



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: Special Education and Adult Career and Continuing Education Services Committee

FROM: Ceylane Meyers-Ruff *Ceylane Meyers-Ruff*

SUBJECT: Proposed Amendment of Sections 200.1(x) and 200.21 of the Regulations of the Commissioner of Education Relating to Special Education Impartial Hearing Officers

DATE: September 2, 2025

AUTHORIZATION(S):

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SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed amendment of sections 200.1(x) and 200.21 of the Regulations of the Commissioner of Education relating to special education impartial hearing officers?

Reason for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is presented to the Special Education and Adult Career and Continuing Education Services Committee for discussion at the September 2025 Regents meeting. A copy of the proposed rule (Attachment A) is attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on September 24, 2025, for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

The Department proposes new rules to provide specificity with respect to the certification of special education impartial hearing officers (IHOs) in New York City and to clarify the procedures for complaints against IHOs statewide.

Definition of an Impartial Hearing Officer

On December 1, 2021, the Department and the New York City Department of Education (NYCDOE) entered into a Memorandum of Agreement (MOA) with New York City's Office of Administrative Trials and Hearings (OATH) to establish a team of full-time IHOs to effectively manage all special education impartial hearings in New York City.

Since all special education impartial hearings in New York City are now being conducted by OATH IHOs, and there are sufficient numbers of IHOs currently working in the rest of state, the Department proposes to amend the definition of an IHO in section 200.1(x) of the Commissioner's regulations to specify that hearing officer certification for OATH IHOs is contingent on their continued employment with OATH and will not be maintained beyond the scope of their employment.

Impartial Hearing Officer Complaints

Education Law §4404(1) requires the Commissioner to promulgate regulations related to the certification of special education due process IHOs and to establish procedures for the suspension or revocation of IHO certification for good cause. Failure of an IHO to abide by the established regulatory requirements to obtain and retain certification can result in the suspension or revocation of such certification by the Commissioner in accordance with provisions set out in section 200.21 of the Commissioner's regulations.

Section 200.21 of the Commissioner's regulations describes a complaint process whereby parties can allege misconduct or challenge the competence of an IHO. If such complaints are substantiated, the Department can address them by, for example, issuing a warning letter, ordering corrective action, or suspending or revoking certification.

Recent complaints filed with the Office of Special Education's Due Process Unit have revealed the need for clarification regarding certain aspects of the complaint process. Therefore, the Department proposes to amend section 200.21 of the Commissioner's regulations related to the IHO complaint process to:

- Identify a time frame by which a complaint may be filed;
- Establish certain criteria upon which a complaint can be dismissed;
- Establish a clear definition for misconduct and incompetence; and
- Clarify the types of relief that may be provided by the Commissioner in the event that misconduct or incompetence of an IHO has been established.

The Department anticipates that the proposed amendment will clarify the process for filing an IHO complaint and eliminate the filing of extraneous allegations.

Related Regents Items

[September 2022: Proposed Amendment of Sections 200.2\(e\) and 200.5\(j\) of the Regulations of the Commissioner of Education Relating to Special Education Due Process System Procedures](https://www.regents.nysed.gov/sites/regents/files/922brca12.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/922brca12.pdf>)

[May 2023: Proposed Amendment of Section 200.1\(x\) and 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Due Process System Procedures](https://www.regents.nysed.gov/sites/regents/files/523brca5.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/523brca5.pdf>)

Recommendation

Not applicable.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented for permanent adoption at the January 2026 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the January 2026 meeting, the proposed amendment will become effective on January 28, 2026.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 107, 207, 305, 4404, and 4410 of the Education Law.

1. Subdivision (x) of section 200.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(x) *Impartial hearing officer* means an individual assigned by a board of education pursuant to Education Law, section 4404(1), or by the commissioner in accordance with section 200.7(d)(1)(i) of this Part, to conduct a hearing and render a decision. In a city school district having a population of one million or more inhabitants, impartial hearing officer may also be employees and/or contractors of a permanent, standing administrative tribunal. No individual employed by a school district, school, or program serving students with disabilities placed there by a school district committee on special education may serve as an impartial hearing officer and no individual employed by such schools or programs may serve as an impartial hearing officer 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 impartial hearing officer. An impartial hearing officer shall:

(1)...

(2)...

(3) be independent, shall not be an officer, employee or agent of the school district or of the board of cooperative educational services of which such school district is a component, or an employee of the Education Department, shall not have a 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; [and]

(4) be certified by the commissioner as an impartial hearing officer eligible to conduct hearings pursuant to Education Law, section 4404(1) and subject to suspension or revocation of such certification by the commissioner for good cause in accordance with the provisions of section 200.21 of this Part. In order to obtain and retain such a certificate, an individual shall:

(i) ...

(ii) ...

(iii) ...

(iv) ...

(v) ...

(vi) be willing and available to accept appointment to conduct impartial hearings.

