

Procedures for the Appointment of Local Special Education Due Process Hearing Officers



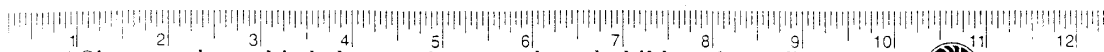
*Office of Special Education and
Early Intervention Services*

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MICHIGAN DEPARTMENT OF EDUCATION DECISION MAKING RULER - 2001



MICHIGAN DEPARTMENT OF EDUCATION
Office of Administrative Law

SUBJECT: Procedures for Appointment of Local Special Education Due Process Hearing Officers

The current applicable administrative rule implementing the Revised School Code provisions governing Special Education (MCL 380.1701 et seq.; MSA 15.41707 et seq.) regarding appointment of hearing officers is AC 1979, R 340.1724a. It states:

Rule 24a.(1) The superintendent of the public agency shall contract for the services of an impartial hearing officer who is mutually agreeable to both parties or who has been appointed by the department. If the parent and the public agency cannot agree on a hearing officer within 14 calendar days following the hearing request, then the superintendent shall immediately request that the department appoint an impartial hearing officer according to procedures established by the department.

(2) A hearing shall not be conducted by an employee or board member of the involved local school district, of another local school district within the same intermediate school district, of a public school academy within the same intermediate school district, or of the intermediate school district of which the involved local school district is a part.

(3) Each public agency shall keep a current department-developed and department distributed list of the persons trained as hearing officers according to procedures established by the department who serve as hearing officers. This list shall be provided to parents upon any request for a hearing. The list shall include a statement of qualifications of each of those persons.

The rule allows selection of hearing officers either by mutual consent of the parties or by appointment by the Michigan Department of Education (Department) in the event that the parties are not able to reach agreement. (Hearing officers chosen by mutual consent need not appear on the Department's list of trained hearing officers.) The following procedure will be followed to implement this rule.

Procedure: Michigan Department of Education, Office of Administrative Law-Appointment of Impartial Special Education Due Process Hearing Officers under R 340.1724a.

Parties' Responsibilities

1. The school district shall provide a copy of this procedure and a copy of the Department's list of trained hearing officers to all parties upon receipt of the request for hearing. When a hearing officer is chosen by mutual consent, the parties are not required to limit their selection to hearing officers appearing on the Department's list of trained hearing officers.
2. Within one business day after receipt of any request for hearing, the school district shall mail or fax to the Department a copy of the request showing the date the request was received.

3. Within 14 calendar days after the date of the receipt of the request for a hearing, the school district shall file with the Department and serve on all parties written notice of one of the following: (a) The name, address and telephone number(s) of the hearing officer selected by the parties; or (b) The date of the hearing request and a statement that the parties have not been able to select a hearing officer by mutual agreement. This written notice of non-selection shall be accompanied by a list of individuals proposed for selection, but rejected by either of the parties. This notice must include names, addresses, and phone numbers of the parties to this hearing request.
4. If the written notice required by paragraph 3 is not filed within the required time limit, the Department shall appoint a hearing officer in compliance with R 340.1724a.

Department's List of Trained Hearing Officers

5. Qualified individuals satisfying all of the following requirements will be included in the Department's list of trained hearing officers:
 - (a) Satisfied minimum education, experience and communication skill requirements as determined by the Michigan Department of Education.
 - (b) Completion of MDE sponsored training in the Individuals with Disabilities Education Act 1997 first given in November of 1998 or study of the videotape and written materials pertaining to that training.
 - (c) Completion of annual Department-sponsored or endorsed in-service training.
 - (d) Beginning September 30, 2001, completion of at least one local level hearing to decision or to stipulated dismissal within the prior 24 months.

Selection and Appointment

6. The choice of a hearing officer will be made without regard to the hearing officer's fees for services. Hearing officers, however, must list their fees with the Department prior to inclusion in the list of trained hearing officers. They must also provide, in writing, updates of those fee statements at least annually.
7. Selection will be made without regard to geographical location or distance factors.
8. Persons otherwise eligible will not be considered for assignment if:
 - (a) they were proposed and rejected during the school district's and parents' earlier attempts to reach mutual agreement unless the parents and school parties have exhausted all hearing officers on the trained hearing officer list. In such an event, the Department shall appoint a hearing officer without regard to previous consideration by either party;
 - (b) the hearing officer had previously communicated a temporary inability to serve on hearing cases;
 - (c) Exclusion would be prudent because removal proceedings were pending under paragraph 15 or 16 or both.
9. Appointment shall be made on an alphabetical rotation, however, the beginning point on the rotation shall be determined by a one-time blind lottery.

10.
 - (a) The Department shall identify the next individual on the rotation who is neither disqualified nor ineligible under these procedures, and confirm his/her availability. If that candidate is unavailable, the Department will confirm the availability of the next individual on the rotation who is neither disqualified nor ineligible. This process will be repeated until a hearing officer is appointed or until the list is exhausted.
 - (b) Upon the next appointment of a hearing officer, the rotation shall begin with the first name following the last appointed hearing officer.
11. For demonstrated emergency situations (such as all listed hearing officers are unavailable, ineligible or disqualified), the Department may waive annual training requirements and give deference to experiential factors in the appointment process.

Notice

12. The Department will, where possible, contact the respective parties by telephone to notify them of the appointment.
13. A letter of appointment verification will be sent certified mail by the Department to the appointed hearing officer, with copies to the respective parties.
14. The hearing officer shall:
 - (a) supply the Department, within 2 days following the grant of any extension of timelines, with written documentation of any extension of hearing timelines including the party's written request, the number of days involved and a determination of good cause.
 - (b) supply two copies of the hearing decision to the Department. The first copy shall contain all personal identifiers. The second copy shall have all personal identifiers deleted.
 - (c) report the cost of completing (b) above as part of his/her fee to the district.

Removal

The Department may, under specific circumstances, withhold or remove a hearing officer from the list of eligible hearing officers.

15. Temporary Inactive Status
 - (a) Hearing officers, against whom a formal complaint has been made, will be placed on an inactive status list until the specific allegation has been examined and resolved.
 - (b) Beginning September 30, 2001, hearing officers who have not completed one local hearing within the 2 past calendar years and participated in the department-sponsored/endorsed annual hearing officer in-service will be held in abeyance until they satisfy these requirements.
 - (c) Hearing officers may request inactive status.

16. Removal

- (a) Hearing officers, against whom allegations are made regarding misconduct or partiality, that are substantiated by the State Level Review Officer or a court of competent jurisdiction, may be removed from the list of trained hearing officers at the discretion of the Department.
- (b) A hearing officer who has failed to complete a hearing within the required time limit without promptly filing with the Department specific time extensions supported by a party's written request and by a written determination of good cause for the extension may be removed from the list of trained hearing officers at the discretion of the Department.
- (c) Hearing officers in abeyance status, who have not completed state requirements after one year, may be removed from the list of trained hearing officers at the discretion of the Department.
- (d) Hearing officers may request their names to be removed.

If you have any questions or concerns regarding the above, please feel free to contact Ms. Lauren S. Harkness, Administrative Law Judge, Office of Administrative Law at (517) 373-8369 or James Rowell, Coordinator, Office of Special Education and Early Intervention Services at (517) 335-0476.