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Special Education Fact Sheet

Special Education Impartial Hearings in New York City

What is an impartial hearing?

An impartial hearing (or “due process hearing”) is an administrative hearing that is similar to a trial, but much less formal. When you and the New York City Department of Education (DOE) are involved in a dispute about a special education issue, a due process hearing is one of the ways that the dispute can be resolved.¹

Like a trial, an impartial hearing ends in a decision by an Impartial Hearing Officer (IHO), the hearing’s equivalent of a judge. The decision of the IHO is final unless it is appealed by one of the parties to the New York State Review Office (SRO) within a set period of time. Please review our fact sheet on appeals to the SRO for more information.

Who is the Impartial Hearing Officer?

The Impartial Hearing Officer (IHO) is the person assigned to rule on the case and determine the outcome. All of the IHOs are trained and paid by the State of New York. The IHOs are not employees of the DOE or the state, and are specifically trained to hear special education cases.

The New York City DOE runs an Impartial Hearing Office through which hearings are arranged, but even though the IHO is assigned to impartial hearings through the this office, the IHO is an independent contractor, and not an employee of the DOE or any other government agency.

¹ Many alternatives to seeking an impartial hearing exist within the system. A parent may request a meeting or mediation as other ways to resolve disputes and obtain the array of services for a child with special education needs instead of or in conjunction with seeking a formal administrative hearing. .

When should I request an impartial/due process hearing?

In accordance with the state and federal special education laws, a parent/guardian or school district may file a request for an impartial hearing for:

Any matter relating to the identification, evaluation or educational placement of a student with a disability.

An Impartial Hearing may also be requested for:

- a student *suspected* of having a disability, or for the provision of a free appropriate public education to that student;
- disputes regarding related services and accommodations on IEPs, and requests for reasonable accommodations only for children who have disabilities but not IEPs (see our fact sheet on Section 504 Accommodations); and
- Some disciplinary matters.

Is there a time limit for requesting a hearing?

You must request an impartial hearing no more than two years after the dispute between you and the DOE arose. You should review the special education regulations and the Procedural Safeguard Notice issued by the New York State Department of Education for specific information on how the limitations may affect an individual case.

The Procedural Safeguards Notice can be found at:

<http://www.p12.nysed.gov/specialed/publications/policy/psgncover.htm#notice> in Spanish and English, or by calling the State's regional office at (718) 722-4544. The DOE can also provide a copy of the notice.

How do I request an impartial hearing?

To request an impartial hearing, you may fill out a form or write a letter. This "due process complaint" or "request for impartial hearing" is the document that puts the DOE on notice of your dispute and raises all of the issues that will be discussed at the impartial hearing. Although the physical format of your complaint is not important, you will want to spend some time making sure that the contents alert the other side to all of the issues that you want to raise and how you hope to resolve the situation.

You are required to send the request for the hearing to the Department of Education's Impartial Hearing Office. It is important that you specifically request a hearing. The information that must be included in the request includes:

- the name of the student
- the home address of the student
- the name of the school the student is attending
- a description of the problem
- a proposed solution

This letter should be as thorough as possible. Issues not raised in the due process complaint cannot be discussed during the impartial hearing. The DOE has posted the form in ten languages (attached) that you can use:

<http://schools.nyc.gov/Offices/ImpartialHearingOffice/Parents/default.htm>.

Where Do I Send my Request for an Impartial Hearing?

Submit your form or letter should to:

Impartial Hearing Office
131 Livingston Street, Room 201
Brooklyn, NY 11201
Attn: Request for Impartial Hearing
Fax: (718)935-2528/2932
E-mail: ihoquest@schools.nyc.gov

In addition to sending the letter to the DOE's Impartial Hearing Office, you should send a copy of the request to the Committee on Special Education for your child's district and the New York State Education Department:

Impartial Hearing Reporting System
New York State Education Department
Office of Vocational and Education Services for
Individuals with Disabilities, Room 1624
One Commerce Plaza
Albany, NY 12234.

Additionally, keep a copy of your request for your records with proof that you sent it (certified mail is a very good way of obtaining proof of delivery).

The Hearing Process

Once you have filed your request for a hearing, you will begin to receive correspondence from both the Impartial Hearing Office and the DOE. This can seem confusing. Once you ask for a hearing, the New York State regulations set strict time lines on the entire process. You can learn about these time lines in the Procedural Safeguards Notice. The timelines will also be communicated to you throughout the case by the hearing office.

