officer shall be paid by the party or parties responsible for the cancellation as set forth in 8 NYCRR §82-3.12(b). The Department does not pay the cancellation fee.

Maximum Hearing Time:

Charges for hearing time will be reimbursed only for the actual time spent in hearing.

If a hearing officer requires more than the defined maximum of 7 hours per day, the hearing officer needs to document this additional hearing time for reimbursement on a pro rata basis. Reimbursement above the maximum 7 hours per day will only be made where the official hearing record substantiates the requested additional actual hearing time on a day.

Maximum Study Time:

Study time is defined as all other administrative tasks, such as hearing preparation, phone calls, correspondence, evidence review and decision writing. Except as provided for herein, charges for study time shall not be in excess of actual time spent on the hearing, prorated to the nearest one-tenth of an hour. The Department will not reimburse for study time beyond a maximum of a 1:1 ratio of hearing days to study days, and expects that the study time for a hearing that lasts in excess of seven days will not require more than seven days of study time. If a hearing officer requires more than the maximum study time for a particularly complex matter, the hearing officer can make an application to the commissioner for additional reimbursement. In situations where good cause substantiates additional study time, as determined by the commissioner, such applications will be granted. Written justification is required for reimbursement where good cause substantiates study time to exceed the maximum of 7 hours per day (see 8 NYCRR §82-3.12(e)). This justification is required regardless if the combined total of actual hearing time and study time exceeds 7 hours on the same day or the entire day involved study time.

Special Reimbursement Rates for Probable Cause Hearings

Education Law §3020-a(2)(c) was added by Chapter 56 of the Laws of 2015 to permit a school district to implement a suspension without pay where the charges are for misconduct constituting physical or sexual abuse of a student.ⁱ In such instances, a “Probable Cause Hearing” must be held within 10 days of the suspension without pay to determine whether sufficient probable cause exists to support the charges. At the conclusion of the probable cause hearing, the impartial hearing officer may make an oral ruling (in certain circumstances) or issue a written decision on the record as to whether the suspension without pay should be continued or reversed. In accordance with the statute, the Department has created special regional rotational lists on the TEACH system for these types of hearings. The regulations governing these types of proceedings may be found at 8 NYCRR §82-3.10.

Due to the compressed timelines and the need to ensure a ready supply of hearing officers for these proceedings, the Commissioner has created a special reimbursement structure for Probable Cause Hearings. To the extent that the hearing is conducted in person, the hearing officer will be reimbursed at twice the normal per diem rate for the first day of the hearing not to exceed seven (7) hours. All subsequent hearing days, if any, are to be billed at the normal per diem rate. All hearing time is to be billed for actual time spent at the hearing, prorated to the nearest 1/10th of an hour. Study time shall be billed at the normal per diem rate, and is subject to the same rules outlined above.

If there are any questions, please contact Samuel J. Finnessey, Jr., Director of the Office of School Personnel Review and Accountability at (518) 473-2829 or tenure@nysed.gov.

ⁱ To the extent that a collective bargaining agreement entered into by the city of New York provides for suspension without pay for the same conduct, the provisions of the agreement supersede Education Law §3020-a(2)(c).