When I get to Heaven: Ethical Issues for Special Education Hearing Officers in the Real World

Ed Litteneker on Outline and harmony. Jim Gerl on Hypotheticals and lead.

1. What is ethical decision making?
   1. Okay what is it? Can we come to a consensus definition or will we know when we see it?
   2. Bias:  “Having or showing a bias having or showing an unfair tendency to believe that some people, ideas, etc., are better than others” (Britannica)
      1. How many different kinds of bias?
      2. Fold our arms
   3. What can literature tell us…
      1. “[There is no neutrality. There is only greater or lesser awareness of one's bias”.](https://www.azquotes.com/quote/549087?ref=bias) [Phyllis Rose](https://www.azquotes.com/author/24797-Phyllis_Rose)
      2. “[We can at least try to understand our own motives, passions, and prejudices, so as to be conscious of what we are doing when we appeal to those of others. This is very difficult, because our own prejudice and emotional bias always seems to us so rational.](https://www.azquotes.com/quote/546595?ref=bias)” [T. S. Eliot](https://www.azquotes.com/author/4432-T_S_Eliot)
      3. “[Bias, like beauty, is often in the eye of the beholder. Facts are your firewall against bias.](https://www.azquotes.com/quote/1249020?ref=bias)” Tom Brokaw
      4. One more: “[A gentleman can see a question from all sides without bias. The small man is biased and can see a question only from one side.](https://www.azquotes.com/quote/792478?ref=bias)” [Confucius](https://www.azquotes.com/author/3177-Confucius)
2. What does IDEA require? (Perry Zirkel)
   1. Impartiality:
      1. The HO is not an employee of the SEA or LEA involved in the education or care of the child,
      2. The HO does not have a personal or professional interest conflicting with the objectivity of the HO,
   2. Competency:
      1. The HO is knowledgeable and understands the IDEA,
      2. The HO is knowledgeable and able to render and write decisions is accordance with appropriate standard legal practice.
3. What is OSEP looking for:
   1. *How does the State ensure the impartiality of the due process hearing officers?*

34 C.F.R. 300.511; 34 C.F.R 303.435 and 303.443;

Question C-15 of the IDEA Part B Dispute Resolution Q&A (July 2013)

* 1. *General Information (asked by OSEP initially for the SEA to demonstrate)*
* The State has policies that ensure hearing officers are not employees of the SEA/LEA.
* The State ensures that the hearing officer is not an LEA/EIS provider that is involved in the education or early intervention services or care of the child, infant or toddler.
* Payment by the SEA/LEA of a hearing officer does not automatically make the hearing officer an employee of the SEA/LEA.
* The State has policies that ensure a hearing officer does not have a personal or professional interest that conflicts with the officer's objectivity in the hearing.
  1. *Possible Follow-up Questions*
* What are the State's procedures for ensuring that hearing officers are impartial in hearings?
* How does the State address allegations that a hearing officer was not impartial?
* Are there examples from the hearing officer training conducted or any documentation that demonstrates that impartiality requirements were discussed in training?
  1. *Areas (or issues) for Follow-up*
* The State does not have any procedures which ensure that its hearing officers are impartial.
* The State does not have any process or procedure to address allegations related to a hearing officer's impartiality.
* The State is not able to provide information from its hearing officer training materials that demonstrates that they discussed the hearing officer impartiality requirements.
* The State employs hearing officers that are employees of the SEA/LA.

1. Courts have considered objective and subjective factors in consideration of recusal of IDEA Hearing Officer (Without citations See Appendix One).
   1. Objective:
      1. Personal or familial tie with a participant,
      2. Residence in the LEA
      3. Financial interest in the outcome (other than getting paid for service as a HO)
      4. Prior professional association with Counsel
      5. Prior Professional relationship with LEA
   2. Subjective:
      1. Introspective
         1. Emotions and conscience
         2. Capable of being free of bias
         3. Capable of being Impartial
      2. What would the public think of the HO continued participation in hearing?
         1. Actions inside and outside the hearing room indicating bias
            1. Statements
            2. Hostility
            3. Favoring one side or the other
            4. Ex parte communication
         2. Prior decisions involving LEA or Parent
         3. Generally, the score card of who the HO “favors’ in their decisions
   3. But are generally differential and not applying the appearance of an impropriety judicial standard
      1. “A Hearing Officer enjoys a presumption of honesty and integrity which is only rebutted by a showing of some substantial countervailing reason to conclude that a decision maker is actually biased with respect to factual issues being adjudicated”. *A.M. v. District of Columbia* 61 IDELR 21, (2013) Amy Berman Jackson.
      2. Should a “judicial standard apply” or an arbitrator standard?
   4. Effect of state administrative law judges and hearing officers codes of conduct. (See Appendix Two)
2. Hearing Officer’s professional and personal wellbeing and continued good health?