You should first receive an acknowledgement of your hearing request from the Impartial Hearing Office. This notice will give you information about your contacts for the case in the Impartial Hearing Office and the DOE.

The Resolution Period

After a hearing request has been received and accepted by the hearing office, the thirty-day resolution period begins. In this period, several things need to occur. It is important to become familiar with the process through reviewing the documents given you by the impartial hearing office and reading the Procedural Safeguards Notice, but some key activities are listed:

- **Answer:** Once the DOE receives your request, they are required to provide you an *answer*, which is supposed to be a response that addresses the substantive claims in the hearing request. Often, the DOE refers to this document as a “due response.” This is usually a form answer that does not seem to address the substantive case. It will look more like a checklist than a legal document.
- **Challenge to the Sufficiency of the Complaint:** If a request for an impartial hearing (the complaint) does not contain all of the required information listed above, or if the letter is confusing or unclear, the other party can challenge the sufficiency of the complaint by notifying the impartial hearing office within a short period of time that it wants the complaint dismissed as insufficient. A few days later, the IHO will make a decision as to whether the hearing request meets the necessary requirements, dismiss the complaint, or let the case go on with the complaint as is. If the petition is dismissed, you can refile with a more detailed request, but all of the timelines will begin again.
- **Resolution Session:** Within the first fifteen days of the case, and before a hearing takes place, a meeting called a resolution session must be held between you and representatives from the DOE to attempt to resolve the issues addressed in the impartial hearing request. The DOE is required to make the arrangements. In most cases, the meeting can be helpful in resolving some issues, allowing for a more concise hearing on difficult issues like tuition reimbursement or the award of private related services. Although you have a right to bring an attorney to the resolution session, the DOE may not send an attorney to the session unless you also have one. The resolution session can only be waived if you and the DOE agree to waive it, and do so in writing. If you and the DOE agree, mediation can be requested in place of a resolution session.
- **Resolution Agreement:** If you and the DOE reach an agreement in the resolution session, you will sign a document detailing the agreement. Either party may cancel it within three days of its signing, but after that, it is legally binding. If a resolution is reached on only some issues, a *partial resolution agreement* will be executed, and you will proceed to the hearing only on the issues still in dispute. If no agreement, or only a partial agreement, is reached, the Impartial Hearing Officer will schedule the case for hearing.

The Hearing Stage

You will receive instructions from the Hearing Office regarding the hearing. **It is important to read all the papers very carefully.** There are time limits on using subpoena forms and submitting evidence. If you need an accessible hearing room, an interpreter, or other special service, you may use the forms to make those requests.

- **Hearing Preparation.** It is important to read the packet sent to you by the Impartial Hearing Office thoroughly. If you did not receive the material, immediately call the Impartial Hearing Office and ask for one. Details regarding subpoenas (formal demands for documents and witnesses to be approved by the IHO), special requests like accessible hearing facilities and interpreters, etc., are laid out in the documents
- **Evidence.** The IHO packet also explains how to prepare your **evidence**, which is the proof for your case. In most cases, you submit your documents at the beginning of the hearing, and also have people testify during the hearing to attempt to prove your claims. The documents you want to submit at the hearing must be submitted to the DOE at least five working days prior to the date of the hearing. Likewise, the DOE must share any documents it plans to use at the hearing in the same time period with you. If documents are not shared with the opposing party at least five days prior to the hearing, the IHO may exclude the evidence from the hearing. When disclosing documents to the other side, you should attach a cover page individually listing all the documents in a general way and put page numbers on all your documents. You should keep two copies of your documents: one for you to use at the hearing and the other to give to the Impartial Hearing Officer at the start of the hearing.
- **Prehearing conference.** It is possible that IHO will decide to hold a conference before the start of the hearing to clarify the issues and discuss evidence that will be submitted at the hearing. Witness lists might be exchanged at the prehearing conference. This meeting can take place by phone prior to the date of the hearing, or just before the opening statements at the hearing. You may ask the hearing office for a preliminary conference if you think one is necessary, but the hearing officer has the final say on whether a conference will be held.

Impartial hearings are generally held at

NYC DOE Impartial Hearing Office
131 Livingston Street
Brooklyn, NY 11201

Alternate arrangements can be made if you need special accommodations. The hearing will take place in a closed room (unless the parent requests an open hearing) at a time that is reasonably convenient to the parent, student and DOE representatives.

