

Special Education Fact Sheet

APPEALING THE DECISION OF AN IMPARTIAL HEARING OFFICER

This fact sheet answers question that parents and guardians might have if they do not agree with the determination of the Impartial Hearing Officer in their child's special education hearing. For more detailed information please refer to the Office of State Review at <http://www.sro.nysed.gov/>.

How to Initiate an Appeal

I disagree with the decision of the Impartial Hearing Officer. What can I do?

If you disagree with the decision of the Impartial Hearing Officer (IHO), you have the option to appeal the decision to the New York State Office of State Review.

What happens if I decide not to appeal the decision of the IHO?

If you decide not to appeal, you and the school district must follow the final determination of the IHO.

Do I need a lawyer to appeal the decision of the IHO?

No, it is not required that you have a lawyer to appeal the decision of the IHO.

What will happen to my child during the appeal process?

During the appeal, your child will stay in his or her current educational placement unless you and the school district agree in writing to other arrangements.

Will I be given another hearing on appeal?

No. The appeal that you will make to the Office of State Review will be solely a paper document review. The State Review Officer will review memorandums submitted by both parties, the Impartial Hearing Officer's decision, and of the testimony and exhibits submitted at the hearing.

In the appeal, who is the "Petitioner" and who is the "Respondent"?

The person who is appealing the decision of the IHO is the Petitioner. The respondent is the person who will need to respond to the Petitioner's appeal of the IHO.

Preparing the Appeal

How do I begin the appeal process?

The first step is to submit a “Notice of Intention to Seek Review” and serve or provide it to the school district within 25 days from the date of IHO’s decision. The purpose of the Notice of Intention is to inform the school district that you are going to appeal the decision of the IHO.

The Notice of Intention must be in the following form:

- ❖ “Notice: The undersigned intends to seek review of the determination of the impartial hearing officer concerning the identification, evaluation, program or placement of (name of student with a disability). Upon receipt of this notice, you are required to have prepared a written transcript of the proceedings before the impartial hearing officer in this matter. A copy of any interim and the final decision of the impartial hearing officer, a bound copy of the written transcript, including a word index for the written transcript, as well as an electronic transcript, and a true copy of the original exhibits accepted into evidence at the hearing and an index to the exhibits must be filed by the Board of Education, together with certification of the completed record, with the Office of State Review of the New York State Education Department within 10 days after service of this notice.” <http://www.sro.nysed.gov/part279regs.html#Noticeofintention>

A copy of the notice must be hand-delivered by someone other than the petitioner, who is at least 18 years of age. The notice must be hand-delivered to any of the following individuals: the school district clerk, a member of the Department of Education, the superintendent of schools, or a person in the superintendent’s office who has been designated by the department as being capable of accepting service.

You should also mail the original copy of the Notice of Intention and an affidavit of service of the copy of the Notice upon the Board to:

Office of State Review of the New York State Education Department
80 Wolf Road, Suite 203, Albany, NY 12205-2643

The original copy of the Notice should be mailed within five (5) days after the delivery of the copy to the Board.

What is an affidavit of service?

An affidavit of service is proof that you provided the other side with the appropriate documents. The affidavit needs to be notarized. It must be signed in the presence of a Notary Public or a Commissioner of Deeds by the person who delivered the documents. The original Affidavit should be attached to the Notice of Intention and the Petition.

What needs to be completed after the “Notice of Intention to Seek Review” is served?

After completing the Notice of Intention, you must prepare a Petition.

What is a Petition?

A Petition is the document in which you describe the reasons why you believe the determination of the IHO was incorrect.

Does the Petition need to conform to a particular format?

The Office of State Review guidelines state that the Petition should be typewritten using standard double spacing, 12 point Times New Roman font, on 8 ½ x 11 inch white paper, single sided, with 1 inch margins. The Petition may not exceed 20 pages. In the upper left hand corner of the first page you should have a heading that is the same as the heading on the Notice of Intention to Seek Review and the Notice with Petition. You can find forms at <http://www.sro.nysed.gov/forms/default.html>

What should be the content of the Petition?

There are several items that the Office of State Review requires you to include in your Petition. These items include:

- ❖ Identifying information about yourself as parent or person in a parental relationship and identifying information about the child’s name, age, and the name of the school, if any, that your child is attending
- ❖ The date that you requested a hearing and the date you received a copy of the hearing officer’s decision
- ❖ A thorough explanation of the portions of the IHO’s decision that you do not agree with and why you do not agree with them. When possible, refer to the evidence used in the hearing and the transcript of the hearing to support your arguments
- ❖ Any specific objections you may have with the manner in which the hearing was conducted or the manner in which previous meetings with the Committee on Special Education was conducted
- ❖ Citations to the record and identification of relevant page numbers in the hearing decisions, transcript, exhibit, or letter
- ❖ A conclusion that states what you would like to happen as a result of the appeal

Can I make legal arguments in the Petition?

You are not required to make legal arguments in your petition, but you may if you wish. In addition, you may submit an additional Memorandum of Law in which you may detail your legal arguments.

Your Memorandum of Law must be typewritten, single-sided, with standard double spacing, 12 point Times New Roman font, on standard 8 ½ x 11 inch white paper, with 1 inch margins. The Memorandum may not exceed 20 pages. You must make citations to the record and identify relevant page numbers in the hearing decision, transcript, exhibit or letter.

Does anything need to be filed with the Petition?

Yes. Another Notice must be filed with the Petition.

What should be in the Notice with Petition?

