



ADVOCATES
FOR
CHILDREN'S

APRIL 2006

Short Guide to Impartial Hearings



NOW UPDATED TO INCLUDE IDEA 2004 CHANGES !!

This guide does not constitute legal services or any legal opinions of its authors. In many cases, the guide may summarize existing policies or laws. The fact that information appears in this guide does not necessarily suggest the authors' agreement with such policies or laws.

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INTRODUCTION: A NOTE ABOUT IDEA 2004 CHANGES

Do not be intimidated by the impartial hearing process! You have legal rights under both Federal and New York state laws to ensure that your child receives an appropriate education. If you feel that your child's educational rights are being violated because s/he is not receiving the proper special education services, you have the right to request a hearing. This guide will help answer some of your questions about the hearing process.

In December of 2004 Congress reauthorized and amended the Individuals with Disabilities Education Act (IDEA) 2004. Most of the changes started to take place on July 1, 2005. This book will inform you of the changes in procedures so that you can advocate for your child. The New York state regulations have also changed, and those changes are included here as well. The federal regulations are not yet completed, but once they are, we will update this booklet as soon as possible.



What is an impartial or “due process” hearing?

THE IMPARTIAL HEARING is an administrative proceeding (like a trial) where a disagreement between the parent (or legal guardian) and the school district is decided by an administrative law judge. This judge is called an Impartial Hearing Officer (IHO).

THE IMPARTIAL HEARING OFFICER (IHO) is an attorney certified by the New York State Education Department (State Ed) to conduct hearings. This hearing officer acts as a judge would in a trial. The IHO cannot be an employee of the New York City Department of Education (DOE) or have a self-interest in the outcome of the hearing.

THE DECISION OF THE IHO must be based only on testimony of witnesses and evidence presented (through documents) at the hearing. After hearing all of the testimony and reviewing all of the documents, the IHO will issue a written decision. In the decision the IHO will explain the reasons for his/her decision. The decision is final unless you or the DOE appeal the decision to the New York State Review Officer (SRO).



When should you request a hearing?

You may request an impartial hearing **whenever** you feel that your child is not receiving a free and appropriate public education (FAPE). The following are some examples of when you have the right to request an impartial hearing:

- ? If you disagree with a recommendation from the Committee on Special Education (CSE) or the Committee on Pre-School Special Education (CPSE) about what services or supports your child should receive
- ? If you disagree with the CSE's disability classification for your child
- ? If your child is not receiving the services recommended on his/her IEP
- ? If you want an independent educational evaluation (IEE) of your child at the DOE's expense and they have refused to pay for it
- ? If your child receives special education services, or should be, and is not being allowed in school

YOU MUST FILE YOUR COMPLAINT WHEN THE VIOLATION OCCURS,
but absolutely no later than 2 years after the violation happened, or
you may lose your right to relief at an impartial hearing.



How do you request a hearing?

The hearing request, also called the Due Process Complaint Notice (DPCN), must be **in writing** to the New York City Impartial Hearing Office. (This procedure is different in NYC than elsewhere in NY state). We recommend it be sent **certified mail, return receipt requested**, so you can prove that it was sent and received. As another option, you may **fax** a copy of your letter to the impartial hearing office at **718-935-2528**. You should **keep the fax confirmation sheet** as proof that the hearing office received your letter. You should call to confirm that it was received. Finally you can **hand-deliver** the letter to the impartial hearing office, but make sure you have them **stamp a copy as "received" by them for your records**.

Requests should be addressed to:

Denise Washington, Chief Administrator
 Impartial Hearing Office, New York City Dept of Education
 131 Livingston Street, Room 201
 Brooklyn, New York 11201
 Telephone: 718-935-3280
Fax: 718-935-2528



ALSO, you MUST send a copy of this hearing request to State Ed at the following address: ** (Keep a copy of this request letter for your records also).

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



What must the hearing request say?