#### Appendix One

I. Presumption HO Free from bias/ recusal

The legal standard is that an IDEA hearing officer enjoys a presumption of honesty and integrity that may be overcome only by proving a substantial countervailing reason to conclude that the hearing officer was actually biased with respect to the party. See, L.C. & K.C. on behalf of N.C. v. Utah State Board of Educ., et al 43 IDELR 29 (10th Cir. 2005); Dell ex rel Dell v. Township High Sch Dist 113 32 F.3d 1053, 21 IDELR 563 (7th Cir. 1994); Roland M v. Concord Sch Comm 910 F.2d 983, 16 IDELR 1129 (1st Cir. 1990); AM v Dist of Columbia 933 F.Supp.2d 193, 61 IDELR 21 (DDC 2013); ES & MS ex rel BS v. Katonah-Lewisboro Sch Dist 742 F.Supp.2d, 55 IDELR 130 (SD NY 2010) WT & KT ex rel JT v. Bd of Educ Sch Dist of NY City 716 F.Supp.2d 270, 54 IDELR 192 (SD NY 2010); LF by Ruffin v. Houston Indep Sch Dist 53 IDELR 116 (S.D. Tex 2009); HH by Hough v. Indiana Bd of Special Educ Appeals 47 IDELR 250 (N.D. Ind. 2007); McComish v. Underwood Public Schs 49 IDELR 215 (D. ND 2008); MN v Rolla Public Sch Dist # 31 59 IDELR 44 (WD Missouri 2012).

An IDEA hearing officer is afforded wide discretion in conducting the hearing, including prehearing procedures. Letter to Anonymous 23 IDELR 1073 (OSEP 1994); See, JD by Davis v. Kanawha County Bd of Educ 53 IDELR 225 (SD WVa 2009); Stancourt v. Worthington City Sch. Dist. Bd. of Educ. 44 IDELR 166 (Ohio App. Ct. 2005). An adverse ruling against a party, for example, does not constitute a valid basis for recusal of a hearing officer. Lessard v. Wilton-Lyndeborough Cooperative Sch Dist 47 IDELR 299 (D.NH 2007). MN v Rolla Public Sch Dist # 31 59 IDELR 44 (WD Missouri 2012). Thus, disagreement with a previous ruling does not constitute a showing of bias or the appearance of bias, and it is not a valid basis for recusal.

II. Fair and Impartial Decision Maker/ part of due process

Enumerated dp factor: Goldberg v. Kelly, 397 U.S. 254 (1970)

Appearance of bias & dp Caperton et al v. Massey Coal Co, Inc, et al, 556 U.S. 868, 129 S.Ct. 2252 (2009);

Other dp caselaw re fair & impartial decision-maker (admin decisions- not all SpEd):

An impartial decision maker is essential to due process of law. *Goldberg,* 397 U.S. at p. 271. See also, *Wong Yang Sun v. McGrath* 339 U.S. 33, 45 (1950). To ensure justice, a tribunal must also give the appearance of impartiality. *In re Murchison* 349 U.S. 133, 136 (1955). Due process requires an impartial and disinterested tribunal. *Marshall v. Jerrico, Inc.* 446 U.S. 238, 242 (1980). An impartial fact finder is required for due process of law in the administrative hearing process. *In re Kristy Y*. 752 A.2d 166, 169 (Me. 2000). Impartiality in ruling upon the evidence is a key component of due process. *Abrahamson v. Illinois Department of Professional Regulation* 153 Ill.2d 76, 95, 606 N.E.2d 1111, 1120 (1992). A due process challenge based upon HO bias because the HO worked in the same building as department employees was rejected by the Court. *Erica v. New Mexico Regulation & Licensing* 184 P.3d 444 (New Mexico Ct App 3/31/2008). A fair trial before a fair tribunal is a basic requirement of due process. *Today’s Fresh Start v. Los Angeles Co Office of Educ* 128 Cal.Rptr.3d 822 (Ct App Calif 2011); *Hall v Lalli* 194 Ariz 54, 977 P.2d 156 (Ariz S Ct 1999).