The Hearing Room

Impartial hearings take place in a conference room -- not a court room -- at a table. The DOE representatives (and sometimes a DOE attorney) sit on one side of the table and the student's family, representatives, and interpreters, if needed, sit on the other. The IHO will sit at one end of the table and a reporter (and recording machine) will be at the opposite end. The hearing is conducted like a trial, with the parties taking turns presenting evidence, and the proceeding managed by the impartial hearing officer. The proceedings are recorded and monitored for clarity by the reporter. Transcripts of all hearings are provided to the parties several days after the hearing.

The Hearing

The IHO will open the hearing by describing the IHO's role and cite the legal authority under which the hearing is conducted. The IHO will ask you and the DOE to present your cases by beginning with an opening statement. This statement can be prepared in advance and read into the record. The Opening Statement briefly describes your position and summarizes the argument that you will make to support it. In all most cases, the DOE will present its case first, even when you were the party asking for the hearing.

Each party presents its case by offering evidence (documentation and witnesses) to persuade the IHO to give you the relief you request. After each witness's testimony, the other side will have an opportunity to ask the witness its own questions. You may ask your witnesses to appear in person or by telephone. Very often, DOE witnesses testify by telephone.

➤ How long do I have to present my case?

Under the New York regulations, you have one day to present its case, unless the Impartial Hearing Officer allows additional time. Many hearings do continue for more than one day.

➤ What is the burden of proof?

The burden of proof is a party's responsibility to prove its position. In a hearing, only one party will bear the burden of proof. If that party is unable to prove its case, it cannot prevail at the hearing. For example, in a case in which a parent sues the DOE for a change in the student's classification, the DOE will have to show that its decision regarding the classification is based on facts supporting the decision. If DOE fails to offer evidence to show the basis for the decision, the DOE cannot prevail. If the parent is able to submit evidence to support its position, she will prevail and the classification will be changed.

The burden of proof is usually on the DOE, which means that the DOE presents its case first. One exception is when a parent is seeking tuition reimbursement for

a private school. For more information on private school cases, please see our fact sheet, *Private School Placements Paid for by the Department of Education*.

➤ **What type of evidence should I prepare to use at the hearing?**

It is important to present evidence at the hearing to support the relief you are requesting. In most cases, your opinion of your child's educational needs is important, but will not be enough on its own to support your request. The evidence you present can be documentary evidence and testimony.

The **documentary evidence** can include Individualized Education Programs (IEPs), school evaluations, private evaluations, letters, progress notes, pictures, videos, and any other information that supports your position. The documents can also be prepared by educational, mental health or medical providers. Additionally, you can present **testimony** from providers, testers, counselors, family members, or other individuals with first-hand knowledge of the student's situation.

➤ **May I use documents or witnesses from the DOE to support my claim?**

If you wish to get records from the DOE and/or call DOE employees as witnesses to testify, you should complete subpoena forms and submit them to the Impartial Hearing Office. The subpoena can be faxed or e-mailed to the impartial hearing office where the IHO will sign it. The office only serves DOE subpoenas. It is usually not necessary to subpoena your own witnesses (who are not DOE employees), but if a witness needs one for any reason, you may ask the IHO to sign one and return it to you for service.

➤ **Will a transcript of the hearing be produced?**

Yes, impartial hearings are official proceedings and are recorded. Transcripts of the proceeding will be sent to you and the DOE after the hearing. The transcript is a complete recording of the official proceeding. During the hearing, however, the IHO might want to have some discussions "off the record," which means that they will not be recorded. Off the record conversations are not part of the official record, and cannot form the basis of an appeal.

➤ **What is the role of the Impartial Hearing Officer during the hearing?**

The IHO is the fact-finder, who listens to the testimony, hears the evidence, and renders a decision. The IHO may ask the parties and witnesses questions, and any disputes or problem that arise during the hearing will be resolved by the IHO.

➤ **What powers does the Impartial Hearing Officer have?**

The IHO has the power to issue subpoenas and administer oaths, and the responsibility to conduct the hearing efficiently and fairly. The IHO can limit or

exclude evidence or witnesses if s/he determines that it is “irrelevant, immaterial, unreliable, or unduly repetitious.” The IHO is empowered to issue some orders.

➤ **What are my rights at the Impartial Hearing?**

Your rights are described in the *Procedural Safeguard Notice Rights for Parents of Children with Disabilities, Ages 3-21*. You should carefully review the description of your hearing rights before you request and attend a hearing.

➤ **May I request an interpreter or a physically accessible location?**

Included in the package of forms that the Impartial Hearing Office provides will be forms to request an interpreter and a physically accessible location for the hearing. There is no charge for accommodations and interpreters at hearings.

