

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 3214, 4403, 4404 and 4410 of the Education Law.

1. Subparagraph (ii) of paragraph (1) of subdivision (e) of section 200.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(ii) available to serve in the district in hearings conducted pursuant to Education Law [, section] §4404(1). Appointment of impartial hearing officers pursuant to Education Law [, section] §4404(1), except as otherwise provided in this subparagraph, shall be made only from such list and in accordance with the rotation selection process prescribed herein and the timelines and procedures in section 200.5(j) of this Part. Such names will be listed in alphabetical order. Selection from such list shall be made on a rotational basis beginning with the first name appearing after the impartial hearing officer who last served or, in the event no impartial hearing officer on the list has served, beginning with the first name appearing on such list. Should that impartial hearing officer decline appointment, or if, within 24 hours, the impartial hearing officer fails to respond or is unreachable after reasonable efforts by the district that are documented and can be independently verified, each successive impartial hearing officer whose name next appears on the list shall be offered appointment, until such appointment is accepted. The name of any newly certified impartial hearing officer who is available to serve in the district shall be inserted into the list in alphabetical order. Provided, however, that in a city school district having a population of one million or more inhabitants:

(a) Any impartial hearing officers employed by, or reporting to, a permanent, standing administrative tribunal employing more than one impartial hearing officer shall be first in an alphabetical rotation when new cases are assigned, and any impartial

hearing officer not employed by, or reporting to, a permanent standing administrative tribunal, will be listed in alphabetical order thereafter.

(b) Any certified impartial hearing officer available for appointment may accept more than one case at a time.

(c) Any permanent standing administrative tribunal employing more than one impartial hearing officer at a time may reassign cases between impartial hearing officers employed by, or reporting to such permanent standing administrative tribunal, to manage administrative needs such as workload distribution.

2. Subparagraph (v) of paragraph (5) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education, is amended to read as follows:

(v) The impartial hearing officer shall determine when the record is closed and notify the parties of the date the record is closed. The decision of the impartial hearing officer shall be based solely upon the record of the proceeding before the impartial hearing officer, and shall set forth the reasons and the factual basis for the determination. The decision shall reference the hearing record to support the findings of fact. The impartial hearing officer shall attach to the decision a list identifying each exhibit admitted into evidence. Such list shall identify each exhibit by date, number of pages and exhibit number or letter. In addition, the decision shall include an identification of all other items the impartial hearing officer has entered into the record. The decision shall also include a statement advising the parents and the board of education of the right of any party involved in the hearing to obtain a review of such a decision by the State review officer in accordance with subdivision (k) of this section. The decision of the impartial hearing officer shall be binding upon both parties unless appealed to the State review officer. Impartial hearing officers must sign and date their decisions as of the date the decision is being distributed and shall distribute the decision

to the parties on that same day. This date shall also constitute the case closure date reported by a district to the Office of Special Education in the New York State Education Department.

3. Clause (c) of subparagraph (i) of paragraph (3) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(c) The impartial hearing officer shall not accept appointment if [he or she is serving as the attorney in a due process complaint in the same school district or has served as the attorney in a due process complaint in the same school district within a two-year period of time preceding the offer of appointment; or if he or she is an individual with special knowledge or training with respect to the problems of children with disabilities who has accompanied and advised a party from the same school district in a due process complaint within a two-year period]the impartial hearing officer has a personal bias or prejudice concerning a party or a party's lawyer, has personal knowledge of facts that are in dispute in the case, has previously acted as an attorney for one of the parties to the matter in controversy, is likely to be a material witness in the matter in controversy, or has a personal or fiduciary interest in the matter. Additionally, an individual may not serve as an impartial hearing officer if he or she is simultaneously employed by: (1) a school district; or (2) a school or program serving students with disabilities placed by a school district committee on special education, nor may an individual employed by a school or program serving students with disabilities placed by a school district committee on special education serve as an impartial hearing officer for two years following the termination of such employment.