

PROGRAMS FOR STUDENTS WITH DISABILITIES REGULATION*Challenging the Recommendation of the CSE*

The Board of Education shall notify the parents of a child with a disability of its decision to place the student in a special education program within thirty (30) days of the Committee on Special Education's (CSE) recommendation.

Upon receipt of such notice or after the receipt of such notice from the Board that the recommendation of the CSE has been rejected or modified by the Board, or in the event that the CSE fails to make a recommendation in accordance with the provisions of section 200.4 of the Commissioner's Regulations, or that the Board shall fail to effectuate the recommendation of such committee within thirty (30) days after the receipt of such recommendation, a parent/guardian may request, in writing, an impartial formal hearing. When a hearing is requested by either party, the parent/guardian shall be given notice which indicates that the parent/guardian may be able to obtain free or low-cost legal and other relevant services at no expense to the school district, and include the names, addresses and telephone numbers of appropriate agencies and other professional resources where such services may be obtained. The Board shall arrange for such a hearing to be conducted in accordance with the following rules:

1. The Board shall appoint an impartial hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in connection with the administrative proceedings before him/her.
2. A written or electronic verbatim record of the proceedings before the hearing officer shall be maintained and made available to the parties.
3. At all stages of the proceeding, where required, interpreters of the deaf, or interpreters fluent in the dominant language of the student's parent/guardian, shall be provided at district expense.
4. The impartial hearing officer shall preside at the hearing and shall provide all parties an opportunity to present evidence and testimony.
5. The parties to the proceedings may be represented by legal counsel or individuals with special knowledge or training with respect to the problems of students with disabilities, and may be accompanied by other persons of their choice.
6. In the event the hearing officer requests an independent evaluation as part of a hearing, the cost of the evaluation must be at public expense.
7. In the event the impartial hearing officer determines that the interests of the parent are opposed to or inconsistent with those of the student, or that for any other reason the interests of the student would best be protected by appointment of a guardian *ad litem*, the impartial hearing officer shall appoint a guardian *ad litem* to protect the interests of such student, unless a surrogate parent shall have previously been assigned. The impartial hearing officer shall ensure that the procedural due process rights afforded

- to the student's parent/guardian pursuant to this section are preserved throughout the hearing whenever a guardian *ad litem* is appointed.
8. The hearing shall be conducted at a time and place which is reasonably convenient to the parent/guardian and student involved and shall be closed to the public unless the parent/guardian(s) requests an open hearing.
 9. The parent/guardian(s), school authorities, and their respective counsel or representative, shall have an opportunity to present evidence and to confront and question all witnesses at the hearing. Each party shall have the right to prohibit the introduction of any evidence the substance of which has not been disclosed to such party at least five days before the hearing.
 10. The parent/guardian(s) shall have the right to determine whether the student shall attend the hearing.
 11. The impartial hearing officer shall render a decision, and mail a copy of the written findings of fact and the decision to the parent/guardian(s), to the Board and to the Office for Special Education Services of the State Education Department, not later than forty-five (45) days after the receipt by the Board of a request for a hearing or after the initiation of such a hearing by the Board. All personally identifiable information shall be deleted from the copy forwarded to the Office for Special Education Services. 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 also include a statement advising the parent/guardian(s) and the Board of the right to obtain a review of such a decision by the state review officer.

Surrogate Parents

The Board of Education will select and assign surrogate parents, pursuant to the Commissioner of Education's Regulations, sections 200.5(e).

Request for the appointment of surrogate parents must be made in writing to the Board. Upon receipt of the request, the Superintendent of Schools or his/her designee shall determine the need for the appointment and if such determination is positive, he/she will proceed with the selection. Recommendation shall be made to the Board and appointment of surrogate parents made within ten (10) days of the determination of need.

Ref: 8 NYCRR §§200.5(c),(e)

Adoption date: August 8, 2006