Thus, the decision maker must be free from bias against any party to the proceeding. *Republican Party of Minnesota v. White* 536 U.S. 765, 777 (2002). For example, a judge may not have a financial interest in ruling against one of the parties. *Tumey v. Ohio* 273 U.S. 510, 531-534 (1927); *Aetna Life Ins. Co. v. Lavoie* 475 U.S. 813, 822-825 (1986). It also violates the due process clause if a judge is inclined to rule against parties who do not bribe him. *Bracy v. Gramley* 520 U.S. 899, 905 (1997). A strong personal bias against a person or a group of people should also be a disqualification. See, *NLRB v. Pittsburgh S. & S. Co.* 337 U.S. 656 (1949); Berger v. U. S. 255 U.S. 22 (1921); *[See, General Motors Corp. v. Rosa, 82 NY2d 183 (N. Y. 1993*)(former general counsel promoted to agency head could not review case prosecuted by her and an assistant) .

In a significant development, disqualification is now also required in cases where the appearance of unfairness is overwhelming. *Caperton et al v. Massey Coal Co, Inc, et al* 556 U.S. 868, 129 S.Ct. 2252 (6/8/2009); In this case, the petitioners had won a $50M jury verdict against Massey in a 2002 fraud case. In 2004, while Massey was appealing the decision, Brent Benjamin challenged sitting Justice Warren McGraw for a seat on West Virginia’s only appellate court. Don Blankenship, President of Massey Coal, formed a 527 organization and spent over $3M campaigning against McGraw. When Massey’s appeal of the verdict reached the West Virginia Supreme Court of Appeals, Benjamin refused to recuse himself and the state court ruled 3-2 to reverse the jury award.

The U. S. Supreme Court reversed the West Virginia court in a 5 to 4 decision. The majority opinion by Justice Kennedy explained that Blankenship’s contributions “had a significant and disproportionate influence” upon Justice Benjamin’s election and that there was a serious risk of actual bias. The opinion concludes that this risk is compelled recusal under the Due Process Clause. Although the majority gave no clear guidance for decision makers to follow in the future, it is clear that the appearance of bias may now be so extreme on a particular set of facts as to require disqualification even in the absence of actual bias.

It is not required, however, that the decision maker lack any opinions or predisposition regarding relevant legal issues that may arise in a case before her. *Republican Party of Minnesota v. White* 536 U.S. 765, 777- 778 (2002); *F.T.C. v. Cement Institute* 333 U.S. 683 (1948). The Court has noted that a lack of preconceived views as to legal issues may actually be undesirable in a decision maker. *Laird v. Tatum* 409 U.S. 824, 825 (1972); *Republican Party of Minnesota v. White* 536 U.S. 765, 777-778 (2002).

