

GREENBURGH ELEVEN USFD

POLICY #4321.9

SELECTION, APPOINTMENT AND COMPENSATION OF IMPARTIAL HEARING OFFICERS

The Board of Education acknowledges that, in a proper case, an impartial hearing may be available pursuant to § 4404(1) of the Education Law to challenge the recommendation of a CSE or CPSE (see Policy # 4321.3), or otherwise challenge actions or omissions relating to the provision of FAPE to a student with a disability, and that only a duly-qualified hearing officer may preside over an appeal concerning a child with a disability. The Board of Education acknowledges that it is required to implement procedures for the selection and board appointment of an impartial hearing officer consistent with the procedures in 8 NYCRR sections 200.2(e)(1) and 200.5(j).

1. Qualifications of Impartial Hearing Officers

Every impartial hearing officer (“IHO”) appointed by the Board of Education must be certified by the Commissioner in accordance with Education Law § 4404(1) and shall be subject to suspension or revocation of such certification by the Commissioner for good cause.

In order to be qualified, an IHO must:

1. Be admitted to the practice of law in the State of New York and be in good standing with a minimum of two years practice and/or experience in the areas of education, special education, disability rights or civil rights; or be an individual certified by the State of New York as an IHO on September 1, 2001;
2. Have access to the support and equipment necessary to perform the duties of an IHO;
3. Be independent, meaning not be an officer, employee or agent of the District or of the BOCES of which the District is a component, or an employee of the New York State Education Department,
4. Be impartial, meaning shall not have any personal or professional interest which would conflict with his or her objectivity in the hearing, and shall not have participated in any manner in the formulation of the recommendation sought to be reviewed.

In addition, the IHO shall possess knowledge of and the ability to: (1) understand the provisions of federal and state laws and regulations pertaining to IDEA and their legal interpretations by federal and state courts; and (2) conduct hearings in accordance with appropriate, standard legal practice and render and write decisions in accordance with appropriate standard legal practice.

It is against Board of Education policy to appoint any individual employed by a school district, school or program serving students with disabilities placed there by the school district’s CSE/CPSE to serve as an IHO. Moreover, no individual employed by such schools or programs may serve as an IHO for two years following the termination of such employment, provided that a person who otherwise qualifies to conduct a hearing under this section shall not be deemed an employee of the school district, school or program serving students with disabilities solely because he or she is paid by such schools or programs to serve as an IHO.

2. Appointment of Impartial Hearing Officers.

The updated list of certified IHOs for Westchester County promulgated by the State Education Department will be used in connection with all requests for impartial hearings. The list shall include the names of those certified IHOs who appear on the state list for the County.

The District Clerk or his or her designee shall be responsible for contacting IHOs. Upon receipt of a request for an impartial hearing, the District Clerk or a designee not involved in the hearing process shall canvass the list in alphabetical order as prescribed by the Commissioner's Regulations to ascertain the willingness and availability of the next listed individual to serve as an IHO for the particular matter. The District Clerk or a designee shall initiate the rotational selection process immediately but no later than two business days after receipt by the District of a hearing 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 a designee, such District representative shall then proceed through the list to determine availability of the next successive IHO. Upon identifying the next IHO on the list who is available to serve, a subcommittee of the Board of Education, consisting of the Board President or in his or her absence, the Board Vice President, shall appoint such person to serve as the IHO in accordance with this policy. Upon appointment, a copy of this Policy shall be forwarded to the IHO.

An IHO may not accept an appointment unless he or she is available:

1. To make a determination of sufficiency of a due process complaint notice within five days of receiving such request; and
2. To initiate the hearing within the first 14 days of the following (unless an extension to the timeline is granted): (a) the date upon which the IHO receives the parties' written waiver of the resolution session; or (b) the date upon which the IHO receives the parties' written confirmation that a resolution session was held but no agreement could be reached; or (c) the expiration of the 30-day period beginning with receipt of the due process complaint notice, whichever occurs first.

Records relating to the IHO selection process including, but not limited to, the request for availability, initiation and completion of such impartial hearing will be maintained by the District and such information will be reported to the Office of Vocational and Educational Services for Individual with Disabilities of the State Education Department as required by Commissioner's Regulations.

3. Compensation of Impartial Hearing Officers

The District shall compensate an IHO for his or her services at a rate not to exceed the maximum rate established for such purpose by the New York State Education Department Director of the Division of the Budget. In addition, IHOs may be reimbursed for reasonable, actual and necessary expenses for automobile travel, meals and overnight lodging (the latter at the Board's option) 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 not be responsible for the IHO's fee due to a late cancellation unless said cancellation is made by the District less than two (2) calendar weeks from the date the IHO is scheduled to serve.

Legal References: N.Y. Educ. Law § 4404(1)(c); 8 NYCRR §§ 100.2(x), 200.2(b)(9), 200.2(e)(1), 200.5(j)(3), and 200.21(a).

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