State Ed has created a sample hearing request form that you may follow, at <http://www.vesid.nysed.gov/specialed/publications/policy/dueprocess7105.htm> or at your Regional office. If you do not use the this form, you may write your own letter, but you should include the following information—the bold starred (**) items **MUST** be included:

- INFORMATION ABOUT YOUR CHILD:**
 - ✓ **Name of child ****
 - ✓ **Child's home address ****
 - ✓ **(if child is homeless, additional contact information) ***
 - ✓ Child's date of birth
 - ✓ New York City identification (or OSIS) number (you can find it on the top left side of the first page of your child's IEP)
 - ✓ **Name and address of the school that your child attends (if any) ****
 - ✓ Parent or guardian's name
 - ✓ Parent's address and phone number
 - ✓ **School district or Region number ****
- DESCRIPTION OF THE PROBLEM: ****
 - ✓ Explain why you feel that your child is not receiving a free and appropriate public education
- A PROPOSED SOLUTION: ****
 - ✓ Explain what placement, services, and/or supports you want for your child

When you write your hearing request form, be as specific as possible in describing the solutions you want. You must be sure to **include all the required information** in your hearing request, because the Region's representative can complain to the IHO that your request isn't complete. If the IHO agrees, you must redo you complaint and all timelines restart.



Next in the process: The resolution session

NEW!!

RESOLUTION SESSION

NEW!!

After the impartial hearing office receives your hearing request, they send a copy to the Regional office where your child attends school. The Regional office then has 15 days to contact you to set up a **RESOLUTION SESSION**. You **must** respond to the resolution session invitation.

Definition: A **Resolution Session** is a meeting between you and someone at the Regional or district office who has “decision-making authority” to try to settle the issues you raised in your due process complaint notice (hearing request).

A resolution session can be **waived** if **BOTH** parties (you and the Region) agree to do so. Unless you and the Region agree to this waiver, then you must attend the Resolution Session to discuss settlement (you may attend by telephone). You do not have to agree to settle your hearing at the session. Also, you may agree to a **partial resolution** of the issues, in which case you must be certain any agreement papers you sign say that this settlement is only partial and that you still want you have a hearing on the remaining issues.

NOTE: THE RESOLUTION AGREEMENT FORM

The Resolution Agreement Form is the form you will sign if you and the DOE come to total or partial agreement about the issues you complained of in your DPCN form or request letter. This form is a contract that is enforceable against the DOE in court if the DOE does not uphold this agreement. **BE CAREFUL** to read this form before you sign, make sure it says **EXACTLY** what you agreed to with the DOE. If you only made a **partial settlement** of the issues, be sure you are clear about that fact, and that the form shows it is **ONLY** partial settlement. Otherwise, you may lose your right to a hearing. You have **3 business days** after signing the form to withdraw your agreement.



Scheduling a hearing after a resolution session

If the resolution session is held but no agreement is reached, the DOE still has till the end of **30 days** to continue attempts to solve your disagreements. If no settlement is reached at the end of that time period, a hearing date will be scheduled. You should call the hearing office to make sure that you get a hearing date and that the date works for you.

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SCHEDULING A HEARING CONTINUED

The impartial hearing office will notify you in writing of the date, time and place of the hearing. **If you cannot make the hearing on the date scheduled, you MUST call the office at 718-935-3280 to inform them.**

Along with the letter telling when your hearing is scheduled, you should receive:



- 1) a brief explanation of the hearing process;
- 2) instructions on how to put documents into evidence
(NOTE: a copy of each of the documents you want to use at the hearing (this is called evidence) must be sent to the Regional office at least 5 work days before the hearing);
- 3) information about subpoenas for documents or for witnesses to appear and testify;
- 4) how to request a translator if you do not speak English; and,
- 5) a notice about whether the child will attend the hearing.



How much will a hearing cost?

An impartial hearing will not cost you anything. However, if you hire an attorney or an advocate, you may be responsible for paying the attorney's or advocate's fees. The DOE must provide you with a list of free or low-cost legal services providers when you request a hearing. Also, if you have paid an attorney to represent you and you win at the hearing, you will be entitled to reimbursement for reasonable attorney's fees



Where is the hearing held?

