



April 29, 2022

TO: New York City Impartial Hearing Officers
New York City Impartial Hearing Office

FROM: Eileen Borden *Eileen Borden*

SUBJECT: New York City Impartial Hearing Decision Process

This letter supersedes the April 21, 2022 letter of the same subject matter regarding the New York State Education Department's (NYSED's) expectations of New York City Impartial Hearing Officers (IHOs) specific to responsibilities and procedures for ensuring the accuracy of impartial hearing decisions, timely submission of impartial hearing decisions to the parties and the NYC IH Office, and accurate impartial hearing case closed dates in the Impartial Hearing Reporting System (IHRS).

To ensure a clear understanding of the terms referenced in this memorandum, the following provides a definition of each:

- *Date of Decision* - the date on the written impartial hearing decision which appears next to the IHO's signature. This is the date that begins the timeline for an Appeal to the Office of State Review.
- *Distribution Date* - the date the IHO first provides the impartial hearing decision to the parent/parent attorney and district litigant. Since the IHO should distribute the decision to the parties as soon as it is rendered, this date should be the same as the Date of Decision.
- *Case Closed Date* - the date transmitted by the NYC IH Office to the IHRS to close the case. This should be the Date of Decision.

IHOs are responsible for ensuring the accuracy, quality and completeness of their impartial hearing decisions. IHOs are expected to review their decisions for accuracy, quality and completeness prior to submission to the parties and the NYC IH Office. Upon a review of a sampling of impartial hearing decisions, NYSED has noted some common errors across decisions. To address those commonly occurring errors, NYSED has developed a list of items IHOs should use when reviewing their decisions. An error-free impartial hearing decision will assist in ensuring timely processing of decisions by the NYC IH Office and accurate case closed dates in the IHRS.

IHOs may only correct their decisions for technical and typographical errors. Corrections made by an IHO must not change the outcome of the hearing or the substance of the final hearing decision. IHOs must also provide proper notice to the parties of any such corrections. Additionally, any reissuance of a corrected decision should not impact the original date of decision.

It has come to our attention that when NYC per diem IHOs submit their final decision to the parties, they are not always submitting a copy of their final decision to the NYC IH Office at the same time. NYC per diem IHOs must submit a copy of their final decisions to the NYC IH Office at the same time the final decision is emailed to the parties. When e-mailing decisions to the parties, NYC per diem IHOs must include IHODec@schools.nyc.gov in the e-mail cc line. Additionally, if a final decision is faxed or mailed to the parties, NYC per diem IHO's must also e-mail a copy to the NYC IH Office at the same time IHODec@schools.nyc.gov. All NYC per diem and Office of Administrative Trial and Hearing (OATH) IHOs must also submit a redacted copy of the decision to NYSED at DueProcessDecisions@nysed.gov within 15 days of submission to the parties and the NYC IH Office.

In addition, it is NYSED's expectation that IHOs will timely submit to the NYC IH Office all written orders including Interim Orders, Termination Orders and Consolidation Orders.

The NYC IH Office must not edit and/or revise an impartial hearing decision, change the signature date of an impartial hearing decision or direct any IHO to edit/revise a decision or date of decision. The case closed date must be the same as the date of decision and must be accurately and uniformly reflected in the case record as the case closed date and submitted to NYSED's IHRS via the File Transfer Protocol (FTP). Processing or staff delays in the NYC IH Office cannot impact or change the case closed date which must be the same as the date of decision. Should an impartial hearing decision contain what the parties think are errors, the parties have the right to appeal the decision to the Office of State Review (8 NYCRR §200.5(k)) or file a complaint alleging misconduct or challenging the competence of an IHO (8 NYCRR §200.21(b)).

Impartial Hearing Decision Checklist

To address commonly occurring errors in impartial hearing decisions, when reviewing decisions for accuracy quality and completeness, impartial hearing officers (IHO's) must ensure the following:

- ✓ Student's name is correct.
- ✓ Case number is correct.
- ✓ There is no language in the decision referencing a different case or student.
- ✓ All paragraphs and/or pages in the decision are included.
- ✓ Any and all redundant paragraphs and/or pages have been eliminated.
- ✓ All pages of the decision are numbered.
- ✓ Track changes have been accepted throughout the document.
- ✓ The decision is titled as either an Interim Order **or** a Final Order – **not both**.
- ✓ The signature date on your decision is accurate: it is imperative that a decision be mailed/emailed on the date of decision.
- ✓ The decision has been saved as a PDF prior to email submission to the NYC IH Office.
- ✓ The completed Administrative Cover Sheet (ACS) required by the NYC IH Office is included with the submission of the decision as a separate PDF.

Thank you for your attention to this timely and important matter. For questions, please contact the Due Process Unit at specedih@nysed.gov or call 518-473-0170.