REVISED PROPOSED AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION RELATING TO SPECIAL EDUCATION IMPARTIAL DUE PROCESS HEARINGS

PUBLIC COMMENT SUBMISSION COVER SHEET
MUST BE RECEIVED NO LATER THAN OCTOBER 19, 2012

MAIL TO:	New York State Education Department P-12: Office of Special Education 89 Washington Avenue, Room 309EB Albany, New York 12234 Attention: Public Comment – Special Education Impartial Hearings	
FAX TO:	518-473-5387	
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FROM: **(Please Print or Type Requested Information)**	**NAME**	**Yvette Goorevitch and Karen Kemp**
	TITLE	**Co-Presidents**
	ORGANIZATION	**Council of New York Special Education Administrators**
	ADDRESS	**PO Box 291**
	CITY	**Slingerlands, NY**
	ZIP	**12159-0291**

Topic	**Section(s) of Regulations**
Certification and appointment of Impartial Hearing Officers (IHO)	**Section 200.1(x)** **Section 200.5 (j)(3)(i)**

☒ **Support** ☐ **Oppose** ☐ **No Position**

Reasons/Recommendations:

As previously stated, CNYSEA supports the proposed amendment that would remove from the rotational list hearing officers who have not served over an extended period of time.

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Name: Yvette Goorevitch and Karen Kemp, Co-Presidents, CNYSEA	
Topic	**Section(s) of Regulations**
Consolidation of multiple due process requests for the same student	**Section 200.5(j)(3)(ii)(a)**
☒ Support Oppose ❑ No Position	
Reasons/Recommendations: **As previously stated, we support the proposed language because it removes the potential for abuse and the inevitable unnecessary time and expense districts incur when required to select a new hearing officer, even when a properly appointed hearing officer is presiding over a hearing involving the same parties.**	
Topic	**Section(s) of Regulations**
Prehearing conferences	**Section 200.5 (j)(3)(xi)** **Section 200.5(j)(3)(xi)(a)(4)** **Section 200.5(j)(3)(xi)(b)(4) and (5)** **Section 200.5(j) (3)(xi)(c)** **Section 200.5(j)(3)(xi)(d)** **Section 200.5(j)(3)(xi)(e)**
❑ Support ☒ Oppose ❑ No Position	
Reasons/Recommendations: **In our previous set of comments, we voiced concern with the decision to eliminate from the reasons for granting an adjournment the need to pursue settlement discussions. With the elimination of the hearing officer's apparent authority to do so, we no longer support this proposal because it would force a hearing officer to schedule hearing dates, etc. 14 days after the close of the resolution process regardless of the status of settlement discussions. As stated previously, we cannot support language that not only appears to preclude hearing officers from ordering adjournments in those cases where the IHO concludes that it is in the interests of the parties to do so, but mandates that within 14 days following the close of resolution, or other events should they occur earlier, the parties prepare for hearing regardless of the circumstances. While federal regulations simply provide that a hearing may proceed upon the end of the resolution period, 34 C.F.R. 300.510(b)(1); nothing in the federal regulations defines or limits the authority of a hearing officer from granting specific extensions of time beyond the mandatory timelines at the request of either party. 34 C.F.R. 300.515 (c). Given the focus of**	

the federal law on decision making through consensus, the proposed language that forces a matter to hearing, regardless of the circumstances, improperly eliminates a hearing officer's discretion to grant the parties the additional time they need to resolve their differences.

To avoid this restriction, we urge the Board of Regents to clarify that if, upon a party's request, a hearing officer determines at the informal conference that it is warranted to grant an adjournment of the hearing to allow additional time for the parties to resolve their underlying complaint, nothing in the proposed language would require the hearing officer to simultaneously proceed to hearing. To do otherwise, unnecessarily eliminates hearing officer discretion which is counter to federal law which supports consensus over litigation wherever possible.