Impartial hearings are currently ALL held at the Department of Education offices at **131 Livingston Street, 2nd floor**, in Brooklyn. You can reach that office by subway — take the A,C, or F train (to Jay St/ Borough Hall), the M or R train (to the Court St. or Lawrence St. stations), the B or Q train (to Dekalb Ave.) the 2,3,4, or 5 train (to Borough Hall), or the G train (to Hoyt/Schermerhorn). You may also take a city bus (consult your local bus lines for routes).



NOTE: You have the right to request that the hearing be held at another place if you cannot travel to this location. You should call the impartial hearing office at **718-935-3280** to make this request.



Who should come to the hearing?

You must appear at the hearing at the scheduled date and time. You may represent yourself or have an advocate or an attorney represent you. You may have witnesses, such as a therapist who has worked with your child, your child's teacher(s), or other people involved with your child (doctor, tutor, etc.), testify at the hearing. These witnesses may testify by telephone if they are unable to appear in person at the hearing. In addition, the DOE may have one of its representatives presenting their case. Attorneys sometimes represent the NYC DOE, but they do not come to the impartial hearing on every case. The DOE may also bring its own witnesses. Finally, an IHO (who acts as a judge) and a court reporter will be present. A court reporter will tape the hearing.

NOTE: Whether you want your child to attend the hearing is a personal choice. It may be very difficult for a child to participate in discussions about his/her special education program. However, it may be useful for the IHO to hear what a child's personal experience has been. If your child wants to participate, you have the right to request that s/he be allowed to do so. You may also invite your child for just part of the hearing.



How do you prepare for the hearing?

Because the IHO's decision is based only on information presented at the hearing, it is important to have documentary evidence and witness testimony to support your case. Information such as psychological, social and other educational evaluations (especially those documents that include recommendations from professionals), IEPs, descriptions of your child's school program, and testimony from professionals who work with your child are important to support your case. You will also be able to testify about your experience involving your child's case.



TIP : To obtain evidence and witnesses: **USE A SUBPOENA !!**
The impartial hearing office will include a subpoena form with the packet that informs you of your hearing date.



WHAT IS A SUBPOENA?

- ? A **subpoena** (pronounced su-pee-na) is a legal document used to request either certain documents or the appearance of a witness at the hearing. If someone refuses to respond to a subpoena, s/he may be penalized by the IHO
- ? You are allowed to request existing documents about your child from the CSE and from any school your child has attended
- ? You are also allowed to request the presence of people to testify about your child at the impartial hearing. Usually you only want to subpoena people who will be **helpful to your case**, such as a teacher or evaluator who agrees with your opinion OR who will support the relief (solution) you are requesting
- ? You should fill out your subpoenas immediately after you receive these forms if you plan to use them



How do you FILL OUT a subpoena?

FOR ALL SUBPOENAS:

- ✓ **WRITE** the name of your child
- ✓ **WRITE** your name and address
- ✓ **WRITE** the hearing number if you know it



FOR DOCUMENTS: Write the **name** of the **agency head** (such as the CSE chair or school principal) **or just their title** and the **mailing address** for the **agency** from which you want documents. Write the **date** when you want the **documents delivered** to your address. You should give a reasonable time to the agency to respond to the subpoena request (usually 5 work days)

- ✓ **STATE** that you are requesting **all documentation** about your child
- ✓ **REQUEST SPECIFIC DOCUMENTS YOU THINK WILL BE HELPFUL:**
For example, useful documents could include your child's referral for special education, any request for evaluations of your child, letters between you and the school, disciplinary/anecdotal reports, phone contacts sheets, and results of standardized tests. You should list any specific documents on your subpoena request even though you also have asked for all documents in your child's file.

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- ☑ **FOR A PERSON TO TESTIFY:** In addition to the requirements for any subpoena, **above**, write the **name** and **address** of the person you want to come to testify at the hearing (or by telephone). Include the hearing **time** and **place**.