There must be a showing of bias before an administrative decision maker will be required to recuse himself (i.e., step down). Without a showing to the contrary, a decision maker is assumed to be a person of “… *conscience and intellectual discipline, capable of judging a particular controversy on its own circumstances.” United States v. Morgan* 313 U.S. 409, 421 (1941); *Withrow v. Larkin* 421 U.S. 35 (1975). There is a presumption that an administrative hearing officer will act honestly, properly and without bias or prejudice. *Iowa Farm Bureau Fed v Environmental Protection Commission* 850 N.W,2d 403 (Iowa 2014); AM v Dist of Columbia 933 F.Supp.2d 193, 61 IDELR 21 (DDC 3/28/13); Warrior Run Sch Dist (JG) 113 LRP 39220 (SEA Penna 9/10/13); *Gonzalez v State Election Enforcement Commission* 145 Conn.App. 458, 77 A.3d 796 (Conn App Ct 2013); *Adkins v. City of Tell City* 625 N.E.2d 1298, 1303 (Ind. Ct. App. 1993); Shaw v. Marques, et al RI Super. 2011 (R.I. Superior Court April 4, 2011); *Buchanan v. City of Minneapolis* No A10-1695; 2011 Minn. App. (Minn. Ct App July 25, 2011); MN v Rolla Public Sch Dist # 31 59 IDELR 44 (WD Missouri 6/6/12); GM by Marchese v Drycreek Joint Elementary Sch Dist 59 IDELR 223 (ED Calif 9/7/12); Nickerson-Reti v Lexington Public Schs 59 IDELR 282 (D Mass 9/27/12); v *York County District Three* 49 IDELR 178 (SEA SC 1/24/8); *WT & KT ex rel JT v. Bd of Educ Sch Dist of NY City* 716 F.Supp.2d 270, 54 IDELR 192 (SD NY 4/15/10); *CG & LG ex rel BG v. NY City Dept of Educ* 55 IDELR 157 (SD NY 10/25/10); *ES & MS ex rel BS v. Katonah-Lewisboro Sch Dist* 55 IDELR 130 (SD NY 9/30/10); *LF by Ruffin v. Houston Indep Sch Dist* 53 IDELR 116 (S.D. Tex 9/21/9); *United States v. Batson, et al* 782 F.2d 1307 (5th Cir. 1986). The fact that a contract hearing officer made a substantial amount of money as a hearing officer ($175,000 over 2007-2009) was not enough to overcome the presumption of integrity where the decision was supported by substantial evidence and the proceedings were not arbitrary or capricious. *Buchanan v. City of Minneapolis* No A10-1695; 2011 Minn. App. (Minn. Ct App July 25, 2011); Fact that hearing officer served as watch commander at time of incident did not rise to constitutional bias. *Matter of Vega v. N. Y. State Dept of Correctional Services* 2012 NY Slip Op 00679 (NY Sup Ct, App Div Third Dept). An administrative hearing office enjoys a presumption of honesty and integrity and impartiality that can be overcome only by a showing of actual bias. *Calvert v. State* 251 P.3d 990 (SCt Alaska 2011); *Maryland Insurance Commr v Central Maryland Acceptance Corp* 33 A.3d 949 (Ct App Md 2011); *Shah v Arizona Styate Bd of Dental Examiners*  No. 1 CA-CV 13-0488 (Ariz Ct App 2014) No due process violation where the oral surgeon who advised the ho panel criticized the grievant and criticized his record keeping because no showing of bias.

PC & MC ex rel KC v. Oceanside Union Free Sch Dist 56 IDELR 252 (EDNY 5/24/11) Court rejected implication that SRO’s credibility determinations were biased where the decision was a lucid and well-reasoned opinion. HO’s credibility determinations were thoroughly discussed. In n.5 to decis court notes that parent counsel complained of the HO’s “fabricated **lunacy**.” Court reprimanded parent counsel for ad hominem attacks; EJ by Tom & Ruth J v. San Carlos Elementary Sch Dist 803 F.Supp.2d 1024, 56 IDELR 159 (ND Calif 3/24/11) Court rejected parent argument that HO conducted a prejudicial and inaccurate hearing. Court found instead a thoughtful and detailed analysis in the decision entitled to significant weight; Clark County Sch Dist (LB) 111 LRP 65198 (SEA NV 8/26/11) SRO ruled that HO did not err in failing to recuse himself where there was no evidence of bias.

The federal Administrative Procedure Act, for example, provides as follows:

…The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

5 U.S.C. Section 556(b).

and

**(d)**

**(1)** In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

**(A)** no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

**(B)** no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;…

5 U.S.C. Section 557(d)(1).

A hearing officer should always consult any relevant federal or state Administrative Procedure Act and any agency procedural rules, regulations or policies as to issues of hearing officer bias in a particular case.

