

Regulation

INSTRUCTION

8506.1

SELECTION, APPOINTMENT AND COMPENSATION OF IMPARTIAL HEARING OFFICERS

- I. The Waterville Central School District will ensure the fair and efficient selection and appointment of impartial hearing officers (IHOs):
 - A. By utilizing and maintaining the district-specific list for Impartial Hearing Officers as maintained by the NYS Education Department's Impartial Hearing Reporting System (IHRS) pursuant to Part 200.1(x) and Part 200.2(e)(1) of the Commissioner's Regulations.
 - B. By granting one of more members of the Board of Education the authority to appoint an IHO who has been selected according to the procedures set forth in this policy.
 - C. By reporting information related to the impartial hearing process, including but not limited to the request for initiation and completion of each impartial hearing to VESID in a format and at an interval prescribed by the Commissioner.
 - D. By directing all employees to promptly forward to the Board of Education any parent's request for an impartial hearing.
 - E. By maintaining the confidentiality of the information contained in impartial hearing requests and impartial hearings.

- II. Initiating a Hearing:
 - A. If the District initiates the impartial hearing, it will provide the parent with prior written notice that it intends to initiate the impartial hearing. Prior notice includes a statement of the action proposed and any explanation of why the district proposes to take the action.
 - B. If a parent submits a written request for an impartial hearing, the request should include the name and address of the student, the name of the school the student is attending, a description of the nature of the problem of the student relating to the proposed or refused initiation or change (including facts related to the problem) and a proposed resolution of the problem to the extent known and available to the parents at the time.
 1. The Superintendent (or designee) will make sure that the parent's request is date-stamped on the first business day that the parent's request is delivered to the District.

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2. The District may not deny or delay a parent's right to an impartial hearing on the grounds that the parent's written request for the hearing does not include required information.
 3. The District will continue to process the request until the parent revokes the request in writing.
- III. After the District determines the need for an impartial hearing or receives a parental request for an impartial hearing:
- A. The Superintendent (or designee) will notify the affected student's parent of the availability of mediation and of free (or low cost) legal and other relevant services available in the area. The Superintendent (or designee) also will provide the parent with a copy of the District's Procedural Safeguard Notice.
 - B. The District should encourage the parents to consider mediation to resolve the disagreement. However, the District cannot delay initiating the impartial hearing once a written request for the hearing is received and the District will continue to process a parent's hearing request until parent revokes the request in writing.
 - C. The District will, within two business days of the day the District determines the need for an impartial hearing or receives a parental request for an impartial hearing, initiate the rotational selection process for appointing an IHO pursuant to Part 200.2(e)(1) and Part 200.5(i) of the Commissioner's regulations and the following procedure:
 1. The Superintendent (or designee) will first contact the IHO whose name appears at the top of the alphabetical list, or if an IHO previously has been appointed to preside over any other matter, the Superintendent (or designee) will first contact the IHO whose name immediately follows the IHO last appointed.
 2. The Superintendent (or designee) will ask any IHO who is contacted whether he/she can convene a hearing within 14 calendar days and can conclude the hearing (unless either party has requested and has been granted an extension) within 45 calendar days (or 30 calendar days for preschool students or 15 calendar days for expedited hearings). If the hearing officer is unable to convene a hearing within these timelines, he/she will be deemed unavailable to serve and the District will proceed with the rotational selection process by contacting the IHO whose name next appears on the alphabetical list.

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3. An IHO who has not responded or remains unreachable after at least two reasonable and independently verifiable efforts to contact him/her within a twenty-four hour period will be deemed unavailable to serve and the District will proceed with the rotational selection process by contacting the IHO whose name next appears on the alphabetical list. (See SED's April 2015 Memorandum). Examples of reasonable and independently verifiable efforts include facsimile, electronic mail, certified overnight mail and telephone contacts that are recorded and confirmed in writing.
 4. The District may seek to expedite the selection process by simultaneously contacting and checking the availability of multiple hearing officers, provided that the District's ultimate selection accords with the rotational selection process detailed in this policy and in the Commissioner's Regulations.
- D. The Superintendent (or designee) will contemporaneously document and maintain records of all efforts to contact each IHO.
1. This documentation will include phone log entries and/or overnight mail receipts, recording dates, times, substance of conversations and/or messages and responses from IHOs.
 2. This documentation also will include the entry of all required data onto the State Education Department's web based reporting system. The District will commence web based reporting as soon as the Board of Education receives a request for an impartial hearing.
 3. The above-described documentation will be completed for every request for an impartial hearing.
- E. The Board of Education or a member of the Board of Education who has been so delegated will appoint the IHO as soon as he/she has been selected.
- IV. After the IHO has been appointed, the District will provide the IHO with a letter of appointment, a copy of the District's notice to the parent that describes the need for a hearing (or copy of the parent's written request for a hearing), contact information for the parties and a copy of the District's policy on compensation for the IHO.
- V. If, by mutual agreement of the parties, the IHO is deemed incapacitated or otherwise unavailable or unwilling to continue the hearing or issue the decision, the Board of Education will rescind the appointment of the IHO and appoint a new IHO in accordance with the procedures established by law and summarized by this policy.

