TO: All Impartial Hearing Officers

FROM: Louise DeCandia

DATE: March 16, 2020

SUBJECT: Novel Coronavirus Impact on Special Education Due Process Timelines

You may be aware by now that school districts across New York State, as well as several State offices downstate have closed due to Novel Coronavirus (COVID-19). It is unclear how long schools may remain closed. The New York State Education Department (NYSED) has been working closely with the New York State Department of Health to provide regular, updated guidance on the Novel Coronavirus (COVID-19). Please refer to the links on NYSED’s Coronavirus webpage at http://www.p12.nysed.gov/sssschoolhealth/schoolhealthservices/coronavirus.html for the latest guidance and information from NYSED and other vetted sources.

At this point, it is not expected that in-person hearings would continue to be conducted. Current regulations provide other methods for hearings to be conducted without meeting in person. Specifically:

- 8 NYCRR §200.5(j)(3)(xvii) “When carrying out administrative matters relating to an impartial due process hearing, such as scheduling, exchange of witness lists and status conferences, the parent and the school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.”

- 8 NYCRR §200.5(j)(3)(xi) allows prehearing conferences to be conducted by telephone;

- 8 NYCRR §200.5(j)(3)(xii)(c) “the impartial hearing officer may receive testimony by telephone, provided that such testimony shall be made under oath and shall be subject to cross-examination;

- 8 NYCRR §200.5(j)(3)(xii)(f) “The impartial hearing officer may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony shall be made available for cross-examination” and
• 8 NYCRR §200.5(j)(3)(xii)(g) allows for the submission of memorandum of law, not to exceed 30 pages, which memorandum may replace the need for closing statements.

NYSED recognizes that timelines for due process may not be a priority for school district's or parents during this unprecedented health crisis. To the extent possible, due process timelines should continue to be met with the use of the regulations cited above and the use of the telephone. If, however, this is not possible, extensions should be sought and granted in accordance with 8 NYCRR §200.5(j)(5)(i). Impartial hearing officers are not authorized to grant extensions on their own behalf or to unilaterally grant extensions to keep cases current. NYSED asks that you work with parents and schools on a case by case basis during this emergency situation to ensure a fair hearing to the parties.

Of particular concern, federal law provides that, prior to an opportunity to a due process hearing, the district has the right to meet with the parent prior to the commencement of the hearing to discuss and attempt to resolve the issues in the due process complaint. Failure of the parent to participate in the resolution meeting could affect the parent's right to a hearing. However, during these unique circumstances, NYSED asks that parties be accommodating of emergency factors that may interfere with the ability to participate in a resolution session. If the school district notifies the parent of its intent to schedule a resolution meeting within the 15 day timeline and the parent informs the school district in advance of the meeting that circumstances prevent the parent from attending the meeting in person or requests that the meeting be conducted by video conference or telephone, it would be appropriate for a school district to proceed using these alternative means to ensure parent participation. If a parent is still unable to participate in a resolution session due to the Novel Coronavirus pandemic, even with the use of alternate means of participation, under these exceptional circumstances, such parent would still be entitled to his/her right to a due process hearing.

Additional flexibility is being sought regarding New York State requirements that pertain to extensions and video conferencing which NYSED believes would be of some assistance during this unprecedented situation. However, social distancing requirements leave it unclear as to when this additional flexibility may be obtained. NYSED's Office of Special Education's Due Process Unit will update this communication should we receive additional authority to provide flexibility on any special education due process requirements.

Thank you for your important work. Stay safe and healthy.