#### Appendix Two

### Pennsylvania Standards of Conduct for Office for Dispute Resolution (ODR)

### Special Education Hearing Officers

The Pennsylvania Standards of Conduct for ODR Special Education Hearing Officers was created by the Pennsylvania ODR Stakeholder Council in 2012. It is based on the Model Code of Ethics of the National Association of Hearing Officials. If any ethical requirements are set forth in statutes, regulations or rules for administrative hearing officers that explicitly apply to Pennsylvania ODR Special Education Hearing Officers, either presently or in the future, the following Standards of Conduct are intended to supplement any such requirements. Nothing in these Standards is intended to contradict or overrule any such requirements.

## Standard I – Impartiality

1. A Hearing officer shall recuse him/herself if the due process hearing cannot be conducted in an impartial manner.
2. Hearing officers shall act in such a way that no one could reasonably believe that any person or agency could improperly influence them in the performance of their duties.
3. Hearing officers shall not conduct or participate in deciding the outcome

of any proceeding in which their impartiality might be reasonably questioned. An appropriate ground for disqualification of a hearing officer is personal knowledge of the evidentiary facts in a case, other than (a) that obtained in the course of the hearing officer’s official duties with regard to a prior case involving a party, and (b) that obtained from the official transcript in a prior case involving a party.

1. Hearing officers shall preside without bias or prejudice and without

discrimination on any prohibited basis against any person involved in the proceeding, and should control the proceedings to prevent such discriminatory behavior by any other person involved.

1. A hearing officer shall neither give nor accept a gift, favor, loan, services,

meals, or other item of value that raises a question as to the hearing officer’s actual or perceived impartiality.

C. If the Hearing officer must recuse him/herself, the file will be returned to ODR for immediate rescheduling.

## Standard II - Conflicts of Interest

1. Hearing officers shall avoid a conflict of interest or the appearance of a conflict of interest before, during, and after a proceeding. A conflict of interest can arise from involvement by the hearing officer with the subject matter of the dispute or from any relationship between the hearing officer and any participant, whether past or present, personal or professional, that reasonably raises a question of the hearing officer’s impartiality.
2. The hearing officer shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the hearing officer.
3. Unless the hearing officer recuses on the hearing officer’s own motion, the hearing officer shall promptly disclose all conflicts of interest that are known to the hearing officer. The hearing officer shall make such disclosure to the parties’ counsel. The parties may agree to allow the hearing officer to preside after full disclosure has been made.
4. When the parents and/or student are not represented by counsel, and the hearing officer discloses a conflict of interest without recusing, the hearing officer shall contact the assigned ODR case manager immediately to allow the parties to grant or refuse informed consent for the hearing officer to continue with the due process proceeding. The ODR case manager will contact both parties, following the procedure attached hereto as Attachment A. The hearing officer shall set a time frame for this procedure that is appropriate in light of the decision due date and the next scheduled hearing date.
5. Subsequent to a due process hearing, a hearing officer shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the proceeding. When a hearing officer develops personal or professional relationships with parties, other individuals, or organizations following a proceeding in which they were involved, factors such as time elapsed following the proceeding, the nature of the relationships established, and the services offered when determining whether the relationships might create a perceived or actual conflict of interest should be taken into consideration.

## Standard III – Competence

1. Hearing officers shall demonstrate and maintain the competencies as found in 34 C.F.R. § 300.511.

(c) *Impartial hearing officer.* (1) At a minimum, a hearing officer—

(i) Must not be—

(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c ) (1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons**.**

## Standard IV – Professional Conduct

Hearing officers shall:

1. Always act in a manner that promotes public confidence in the integrity, impartiality and efficiency of the hearing process.
2. Maintain high standards of professional conduct.
3. Follow procedural formalities to the extent required by the IDEA, exercising their discretion to make exceptions in the interest of fairness and adjudicative efficiency, consistent with the requirements of due process.
4. Punctually fulfill their professional commitmentswithin the specified timelines of the due process hearing guidelines**.**

## Standard V – Confidentiality

1. Hearing officers shall not disclose confidential or private information obtained by reason of official position or authority as required by law.
2. Hearing officers shall never seek to use such confidential information to further their personal interests.
3. Hearing officers shall follow ODR’s rules or policies regarding media contacts. In any permitted contact with the media, hearing officers shall limit the sharing of information to that which does not identify individuals and should never discuss the merits of any specific case.
4. Hearing officers shall avoid ex parte communications about a case with anyone (including family, friends, and agency staff and associates) unless authorized by statute or agency regulations. However, hearing officers may in confidence discuss cases with other hearing officers.