NOTE: For subpoenas of agencies or witnesses who **ARE NOT DOE employees, YOU are responsible** for serving subpoenas to those NON-DOE witnesses. You should have someone over the age of 18 who is not part of the hearing deliver the subpoenas to the people you want to testify.
*** You **may not** deliver the subpoena yourself.
*** The impartial hearing office will **ONLY** deliver your subpoenas for **DOE employees and offices**.



- TIP:** When filling out the subpoena form, address one subpoena each to:
- ? The Regional CSE chairperson, for your child's special education records
 - ? Your child's school, for school records, **AND**
 - ? Any other institution (agency, office) that has educational or medical evaluations that may be useful to help you prove your case



How do you get witnesses (people you want to testify for you) to come to the hearing?

- ? Your best bet is to call your possible witnesses to let them know you want them to testify **BEFORE** you send them a subpoena. When you speak with them, find out when they will be available to testify.
 - ? Witnesses who have a professional relationship with your child, such as teachers, school aides, and doctors are usually quite helpful.
 - ? If a witness cannot come to the hearing, you can call that witness on the phone during the hearing or the witness can write a report that can be used as evidence during the hearing.
 - ? You can ask the IHO to allow one of your witnesses to testify first if your witness is unavailable later in the day.



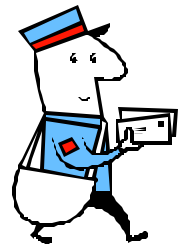


TIP: Your best bet is to have witnesses testify in person. Telephone is the second best way. However, if a witness is not available for the hearing, even by telephone, a written report is acceptable. Detailed reports that discuss facts about your child and show that the person writing the report understands your child's problems are most useful.



Where do you send your subpoenas?

- ? Make at least 2 copies of each subpoena — keep one copy for your records, send (or fax) one copy to the impartial hearing office. You may also send one copy directly to the institution from which you are requesting documents (the CSE office or school) if you choose.
- ? Send the subpoena by mail or fax, or deliver it in person to the impartial hearing office. The IHO will then sign the subpoena. For DOE employees, the impartial hearing office will serve the signed subpoenas.



The DOE must send you the documents they plan to use as evidence before hearing!

The Regional CSE office is required to send you copies of all of the documents they will use at the hearing at least **five (5) work days** before the hearing.



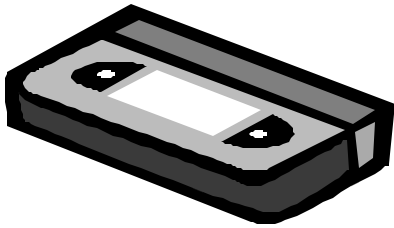
YOU must send the DOE your documents before hearing!

- ? **You** are ALSO required to send a copy of ALL documents that you want to use as evidence at the hearing to the Regional CSE office (**NOT** to the impartial hearing office) at least five (5) work days before the hearing.
- ? Be sure to keep proof that the DOE received your documents. If you send it, it should be either certified mail, return receipt requested so you have a receipt, or faxed so you have a fax confirmation. If you hand deliver the documents, make sure you have the DOE hand stamp your copy to show they received the documents.

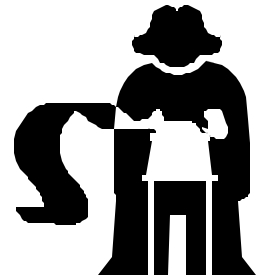
Remember, you **must** send ANY documents you plan to use at hearing, **INCLUDING** any written reports that you want to use as evidence to the CSE five (5) work days before the hearing!!



How is the hearing recorded?



The hearing is tape recorded, and a type-written copy of all testimony (called a “transcript”) is taken from the tape. Then you, the IHO, and the DOE’s representative will each receive a copy of the written transcript usually within about two weeks after the hearing. The IHO’s decision must be based **only** on what is said on the record at the hearing and upon the documents placed in evidence.



How long will the hearing last?

Impartial hearings can take anywhere from an hour to a few days, depending on the number of witnesses and the difficulty of the case. The impartial hearing is an administrative hearing and is much like a trial in a court house. You have the right to present evidence about your case, ask your witnesses questions, and question the DOE’s witnesses. Before the hearing begins there is often an off-the-record (not taped) discussion led by the hearing officer to understand the issue(s) you raised and to try to reach an agreement. If you prefer, you can ask the IHO to tape that discussion (to hold it “on the record”).



