

Accelerated Order of Relief Fact Sheet
April 2022

This fact sheet outlines amendments and additions to the Regulations of the Commissioner of Education to conform such with Chapter 812 of the Laws of 2021 (Chapter 812) amending Education Law Section 4404. Chapter 812 permits the immediate appointment of an impartial hearing officer (IHO) to due process complaints that have been on a waitlist for 196 days or more. Once appointed, IHOs may issue an order or finding based upon a proposed order of relief submitted by a parent identifying appropriate and individualized programs and services for the student.

Fact Sheet
Accelerated Review and Order of Relief

The amendments to sections 200.5(j) and 200.21(a) and addition of section 200.5(o) to the Regulations of the Commissioner of Education provide the process by which a parent may request the assignment of an IHO to conduct an accelerated review, as well as the timelines by which the IHO must conduct such review and issue an order of relief or finding.

Requesting Accelerated Review

Districts are required to provide written notification to all parents of their right to request accelerated review 196 days from the day they filed their due process complaint. Specifically, districts must provide written notification to parents no less than five business days after the 196th day has elapsed.

Exceptions to a Request for Accelerated Review

Accelerated review is not available where the complaint involves a claim regarding the initial identification as a student with a disability or manifestation determinations. Note that these types of cases should not become eligible for accelerated review because of an agreement made between New York City Department of Education, Class Counsel representing students in a lawsuit concerning delays in the impartial hearing process (*J.S.M., et al. v. NYC Department of Education, et al.*, 20 CV 705 (E.D.N.Y.)), and the New York State Education Department in January 2021. The parties agreed that chronological assignment of hearing officers did not equitably address the complaints and that cases should be prioritized based on factors including whether or not the student is receiving any special education programs and services and the type of relief sought.

Appointment of an IHO

A parent may immediately request the appointment of an IHO upon the expiration of the 196th day from the day they filed their due process complaint. Within one business

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day of receipt of a parent's request for accelerated review, an IHO shall be appointed. If a parent with an eligible due process complaint does not request an accelerated review, the district must notify the parent of their eligibility.

Additional Considerations Before Requesting Accelerated Review

By requesting an accelerated review and order of relief, the parent understands that the accelerated review shall be conducted in place of the hearing procedures specified in section 200.5(j) of the Regulations, and the parent understands and agrees that the review will be conducted *exclusively* on the written record and via email pursuant to section 200.5(o) of the Regulations. Additionally, when accelerated review is sought, the district will be deemed to have denied the student a FAPE by virtue of the 196 day (or more) delay in the appointment of an IHO (see Blackman v. District of Columbia, 277 F.Supp.2d 71 (2003) [holding that the failure to provide timely due process hearings and determinations months after the expiration of the 45-day period constitutes the denial of a free appropriate education]). Such determination is binding and shall not be subject to an appeal to the State Review Officer.

Timeframe and Hearing Schedule

Within two business days of appointment, the IHO shall notify the parties via email of the schedule for the electronic submission by the parent of a proposed order of relief and supporting written documentation (i.e., affidavits, affirmations, and declarations, as well as exhibits).

Within ten business days from receipt of the schedule, parents must submit their completed proposed order of relief and all supporting documentation via email to the IHO and district representative.

Within two business days after receipt of the parent's submission, the school district may file objections to the proposed order of relief along with any documentation (e.g., affidavits, exhibits) it wishes the IHO to review. The district's objections must be submitted via email to the IHO and the parents.

Within two business days after receipt of the school district's objections, if any, the parent may submit a written response via email to the IHO and district representative(s).

Within two business days after receipt of the parent's response, if any, or two business days after receipt of the parent's proposed order of relief, if the district did not object, the IHO shall determine what documents will be admitted and shall certify the record. The certified record will form the basis for the order of relief or finding by the IHO.

Within two business days after certification of the record, the IHO shall issue a final determination in the form of either: 1) the order of relief proposed by the parent, 2) the

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order of relief proposed by the parent *as modified* by the IHO based upon the written record, or 3) a finding that no relief is warranted based upon the record before them.

Additional Considerations Concerning the Hearing Process

As indicated above, the IHO's determination will be based solely on the submission of documentation. There will be no transcript, and there will be no finding of fact, other than what is reasonable and appropriate relief to be ordered for the parent based on the documentation submitted.

Appeal

The parties may appeal to the Office of State review within applicable timelines as outlined in section 200.5(k) of the Regulations except that, parents cannot appeal a final determination where the IHO has ordered the relief proposed by the parents.

IHO Payment

NYCDOE will compensate an IHO who conducts an accelerated review and issues an order of relief at a flat rate of \$500 per case.