

<b>Office of Administrative Hearings (OAH) Internal Procedures Transmittal</b>	<b>Transmittal 18-05</b>
<b>Distribution:</b>	<b>Date: May 8, 2018</b> <b>Page: 1 of 2</b>
<b>Albany OAH Staff <input checked="" type="checkbox"/></b> <b>Rest of State Hearing Officers <input checked="" type="checkbox"/></b>  <b>Supervising Hearing Officers <input checked="" type="checkbox"/></b>  <b>NYC OAH Staff <input checked="" type="checkbox"/></b> <b>NYC Hearing Officers <input checked="" type="checkbox"/></b>  <b>Supervising Hearing Officers <input checked="" type="checkbox"/></b>  <b>Rest of State Social Service Districts <input type="checkbox"/></b>  <b>NYC Agencies <input type="checkbox"/></b>	<b>Subject:</b> <b>Recusal of Hearing Officer at Party Request</b>

This Office of Administrative Hearings (OAH) Internal Procedures Transmittal seeks to clarify the steps Hearing Officers should take when responding to recusal requests made by a party or parties to a fair hearing pursuant to *18 NYCRR § 358-5.6 (c)*. This Transmittal replaces Transmittal 91-03 dated May 23, 1991.

Before considering a party's request that a Hearing Officer recuse himself or herself from presiding over a hearing, three criteria must be met:

1. The request must be made in good faith;
2. The request must be made on the record, either orally or in writing; and
3. The grounds for the request must be described in detail.

*18 NYCRR § 358-5.6 (c)(3)*

If the Hearing Officer is satisfied that these criteria have been met, he or she must determine whether to grant the request. Examples of grounds warranting recusal include:

- The Hearing Officer has previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of Hearing Officer;
- The Hearing Officer has any interest in the matter, financial or otherwise, direct or indirect, which will impair his or her independent judgment; or
- The Hearing Officer has displayed bias or partiality to any party to the hearing.

*18 NYCRR § 358-5.6 (c)(1)*

If the Hearing Officer GRANTS the request, he or she must:

1. Advise the parties on the record that the request is being granted;
2. Adjourn the hearing for reassignment; and
3. Promptly notify his or her supervisor of the decision to grant the recusal request.

If the Hearing Officer DENIES the request, he or she must:

1. Advise the parties on the record that the request is being denied and that the hearing will continue;
2. Advise the parties on the record that the request will be reviewed by OTDA's General Counsel or designee;

18 NYCRR § 358-5.6 (c)(5)

3. Promptly notify his or her supervisor of the decision to deny the recusal request; and
4. Promptly email [recusal@otda.ny.gov](mailto:recusal@otda.ny.gov) of the decision to deny the recusal request.

If you have any questions regarding this Transmittal, you may email [recusal@otda.ny.gov](mailto:recusal@otda.ny.gov).

A handwritten signature in black ink, appearing to read 'Roy A. Esnard', is positioned above the typed name.

Roy A. Esnard, Deputy Commissioner  
Office of Administrative Hearings