TIMING MATTERS!!

If you cannot resolve your disagreement with the CSE at the resolution session, the impartial hearing office will schedule you for a hearing. The whole hearing process, from the end of the time for resolution until you get the decision, must be completed within 45 calendar days from the date the IHO received the written request for the hearing (this date is the “compliance date”), unless either you or the DOE representative have asked that the compliance date be extended. Sometimes if the parent and DOE representative are working on a settlement, the case may be adjourned (delayed), and the IHO will ask you or the DOE to make a motion that the compliance date be extended to allow more time for the IHO to make a decision.



TIP: If you reach an agreement while at the hearing, you should ask the IHO to put the agreement on the record and to order the DOE to follow the terms of the agreement.



Where does your child go to school after you request a hearing (pendency)?

During any hearing (and appeals) your child has the right to remain in his/her current educational placement, unless you and the DOE agree to another placement in writing. This right is called “**pendency**” or “**stay put.**” For children who have never been recommended for services, services can be obtained during the time before the IHO makes a decision **only** if the DOE agrees to provide the services.



Exceptions to Pendency/Stay Put: Early Intervention (EI) and Pre-School

If the CPSE finds that your child is not eligible for pre-school special education, your child's eligibility for the Early Intervention (EI) program will end when your child turns three years old. If you choose to pursue your due process rights to mediation and/or to an impartial hearing, pendency for your child is in an approved preschool special education program and/or services agreed to by the CPSE and you. If you and the CPSE cannot agree, the impartial hearing officer will determine your child's pendency placement until all proceedings have been completed.



Is the IHO's decision final?

The IHO's decision is final **unless** you or the DOE ask for a review of that decision by the NY State Review Officer. This review is called an **appeal**.

- ? You should receive the rules for how to prepare an appeal along with a copy of the decision.
- ? Time is limited, so you must decide quickly whether to appeal. A written notice of intention to seek review must be hand-delivered to the DOE within 25 days after the date of the IHO's decision. The petition (the document where you explain the facts of the case and why you disagree with the IHO's decision) is due 35 calendar days after you receive the decision (if the decision was mailed to you, you can add four (4) mailing days to that deadline).



Is there an alternative to the impartial hearing process?

Yes. MEDIATION is an alternative process through which you and the DOE try to work out disagreements about the recommendations of the CSE or CPSE. A neutral mediator is assigned to help you with this process, but the mediator does not make decisions or orders. The mediator is not on anyone's side. The mediator's job is to be impartial and neutral, and simply to help both sides come to an agreement. Agreements reached during mediation are binding on both you and the DOE. If you decide to mediate, you must request mediation in writing and send the request to the DOE. If you decide not to mediate, someone may still call you from the dispute resolution center to talk about the benefits of mediation. If you try mediation but don't reach an agreement, you still have the right to an impartial hearing, and you can request a hearing whenever you want. The biggest difference between a mediation and a resolution conference (p. 6) is that there is no one mediating between you and the DOE at the resolution session.



MEDIATION CENTERS

To find out more about mediation, you can contact the mediation center in your borough:

Bronx: IMCR Dispute Resolution Center:

718-585-1190/ Fax 718-585-1962

www.imcrmed@nyct.net

Brooklyn: Brooklyn Mediation Center

718-834-6671/ Fax 718-834-6681

Manhattan: Manhattan Mediation Center

212-577-1740/ Fax 212-406-2637

www.safehorizon.org

Queens: Community Mediation Services, Inc. Queens Mediation Network

718-523-6868/ Fax 718-291-5769

718-523-8204

www.adr-cms.org

Staten Island: Staten Island Dispute Community Resolution Center

718-720-9410/ Fax 718-273-4169

www.nycid.org



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Still have more questions?
Call **ADVOCATES FOR CHILDREN**
during our **HELPLINE** hours
10:30 am -1 pm Tuesday and Thursday

212-947-9779

(listen for instructions)

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