Notwithstanding the provisions of section 200.21 of this Part, unless good cause has been provided to the commissioner including, but not limited to, cause resulting from poor health as certified by a physician, active military services or other similar extenuating circumstances, the certification of an impartial hearing officer shall be rescinded upon a finding that the impartial hearing officer was not willing or available to conduct an impartial hearing within a two-year period of time[.]; and

(5) in a city school district having a population of one million or more inhabitants, be continuously employed or report to a permanent, standing administrative tribunal. An impartial hearing officer's certification is contingent on their employment or contracting with such tribunal.

2. Subdivision (b) of section 200.21 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) *Procedures for the suspension or revocation of impartial hearing officer certification.* The certification of impartial hearing officers is subject to suspension or revocation on the grounds of incompetence or misconduct.

(1) Complaints alleging the misconduct or challenging the competence of an impartial hearing officer [shall] must be made in a signed written statement to the commissioner and [shall] must contain a concise statement and documentation of the facts upon which the complaint is based, and must not include personally identifiable information of any student(s) related thereto.

(i) Complaints brought by a parent, school district, or a nonparty to a due process hearing must be filed within one year of the final action in the due process hearing or, where an appeal has been taken, within one year of the decision of the State Review Officer indicated in section 200.5(k) of this Part.

(ii) Jurisdiction will not be accepted where:

(a) the allegations relate to the impartial hearing officer's rulings or decision, such as incorrect reasoning or lack of a suitable rationale;

(b) the allegations relate to factors that may have influenced the impartial hearing officer's ruling or decision, such as bias or partiality;

(c) the allegations raise questions about the exercise of the impartial hearing officer's discretion; or

(d) the allegations were appealed to the State Review Officer and decided by the State Review Officer, or could have been appealed to the State Review Officer pursuant to section 200.5(k) of this Part, but were not appealed.

(iii) For the purposes of this section, *misconduct* means that an impartial hearing officer engaged in demonstrably egregious behavior that reflects a lack of judicial temperament, such as abusive or harassing language, acting in a hostile and undignified manner, or unlawful harassment.

(iv) For the purposes of this section, *incompetence* means that an impartial hearing officer engaged in unreasonable conduct that resulted in a denial of due process to one or both parties to an impartial hearing.

(2) The commissioner will review all complaints to determine if they meet the requirements of paragraph (1) of this subdivision. The commissioner may dismiss any complaint, or any part thereof, that fails to meet such requirements or if an investigation is not otherwise warranted. Each complainant shall receive notification if their complaint is dismissed.

[(2)] (3) Upon receipt of the complaint, the commissioner shall provide the impartial hearing officer with notice of the complaint and 30 days to respond [thereto] in writing, which may include supporting evidence.

[(3)] (4) The commissioner shall provide for review and, if warranted, further investigation of the complaint. The investigation process shall be conducted in accordance with the following:

(i) A [summary] copy of the complaint shall be sent to the impartial hearing officer [and complainant].

(ii) [Additional] The complaint investigator may request additional information [may be requested from the complainant] from the parties as appropriate, which may include a request for [a sworn] an affidavit.

[(iii)] The impartial hearing officer shall be provided an opportunity to respond in writing and provide documentation to the State Education Department. The response from the impartial hearing officer must be received not later than 30 days from the date the impartial hearing officer receives the complaint summary.]

[(iv)](iii)...

[(v)](iv)....

[(vi)](v) If, upon a review of the facts, the commissioner finds misconduct or incompetence on the part of the impartial hearing officer, the commissioner may issue a warning letter to the impartial hearing officer containing an order for corrective action, [or, depending on such factors as the level of misconduct or incompetence and the number of prior findings of misconduct or incompetence against the impartial hearing officer, the certification of the impartial hearing officer may be suspended or revoked.] impose additional training or technical assistance to be completed by the impartial hearing officer, temporarily remove the impartial hearing officer from the list of available hearing officers required by section 200.2(e) of this Part including being ineligible to have cases reassigned to them pursuant to section 200.2(e)(1)(ii)(c) of this Part, or suspend or revoke certification of the impartial hearing officer.

[(4)] (5) In addition to complaints made to the commissioner in accordance with paragraph (1) of this subdivision, the commissioner, on his or her initiative, may [suspend, revoke or take such other appropriate action with respect to the certification of the impartial hearing officer] impose any of the remedies outlined in subparagraph (vi) of paragraph (4) of this section upon a finding that:

(i) the impartial hearing officer failed to comply with an order of the commissioner;

(ii) the impartial hearing officer failed to issue a decision in a timely manner where such delay was not due to extensions granted at the request of either party as documented in the record; [or]

(iii) the State Review Officer determined that an impartial hearing officer engaged in conduct [which] that constitutes misconduct or incompetence[.]; or

(iv) the impartial hearing officer committed misconduct or incompetence.

[(5) The commissioner, upon finding that good cause has been established of either misconduct or incompetence on the part of the impartial hearing officer, shall revoke or suspend the certification of the impartial hearing officer, except that the commissioner may, in his discretion, issue either a warning or a conditional suspension of certification pending completion of a specified course of training where the imposition of a more severe penalty would not be justified.]