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VI. The Impartial hearing:

- A. The impartial hearing officer will be authorized to administer oaths and to issue subpoenas in connection with the administrative proceedings before him/her.
- B. A written or, at the option of the parents, electronic verbatim record of the proceedings before the hearing officer will be maintained and made available to the parties.
- C. At all stages of the proceeding, where required, interpreters of the deaf, or interpreters fluent in the native language of the student's parent, will be provided at district expense.
- D. The IHO will preside at the hearing and will provide all parties the opportunity to present evidence and testimony.
- E. The parties to the proceeding may be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities.
- F. The hearing will be conducted at a time and place that is reasonably convenient to the parent and student involved. The hearing will be closed to the public unless the parent requests an open hearing.
- G. The parents will have the right to determine whether the student attends the hearing.
- H. The parents, school authorities, and their respective counsel or representative, will have the opportunity to present evidence and testimony, compel the attendance of witnesses and confront and question all witnesses at the hearing.
- I. The introduction of any evidence, the substance of which has not been disclosed to the other party at least five business days before the hearing (three business days for expedited hearings), may be prohibited from presentation at the hearing at the objection of a party and/or at the discretion of the IHO.

VII. After the Hearing

- A. The IHO must render and mail a copy of the written, or at the option of the parents electronic findings of fact and decision to the parents, the Board of Education and VESID not later than 45 calendar days for school age children (or

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30 calendar days for preschool children or 15 business days in the case of an expedited hearing) of the date that the Board initiates the hearing or receives the parent's request for a hearing. All personally identifiable information will be deleted from the copy that is forwarded to VESID.

- B. The decision of the IHO is binding upon both parties and will be implemented in a timely manner unless appealed pursuant to applicable law.

VIII. Compensation and Reimbursement of Costs:

A. Reimbursement for services:

- 1. At the conclusion of the impartial hearing, the IHO shall submit to the District an itemized record describing each service performed and the time required to perform each service. An IHO will not receive reimbursement for services before the itemized record is submitted to the District.
- 2. The following activities associated with impartial hearings are reimbursable:
 - a. Pre-hearing activities such as scheduling the hearing and determining the location, conducting pre-hearing conference calls, arranging for interpreters, witnesses, subpoenas and a stenographer a stenographer and writing letters to the parties involved in the hearing.
 - b. Hearing activities such as conducting the hearing, handling settlement agreements placed on the record and arranging for subsequent hearing dates.
 - c. Post-hearing activities such as researching information pertinent to the hearing issue(s) and writing the decision.
- 3. The rate of reimbursement for the above listed activities shall be a minimum of \$ 75.00 per hour.

B. Reimbursement for out-of-pocket necessary expenses:

- 1. The IHO shall submit receipts for out-of-pocket necessary expenses to the District before receiving reimbursement for such expenses.
- 2. The following out-of-pocket necessary expenses:

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- a. Mileage at the rate established by the IRS.
 - b. The cost of highway tolls.
 - c. The cost of reasonable overnight accommodations and reasonable meal expenses when the hearing dates are scheduled for two or more continuous dates and the IHO would otherwise be required to travel ninety or more miles between his/her residence and the hearing location.
- C. Cancellation or Re-scheduling fees: The District shall attempt to provide an IHO with two (2) or more business days' advance notice of the cancellation or re-scheduling of an impartial hearing.
1. Should the District request the cancellation or re-scheduling of an impartial hearing and fail to provide an impartial hearing officer with two (2) business days of notice, the District agrees to pay the IHO a minimum of \$ 150.00.
 2. The District shall not be responsible for costs associated with a parent/legal guardian's cancellation or adjournment of a hearing.
- D. Payment for Expedited Transcripts: The District shall not pay for an expedited transcript of a hearing unless the IHO determines that an expedited transcript is required for the IHO to fulfill his/her duties.

Waterville Central School District

Legal Ref: Education Law §4404; 8 NYCRR 200.1(x), 20012(b)(9), 200.2(e)(1), 200.5(i)(3)(xiv), 200.5, 200.21; SRO 93-47; SED April 2015 Memorandum.

Adopted: 02/24/04

Revised: 09/14/04, 01/11/16, 03/27/18