➤ **Should a student be present at an impartial hearing?**

If you think it is appropriate, your child has the right to be present and participate in the hearing. A notice that the student will be present is included in the material you will receive from the Impartial Hearing Office.

After the Hearing

The IHO will provide a written decision a few weeks after the record is closed. The IHO has 45 days from the end of the resolution session to conduct a hearing and render a decision, but this time period may be extended in some cases.

Where will a student attend school while waiting for a hearing and its decision?

The federal law contains a “stay put” provision, which means that the student may remain in the current educational setting until the dispute is resolved. The term used for this is “pendency,” and is triggered when the due process complaint is filed and continues through the appeal period. Please see our Pendency Fact Sheet for details.

It is possible for you and the DOE to agree to place the child in an alternate placement until the completion of the hearing if the current placement is unsafe or otherwise harmful. If the case involves a disciplinary suspension or an application for initial admission to public school, your child, with your consent, can be placed in a suitable public school program until the completion of all of the proceedings. If your preschool child is currently not receiving special education services and programs, he or she may also receive services during hearings or appeals.

What happens if I disagree with the Impartial Hearing Officers decision?

If you are dissatisfied with the IHO's decision, you may appeal to the State Review Officer (SRO) of the State's Department of Education. There are short timelines in filing this type of an appeal. To obtain more information, review the *Procedural Safeguard Notice: Rights for Parents of Children with Disabilities, Ages 3-21* and our fact sheet on *Appealing a Case to the SRO*. See, also: <http://www.sro.nysed.gov>.

Where can I find more information on hearings?

Procedural Safeguard Notice: Rights for Parents of Children with Disabilities, Ages 3-21 can be found in Spanish and English at:

<http://www.p12.nysed.gov/specialed/publications/policy/psgncover.htm#notice>

or by calling the State's regional office at (718) 722-4544.

Model forms are available from the DOE or the New York State Education Department Special Education at (518) 473-2878 or <http://www.vesid.nysed.gov/specialed/>

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. ***

January 2011

<input type="checkbox"/> I request an Impartial Hearing be scheduled. <input type="checkbox"/> I request Mediation.
<input type="checkbox"/> I request an Impartial Hearing, but request Mediation instead of the Resolution Session.

• REQUEST FOR DUE PROCESS PROCEEDINGS

*Student's Name _____ NYC Student I.D. (OSIS) _____

*Student Address _____ City/State _____ Zipcode _____

Student's Date of Birth: ___/___/___ Student attends: Public School Charter School Private School District# _____
 Check here if student is Homeless, in a Correctional Institution, or in Foster Care

*Name of School Student is attending: _____

Address of School _____ Zipcode _____

Date of Current IEP: ___/___/___ IEP Developed by District #: _____

Contact Information for Parent or Guardian

Name of Parent or Legal Guardian: _____

Address (if different than student's address) _____

City, State _____ Zip code _____

(If this address is different from student's school records, please go to the school and correct address. Filing this request does not change the student's records at the school).

E-mail address: _____ Check here if you want notice of scheduled hearings by E-mail

Telephone: *[All calls will be made between the hours of 8 a.m. & 5 p.m. Please check the box next to the preferred contact number.]*

Home: (____) _____ Cellular: (____) _____

Work: (____) _____ Other: (____) _____

Primary Language in the home: English Other (specify) _____

Check here if you will need a translator at the proceeding. Specify language _____

Check here if you will need a sign language interpreter at the proceeding.

Problem and Proposed Solution to the Described Problem

*Describe the problem (the concerns relating to the disagreement between you and the district, please include specific facts).

If more space is needed, attach additional paper. _____

*Proposed solution to the above problem: _____

If more space is needed, attach additional paper.

SIGNATURE OF PERSON COMPLETING THE FORM _____

DATE _____

RELATIONSHIP TO STUDENT: Parent / Legal Guardian Attorney Other (specify) _____

Note: If you checked "Attorney" or "Other, please provide the contact information below. Please note that information on this case will only be discussed with persons in a parental relationship unless the attorney has submitted a Notice of Appearance or, if "Other", a confidentiality release form has been signed and submitted by the parent or legal guardian identifying the person with whom the NYC DOE staff can discuss the matter.

Other or Attorney Contact Information

Name _____ Email Address _____

Address _____ Zip Code: _____

Telephone _____

The information contained in this notice will remain confidential.

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