

<b>Office of Administrative Hearings (OAH) Procedures Transmittal</b>		<b>Transmittal: 16-01</b>
<b>Distribution:</b>		<b>Date: March 1, 2016</b> <b>Page: 1 of 2</b>
<b>Albany OAH Staff</b> <input checked="" type="checkbox"/>	<b>Rest of State Hearing Officers</b> <input checked="" type="checkbox"/>	<b>Subject:</b> <b>Access to Policy Documents to Prepare for a Fair Hearing</b>  <b>18 NYCRR 300.5(b) and GIS 16 TA/DC001</b>
	<b>Supervising Hearing Officers</b> <input checked="" type="checkbox"/>	
<b>NYC OAH Staff</b> <input checked="" type="checkbox"/>	<b>NYC Hearing Officers</b> <input checked="" type="checkbox"/>	
	<b>Supervising Hearing Officers</b> <input checked="" type="checkbox"/>	
<b>Rest of State Social Service Districts</b> <input checked="" type="checkbox"/>		
<b>NYC Agencies</b> <input checked="" type="checkbox"/>		

18 NYCRR 300.5(b) provides that “upon request, specific policy materials shall be made available for an applicant, recipient or his representative to determine whether a fair hearing should be requested or to prepare for a fair hearing.” Examples of policy materials include: Administrative Directives (ADM’s), Informational Letters (INF’s), Local Commissioners Memoranda (LCM’s), General Information System Messages (GIS) and various source books and provider manuals. 18 NYCRR 300.5(b) is applicable to policy materials issued by the New York State Office of Temporary and Disability Assistance (OTDA), the New York State Department of Health, and the New York State Office of Children and Family Services. All OTDA policy documents and manuals are available on the OTDA website. It should also be noted that social services districts sometimes issue their own documents to implement State policy. Such policy materials must be made available, upon specific request, by the social service district to an applicant, recipient or their representative to determine whether a fair hearing should be requested or to prepare for a fair hearing.

The regulation addressing access to specific policy materials should not be confused with the regulations governing an Appellant’s right to examine their case record [18 NYCRR 358-3.7] and the Appellant’s right to request copies of the documents the social services district will present at the hearing [18 NYCRR 358-4.2(c)]. This memo only discusses access to specific policy documents.

In [GIS 16 TA/DC001](#), OTDA reminded social services districts about the current requirements in this regulation and added a new paragraph to CNS notices advising Appellants and their representatives about the availability of specific policy documents to prepare for a hearing upon request. A social services district may satisfy this requirement in one of several ways:

- A district may advise the requestor that the fastest way to access the material is to go to the OTDA website. However, if the requestor indicates that they want the district to make the materials available the district may mail the policy document or the manual either through US mail or e-mail it if requested by the requestor;
- A district may provide a time and place where the requestor may view the policy document or manual. The viewing may be by paper copy or at a computer terminal.

When this issue is raised at the hearing, the Hearing Officer has a responsibility to assess whether the social services district has complied with 18 NYCRR 300.5(b) and that requested

specific policy documents have been made available to the Appellant or their representative and take appropriate action if this has not occurred. There are no special requirements an Appellant, or representative, has to follow to make a request. A statement by the Appellant, or their representative, which is as specific as possible, requesting access to policy documents to prepare for a fair hearing is sufficient. If the district does not comply with the request, or the request is made at the time of the hearing, the Hearing Officer may do several things. The Hearing Officer may grant an adjournment so that the district may provide the Appellant, or their representative, with access to specific policy documents as outlined in GIS 16 TA/DC001. The Hearing Officer could also allow a brief recess for the Appellant to review the specific policy documents. When requests for specific policy documents are made by an Appellant's representative, the Hearing Officer should enquire whether the representative has available Internet access and, if so, advise the representative that all OTDA policy documents are available on the OTDA website. A brief adjournment may be granted to allow the representative an opportunity to review policy documents. As the circumstances of each case can vary, the Hearing Officer is to review this issue on a case-by-case basis.

A handwritten signature in cursive script, appearing to read "Samuel L. Spitzberg".

Samuel L. Spitzberg, Director,  
Office of Administrative Hearings