



September 2017

TO: District Superintendents  
Superintendents of Schools  
Public School Administrators  
Superintendents of State-Operated and State-Supported Schools  
Executive Directors of Approved Private Schools  
Charter School Administrators  
Nonpublic School Administrators  
Directors of Special Education  
Directors of Pupil Personnel Services  
Chairpersons of Committees on Special Education  
Organizations, Parents and Individuals Concerned with Special Education  
Special Education Impartial Hearing Officers (IHOs)

FROM: Christopher Suriano 

SUBJECT: Requirements Related to Special Education Impartial Hearings

The purpose of this memorandum is to advise and remind all parties regarding important procedural requirements relating to special education due process hearings pursuant to 34 CFR §300.515 and 8 NYCRR §§200.5, 200.16 and 201.11 of the Regulations of the Commissioner of Education.

### **Filing a Due Process Complaint**

Either a parent or a school district may file a due process complaint on matters relating to the identification, evaluation or educational placement of a student with a disability, or the provision of a free appropriate public education to the child. Whichever party files a due process complaint must also provide a copy to the New York State Education Department (NYSED).

### **Appointment of an Impartial Hearing Officer (IHO)**

Following receipt of a written request for an impartial hearing from a parent, or the filing of a request by a school district, the school district must immediately, but not later than two business days, initiate the process to select an IHO using a rotational selection process in accordance with State regulatory requirements. Should an IHO decline appointment, or if, within 24 hours, the IHO fails to respond or is unreachable after reasonable efforts by the district, each successive IHO whose name next appears on the district's rotational appointment list must be offered appointment until such appointment is accepted by an IHO.

The IHO may not accept appointment unless he or she is available to make a determination of sufficiency of a due process complaint notice within five days of receiving such a request and to initiate the hearing as follows:

- 1) When a school district files a due process complaint notice, the hearing or prehearing conference must commence within the first 14 days after the date upon which the IHO is appointed; or
- 2) When a parent files a due process complaint notice, the hearing or pre-hearing conference must commence within the first 14 days after:
  - a. the IHO receives the parties' written waiver of the resolution meeting; or
  - b. the IHO receives the parties' written confirmation that a mediation or resolution meeting was held but no agreement could be reached; or
  - c. the expiration of the 30-day resolution period, whichever occurs first; unless
  - d. the parties agree in writing to continue mediation at the end of the 30-day resolution period, in which case, the hearing or pre-hearing conference shall commence within the first 14 days after the IHO is notified in writing that either party withdrew from mediation.

For an expedited due process hearing, an IHO may not accept appointment unless available to hold the hearing and render the decision within the time period for the expedited hearing.

Once an appointment is accepted by an IHO, the board of education or trustees shall immediately appoint the IHO to conduct the hearing. A board of education may designate one or more of its members to appoint the IHO. A copy of the due process request should not be provided when an IHO is initially contacted for availability to accept appointment to a case. A copy should only be provided to the IHO after the IHO has confirmed his or her availability and is appointed by the board of education.

Acceptance of an appointment by an IHO means that he or she is fully available to hear the case through to its conclusion. It is inappropriate and contrary to the interests of the parties and judicial economy for an IHO to refuse appointment for reasons such as the complexity of the case, prior recusals of IHOs from appointment in the case, prior experience with particular litigants or other similar reasons.

However, it is appropriate and necessary for an IHO to recuse him or herself following appointment for a justifiable reason under the following limited circumstances:

- 1) When the personal or professional interest of the IHO would conflict with his or her objectivity in the hearing; or
- 2) When the IHO becomes unavailable or unable (for example due to extenuating personal reasons) to complete the hearing.

Upon the recusal of an IHO following his or her appointment, the district must immediately appoint another IHO using the rotational selection process referenced above. Following such a recusal and new appointment, either party may request the newly appointed IHO to:

- 1) Issue a decision based on the record established to date if the hearing has been completed;
- 2) Continue the hearing building upon the record established to date; or
- 3) Continue the hearing with the development of a new record.

### **Due Process Hearing Timelines**

If a school district files a due process complaint, the IHO's decision must be rendered and mailed or provided electronically to the parties not later than 45 days (30-days for a preschool child) from the day after the public agency's complaint is received by the other party and NYSED.

If a parent files a due process complaint, the decision is due not later than 45 days from the day after one of the following events, whichever shall occur first:

- 1) Both parties agree in writing to waive the resolution meeting;
- 2) Either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
- 3) Both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public agency withdraws from the mediation process; or
- 4) The expiration of the 30-day resolution period.

In cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the IHO closes the record. Consistent with the intent of rendering timely decisions, if the new decision date is earlier than the 14<sup>th</sup> day from the date the IHO closes the record, the earlier date should be the new decision date.

### **Expedited Hearing Timeline:**

An expedited due process hearing occurs according to the following time period, unless the parent and school district agree in writing to waive the resolution meeting or agree to use mediation:

- 1) A resolution meeting occurs within seven days of receiving notice of the due process complaint.
- 2) The expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint.
- 3) The expedited due process hearing occurs within 20 school days of the date the complaint requesting the hearing is filed.
- 4) The IHO must make a determination within 10 school days after the hearing.

No extension to an expedited impartial hearing timeline may be granted.

## **Extensions to the Due Process Hearing Timeline**

An IHO may grant specific extensions of time beyond the periods required by regulation at the request of either the school district or the parent.

- 1) An IHO may not solicit extension requests.
- 2) An IHO may not grant extensions on his or her own behalf or unilaterally issue extensions for any reason.
- 3) Each extension shall be for no more than 30 days.
- 4) Not more than one extension at a time may be granted.
- 5) The IHO must promptly respond in writing to each request for an extension, setting forth the facts relied upon for each extension granted.
- 6) The reason for each extension must be documented in the record.
- 7) The IHO may render an oral decision to an oral request for an extension if the discussions are conducted on the record, but must subsequently provide that decision in writing and include it as part of the record.
- 8) For each extension granted, the IHO must set a new date for rendering his or her decision (mailing the decision to the parties), notify the parties in writing of such date, and, as required, revise the schedule of remaining hearing dates set forth in any written pre-hearing order issued to ensure that the IHO's decision is issued by the revised decision due date.

The IHO may grant a request for an extension only after fully considering the cumulative impact of the following factors:

- 1) Whether the delay in the hearing will positively contribute to, or adversely affect, the child's educational interest or;
- 2) Whether a party has been afforded a fair opportunity to present its case at the hearing in accordance with the requirements of due process;
- 3) Any adverse financial or other detrimental consequences likely to be suffered by a party in the event of delay; and
- 4) Whether there has already been a delay in the proceeding through the actions of one of the parties.

Absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted because of:

- 1) School vacations;
- 2) A lack of availability resulting from the parties' and/or representatives' scheduling conflicts;
- 3) Avoidable witness scheduling conflicts; or
- 4) Other similar reasons.

An extension may be granted for settlement discussions between the parties upon a finding of good cause based on the likelihood that a settlement may be reached. No extension may be granted after the record close date.

The IHO must promptly respond in writing to each request for an extension setting forth the facts relied upon for each extension granted. The IHO's written response becomes part of the record.

**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. Once a record is closed, there may be no further extensions to the hearing timelines.

In cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the IHO closes the record. Consistent with the intent of rendering timely decisions, if the new decision date is earlier than the 14<sup>th</sup> day from the date the IHO closes the record, the earlier date should be the new decision date.

If there are any questions regarding this memorandum, please contact NYSED's Office of Special Education Due Process Unit at (518) 473-0170.