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Name: Yvette Goorevitch and Karen Kemp, Co-Presidents, CNYSEA	
Topic	**Section(s) of Regulations**
Decision of the IHO	**Section 200.5(j)(4)(iii)**
❑ Support ☒ Oppose ❑ No Position	
Reasons/Recommendations: **Recognizing that we previously took no official position and otherwise supported the proposal that would preclude the hearing officer from ordering a settlement that included terms not specifically raised in the hearing request, upon further consideration, we see no reason for the inclusion of the proposed language.** **If the parties are in agreement on the terms of settlement, there appears to be no reason to limit a hearing officer with the agreement of both parties, to order terms in matters not before the hearing officer. Where a settlement can be reached between the parties, it is in the interests of the school district to do so. If the district agrees to terms not specifically addressed in the complaint, there is nothing in law or regulation to prevent such a settlement. In the absence of a settlement of all potentially outstanding issues however, a parent can always file a new complaint which would begin the process all over again. We therefore urge the Board of Regents to remove any limits on the authority of hearing officers in the settlement process not imposed under federal law.**	
Topic	**Section(s) of Regulations**
Timeline to render a decision	**Section 200.5(j)(5)**
❑ Support ☒ Oppose ❑ No Position	
Reasons/Recommendations: **Despite what we understand to be objections made by several commenters, the Board of Regents not only eliminated the language initially proposed that would have allowed at least one extension of the thirty day time line for settlement discussions, but maintained, as is, the blanket prohibition imposed on hearing officers to grant them "barring a compelling reason or specific showing of substantial hardship".**	

Recognizing that the Department's concerns were generated, in part, by the findings of the United Department of Education" regarding the indicator involving timeliness of hearings, we urge the Regents to consider the fact that under federal law, hearing officers are granted the authority to grant extensions upon a party's request without any further limits on that authority. Consequently, we urge the Regents to follow the federal law by removing any restrictions under state regulations that limit a hearing officer's discretion in granting extensions that are not specifically imposed under federal law, particularly where the request is based on the hearing officer's determination, in response to a request form a party, that good faith settlement discussions should be allowed to proceed.

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Name: Yvette Goorevitch and Karen Kemp, Co-Presidents, CNYSEA	
Topic	**Section(s) of Regulations**
Impartial Hearing record	**Section 200.5(j)(5)**
❑ Support ☒ Oppose ❑ No Position	
Reasons/Recommendations: **As stated previously, requiring hearing officers to redact personally identifiable information before forwarding a decision to the state has increased the cost of hearings to districts. Therefore, we request that districts be authorized, and be given the option of completing the redactions and forward a redacted copy to the state, as federal law contemplates. 34 C.F.R. 300.513(d).**	
Topic	**Section(s) of Regulations**
Submission of IHO decisions	**Section 200.5(j)(5)**
❑ Support ☒ Oppose ❑ No Position	
Reasons/Recommendations: See comments above – same as above	

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Name: Yvette Goorevitch and Karen Kemp, Co-Presidents, CNYSEA	
Topic	**Section(s) of Regulations**
Extensions to the due date for rendering the impartial hearing decision	**Section 200.5(j)(5)(i)-(iv)**
❑ Support ☒ Oppose ❑ No Position	
Reasons/Recommendations: **Despite the objections of several commenters, the Board of Regents not only eliminated the language initially proposed that would have allowed for at least one extension of the thirty day time line for settlement discussions, but maintained, as is, the blanket prohibition imposed on hearing officer to grant extensions for settlement discussions between the parties "barring a compelling reason or specific showing of substantial hardship".** **Recognizing that the Department's proposal was generated, in part, by the findings of the United States Department of Education regarding the indicator involving timeliness of hearings, we urge the Regents to consider the fact that under federal law, hearing officers are granted the authority to grant extensions upon request from a party, without any further limits on that authority. Consequently, we urge the Regents to follow the federal law by removing any restrictions under state regulations that limit a hearing officer's discretion in granting extensions that are not specifically imposed under federal law, particularly where the request is based on the hearing officer's determination, in response to a request from the party, that good faith settlement discussions should be allowed to proceed.**	
Topic	**Section(s) of Regulations**
Withdrawals of requests for due process hearings	**Section 200.5(j)(6)**
☒ Support ❑ Oppose ❑ No Position	
Reasons/Recommendations: **Support for the reasons previously stated.**	

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