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SPECIAL EDUCATION FIELD ADVISORY

To: New York State Special Education Impartial Hearing Officers (IHOs)
Directors of Special Education, New York State Public School
Districts

From: Patricia J. Geary *Patricia J. Geary*

Subject: Guidance on Procedures Relating to Special Education Impartial Hearings

The purpose of this memorandum is to provide clarification regarding some of the procedural requirements relating to special education due process hearings pursuant to section 200.5 of the Regulations of the Commissioner.

Amendments to Due Process Complaint Notices:

Whenever a special education impartial hearing is requested, the party presenting the complaint must provide a written due process complaint notice to the other party. That notice must provide specific information. A party may not have an impartial hearing until that written due process notice includes the required information. It is the filing of that notice that initiates the timelines for the hearing.

Under certain circumstances, the party presenting the complaint may amend the due process notice. Section 200.5(i)(7) of the Regulations of the Commissioner states that a party may amend its due process complaint notice only if:

- (a) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subdivision (j)(2) of this section; or
- (b) the IHO grants permission. The IHO may grant such permission at any time not later than five days before an impartial due process hearing commences (i.e., not later than five calendar days before the first day of hearing, not each subsequent hearing day).

Upon receipt of written consent from the other party to the amendment or permission of the IHO, the party presenting the complaint may file the amended due process complaint. The applicable timelines for an impartial due process hearing, including the

timelines for the resolution process, recommence at the time the party files the amended due process complaint notice. The timelines do not recommence at the time the party initially requests to amend its complaint or amends the complaint without written agreement by the other party or permission from the IHO as referenced above.

The timeline for commencing a hearing or prehearing conference is prescribed in section 200.5(j)(3)(iii) of the Regulations of the Commissioner.

Consolidation of due process complaints:

In circumstances when there is an impartial hearing about a student in progress before one IHO and the same parties submit another due process complaint notice, the regulations prescribe a process for the IHO assigned to the first case, the pending case, to determine whether it is appropriate to consolidate – or bring together – the issues of both due process complaint notices into one hearing.

Section 200.5(j)(3)(ii)(a) of the Regulations of the Commissioner provides procedures for the consolidation of due process complaint notices that are filed while an impartial hearing is pending before an IHO involving the same parties (same parent and same school district) and the same student with a disability. When a new complaint has been consolidated with a pending complaint, the timeline for issuance of the decision is the same timeline as the earliest pending due process complaint. When considering whether to consolidate one or more separate requests for due process, the IHO must consider relevant factors, including those found in section 200.5(j)(3)(ii)(a)(4). The IHO must issue a written order as to whether he/she will or will not consolidate a subsequent due process request into a pending case. The written order must include the reason(s) [i.e., analysis] for the IHO's decision.

Consolidation of a complaint cannot impede a party's right to participate in a resolution meeting regarding the issues included in the subsequent due process complaint. Therefore, when considering whether to consolidate one or more separate requests for due process, the IHO should weigh whether the timeline applicable to the pending due process complaint will accommodate a party's right to participate in the resolution process. The IHO has the discretion to grant – for good cause – specific extensions of time beyond the 45-day timeline at the request of either the school district or the parent. An extension may be appropriate to accommodate a resolution meeting between the parties regarding the issues raised in the subsequent complaint.

Withdrawal of due process complaints:

Section 200.5(j)(6) of the Regulations of the Commissioner of Education provides procedures for a party's withdrawal of his or her request for a due process hearing. The regulation states that if the party subsequently files a due process complaint notice within one year of the withdrawal of a complaint that is based on or includes the same or substantially similar claims as made in a prior due process complaint notice that was previously withdrawn by the party, the school district shall appoint the same IHO appointed to the prior complaint unless that IHO is no longer available to hear the new due process complaint notice.

A due process complaint seeking tuition reimbursement for a different school year should **not** be deemed to be "the same or substantially similar claim" as made for a prior school year, therefore requiring appointment of the same IHO. Because the claim for a subsequent tuition claim would be based on the individualized education program (IEP) developed for the student for a different school year or the failure to develop an IEP for the new school year, a new IHO must be appointed from the district's rotational appointment list rather than appointment of the same IHO who was appointed to the prior complaint that was withdrawn within one year. However, if the subsequent tuition claim also includes the tuition reimbursement claim that was previously withdrawn by the party, the school district shall appoint the same IHO appointed to the prior complaint unless the IHO is no longer available to hear the new due process complaint notice.

Record Close Date:

An IHO determines when the record in an impartial hearing is closed. A record is closed when all post-hearing submissions are received by the IHO. Regulations require the IHO to notify the parties of the date the record is closed. School districts must enter the "Actual Record Close Date" (ARCD) in IHRS. Once a record is closed, there may be no further extensions to the hearing timelines. When a case has been properly extended, the written decision of the IHO must be rendered and mailed within 14 days of the ARCD.

An IHO has the discretion to revise the record close date, provided good cause exists to do so. The revised record close date, however, cannot extend the date the decision is due. Good cause may exist, for example, when an IHO determines that additional clarification is required after the parties have submitted their post-hearing submissions.

IHO Decisions:

Section 200.5(j)(5) requires that, within 15 days of mailing the decision to the parties, the IHO must submit the impartial hearing decision to NYSED's Office of Special Education. This memo is to remind IHOs that for decisions submitted to NYSED, all personally identifiable information, in accordance with the guidelines provided by the Commissioner, must be deleted from the copy forwarded to the Office of Special Education. A copy of the redaction guidelines is available from NYSED. Decisions that

are not properly redacted upon submission to NYSED may be returned to the IHO for proper redaction and resubmission.

District Responsibility to Timely Enter Data into IHRS:

Pursuant to section [200.5\(j\)\(3\)\(xvi\)](#) of the Regulations of the Commissioner of Education, each board of education is required to report information relating to the impartial hearing process including, but not limited to, the request for initiation and the completion of each impartial hearing. To capture this information, the Impartial Hearing Reporting System (IHRS) is a web-based data collection system operating in "real time" that is used to monitor New York State's due process system to ensure that impartial hearings are completed within the time periods required by federal and State law and regulation. Dates for critical points in a case record must be entered in chronological order, as the information in one part of the record often relies on dates entered in another part. Therefore, it is of the utmost importance that hearing officers report their case information to the districts in a timely manner and that districts enter case information in a timely and chronologically accurate manner. Failure to do so will often result in multiple errors and timeline anomalies which will then need to be adjusted by a district within the IHRS.

Questions regarding this memorandum may be directed to the Office of Special Education, Due Process Unit at (518) 473-0170.