## Standard VI - Personal Conduct

1. Hearing officers, either those directly employed or contracted by ODR should not present themselves in such a way as to convey the impression that he/she speaks for or on behalf of ODR during a due process hearing, speaking engagements, training presentations, etc.
2. Hearing officers should treat all participants with equal courtesy and dignity and require the same treatment of the hearing officers by participants. Hearing officers should refrain from social conversation that is inconsistent with the formality and gravity of the situation, and should assure that every participant is addressed with the degree of formality that such participant prefers.

Attachment A: Procedures When Hearing Officer Has Identified Conflict

1. The hearing officer will notify the assigned ODR case manager of the situation, along with the date upon which a decision about the conflict must be made by the parties and reported to the hearing officer by the ODR case manager. The hearing officer will give no more than ten (10) days for this process to be completed.
2. The ODR case manager will contact the unrepresented parent to ascertain whether the parent agrees to waive the conflict. The ODR case manager will advise the parent of the availability of ConsultLine staff to discuss the situation with parent. If parent chooses to talk with a ConsultLine representative, the ODR case manager will give parent’s contact information to ConsultLine, along with the deadline set by the hearing officer for completion of these procedures. The ODR case manager and ConsultLine supervisor will, together, monitor the situation to ensure that parent’s wish to talk to a ConsultLine representative does not adversely impact the deadline set by the hearing officer.
3. The ODR case manager will contact counsel for the LEA to ascertain whether the LEA agrees to waive the conflict.
4. The ODR case manager will notify the parent and the LEA’s counsel of their respective decisions regarding waiver of the conflict.
5. If both parties do not agree to waive the conflict, the ODR case manager will notify the hearing officer that the conflict cannot be waived, with no mention of which party did or did not agree to a waiver.
6. The hearing officer will immediately recuse him or herself from the pending hearing, and as soon as is practical, the ODR case manager will reassign the case to another hearing officer.
7. If both the parent and LEA agree to waive the conflict, parent and LEA’s counsel will complete and sign the “Consent Form for Waiver of Hearing Officer Conflict” and forward it to the ODR case manager in sufficient time to allow the ODR case manager to advise the hearing officer of the parties’ decision within the timeframe set by the hearing officer.
8. The ODR case manager will notify the hearing officer that the parties have consented to his/her continued involvement in the pending matter.
9. If either party does not provide a response to the ODR case manager in sufficient time for the case manager to abide by the deadline set by the hearing officer, it will be assumed that the party(ies) do not consent to the waiver. The ODR case manager will notify the hearing officer that the case will be reassigned to another hearing officer, and as soon as is practical, the ODR case manager will reassign the case to another hearing officer.

# Consent Form for Waiver of Hearing Officer Conflict

The hearing officer assigned by ODR to the due process hearing listed below has disclosed a conflict of interest to the parties. The hearing officer has indicated that, despite the conflict of interest, he/she does not believe that this conflict violates the impartiality requirements of 34 CFR §300.511(c). The hearing officer has referred this matter to the ODR case manager to determine from the parties whether they agree to waive the conflict, and agree to allow the assigned hearing officer to preside over the case.

Your decision to consent, or not to consent, to hearing officer [Name] presiding over due process hearing [File No.] is entirely voluntary. Only if all parties in the case agree to hearing officer [Name] deciding the case will he/she do so.

Check one:

[ ] I consent (agree) to hearing officer [ Name] deciding File No. [ ].

OR

[ ] I do not consent (agree) to hearing officer [Name] deciding File No.

[ ].

Party Name Signature of Party or Attorney Date

(Electronic signature accepted)

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34 CFR 300.511(c):

*Impartial Hearing Officer. (1).* At a minimum, a hearing officer—

1. Must not be—
2. An employee of the SEA, or the LEA that is involved in the education or care of the child; or
3. A person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;
4. Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretation s of the Act by Federal and State courts;
5. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
6. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

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