The Notice with Petition should read as follows:

“Notice: You are hereby required to appear in this review and to answer the allegations contained in this petition. Your answer must conform with the provisions of the regulations of the Commissioner of Education relating to reviews of this nature, copies of which are available from the Office of State Review of the New York State Education Department, 80 Wolf Road, Suite 203, Albany, NY 12205.

Please take notice that such regulations require that an answer to the petition must be served upon the petitioner, or if petitioner is represented by counsel, upon such counsel, within 10 days after the service of the petition for review, and that a copy of such answer must, within two days after such service, be filed with the Office of State Review of the New York State Education Department, 80 Wolf Road, Suite 203, Albany, NY 12205.” <http://www.sro.nysed.gov/part279regs.html#NoticeWithPetition>

Does the petitioner need to serve the appeal or can someone do it on his/her behalf?

The petitioner must have someone, who is over 18 years of age and is not a party to the appeal, personally serve the petition on the school district no more than 10 days after personally serving the Notice.

The Petition must be personally served to the school district within 35 days from the date of the IHO’s decision. If you received the IHO’s decision by mail, the date of mailing plus the four following days are excluded in calculating the 25 or 35 day period.

The Petition and Notice together with an affidavit of verification upon the other party to the hearing must be filed with the Office of State Review of the New York State Education Department within 3 days after service is completed.

What is an affidavit of verification?

An affidavit of verification is proof that the petitioner has read the petition and is aware of its contents. The affidavit needs to be notarized. It must be signed in the presence of a Notary Public or a Commissioner of Deeds by the person who delivered the documents. The original Affidavit should be attached to the Petition.

Response to Petition

What happens after I file my petition?

The Respondent is required to serve and Answer in response to your petition within 10 days after receiving the petition. You will either receive the Answer via mail or personal delivery. If you have an attorney, the Answer should be served to your attorney. The Respondent may also submit a Memorandum of Law along with the Answer.

Can I submit a Reply to the Respondent's Answer?

Yes. You may submit a Reply to the Answer. However, it must be limited to responding only to procedural defenses asserted in the Answer or any additional documentary evidence submitted in the Answer.

Your reply must be typewritten with standard double spacing, in 12 point Times New Roman font, on standard 8 ½ x 11 inch white paper, with margins no smaller than 1 inch, and no longer than 10 pages.

Filing Responsibilities

Should I retain copies of the documents?

Yes. Keep copies all of the documents for your own records

Am I responsible for filling the decision of the IHO with the Office of State Review?

No, it is the school district's responsibility to file the decision of the IHO with the Office of State Review. The district is also required to submit a bound copy of the written transcripts of the hearing, including a corresponding word index, an electronic copy of the transcripts, a copy of the original exhibits offered into evidence at the hearing, including a corresponding index to the exhibits, and a certification that the record submitted is the complete hearing record.

What happens if I do not file and serve my appeal correctly?

If your appeal is filed or served incorrectly, the State Review Officer has the discretion to dismiss your appeal.

What if I do not meet the deadline?

You can file an appeal after the deadlines have past. However, the State Review Officer then has the discretion to dismiss the case for not being filed in a timely manner. If you have missed your deadlines and still wish to file an appeal, you may wish to explain in your petition why you did not meet the deadlines. The State Review Officer may excuse you for failing to file the appeal in a timely manner if the Officer finds that you have shown a good reason in your petition.

Final Decision of the State Review Officer

Who is the State Review Officer?

The State Review Officer (SRO) is an individual who cannot have any personal, professional, or economic interests in the hearing to be reviewed. The SRO cannot be employed at any time by a party to the appeal and cannot have been in any way involved with any state or local policy or procedure that is being challenged at the hearing. If you believe that the SRO in your case has violated one of these requirements, you may challenge his or her impartiality.

What will the SRO consider in determining whether additional evidence will be allowed in the appeal that was not introduced at the hearing?

The SRO will consider whether the evidence is necessary to make a determination. The SRO will also determine whether the evidence was previously available and could have been admitted during the impartial hearing. If you have evidence that you feel is important to your case and was not introduced at the hearing, present it to the SRO and ask to have the evidence admitted.

When is additional oral evidence permitted on appeal?

Additional oral evidence is generally not permitted on appeal, however if the State Review Officer determines that it is necessary, he or she will direct that a hearing be held to receive the oral evidence.

How will I know when the SRO has made a decision?

The SRO must make an independent decision after a complete review of the hearing record and issue a written decision on your appeal. Copies of the decision will be mailed to you, or your attorney, and to the attorney for Department of Education. The decision of the SRO must be followed out by both parties and the Education Department with respect to the provision of special education in dispute.

What if I disagree with the SRO's final decision?

If you are not happy with the SRO's final determination, you may take your case to either the New York State Supreme Court or the Federal District Court for judicial review. However, you must commence the lawsuit within 4 months of the SRO's decision.

TIPS

- **Keep a notebook**
 - **Record all phone conversations and in-person conferences and meetings**
 - **Keep all the papers you received from the DOE**
 - **Keep letters and envelopes**
 - **If documents are not dated, note the date you received the document on the back of the document or envelope**
- **Send all communications by certified mail or hand deliver them, asking the receiver to initial and date your copy**
- **Always**
 - **Keep a copy of everything you give to the DOE**
 - **take the name of the DOE person you're dealing with**
 - **If you can, get title, office, and detailed contact information**
 - **write it all down for future use**

***DUE TO THE GENERAL NATURE OF THE INFORMATION PRESENTED, THIS FACT SHEET SHOULD NOT BE REGARDED AS LEGAL ADVICE. ***