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Call Advocates for Children during
our Helpline hours
10am-1pm Tuesday and Thursday
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Short Guide to Impartial Hearings

Introduction

Do not be intimidated by the impartial hearing process! You have legal rights under both Federal and 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.

What is an impartial or "due process" hearing and how does it work?

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 often called an Impartial Hearing Officer (IHO)

THE IMPARTIAL HEARING OFFICER (IHO) is an attorney certified by the NYS Education Department to conduct hearings. This hearing officer acts as a judge would in a trial. The IHO cannot be an employee of the Department of Education (DOE) or have an 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 NY State Review

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. This guide was published prior to the passage of the 2004 revision of the Individuals with Disabilities Education Act and does not reflect any changes to the Act.

Officer (SRO).

When should you file for 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 file for an impartial hearing.

- ◆ You disagree with a recommendation from the Committee on Special Education (CSE) or Committee on Pre-School Special Education (CPSE) about what services and supports your child should receive
- ◆ Your child is not receiving the services recommended on his/her IEP
- ◆ You want to get an independent evaluation of your child at the Department of Education's expense
- ◆ Your child receives special education services, or should be, and is not being allowed in school

How do you request a hearing?

The request must be **in writing** to the impartial hearing office. 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. If you fax or mail the request you should call to confirm that it was received. You should also keep the fax confirmation sheet as proof that the hearing office received your letter. Finally you can hand-deliver the letter to the impartial hearing office, but make sure you have them stamp a copy for you to keep.



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

If you would like 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





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 personally served on the DOE within 25 days after the date of the IHO's decision. The petition (where you explain the facts of the case and why you disagree with the IHO's decision) is due 35 days after you receive the decisions.

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 mediator is assigned to help you with this process, but the mediator does not make decisions or orders. Any 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 do not reach an agreement, your right to an impartial hearing still remains and should not be delayed.

What must the hearing request say?

The hearing request does not have to follow a specific format. However, you should include the following information:

INFORMATION ABOUT YOUR CHILD: Name, date of birth, New York City identification (or OSIS) number (you can find it on the top of the first page of your child's IEP), parent/guardian name, home address, and the name or number of the school your child is attending

DESCRIPTION OF THE PROBLEM: Why you feel that your child is not receiving a free and appropriate public education

A PROPOSED SOLUTION: The supports and services that you want for your child



TIP: When you file your request, you should be as specific as possible in describing the solutions you are requesting



What happens next in the process?

After the impartial hearing office receives your request, a hearing date will be scheduled. The Impartial Hearing office will notify you in writing of the date, time and place of the hearing. If you cannot come to the hearing on the date scheduled, you must call the impartial hearing office at 718-935-3280 **IMMEDIATELY** to let them know. Along with the letter telling you when your hearing is scheduled, you should also receive:

- 1) a brief explanation of the hearing process;
- 2) instructions on how to put documents into evidence (a copy of each of the documents you want to use at the hearing 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.

NOTE: Whether you want your child to attend the hearing is a personal choice. It can be very difficult for a child to participate in discussions about their special education program. Sometimes it may be useful for the Impartial Hearing Officer to hear what the 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 can also choose to have your child present for just part of the hearing.

How much will a hearing cost?

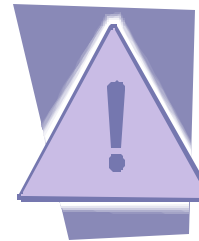
An impartial hearing will not cost you anything. However, if you hire an attorney or an advocate, you may be responsible for paying the attorney's or advocate's fees. The Department of Education must provide you with a list of free or low-cost legal services providers when you request a hearing. Also, if you hire an attorney 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 now ALL being held at the Department of Education offices at 131 Livingston Street, 2nd floor, in Brooklyn. However, 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?

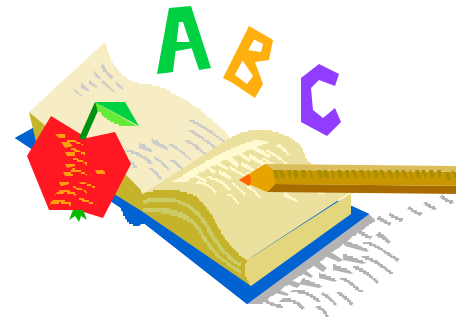
You must appear at the hearing at the scheduled date and time. You may represent yourself or have an advocate or an attorney represent you. You may have witnesses such as a therapist who has worked with your child, your child's teacher(s), or other people involved with your child (doctor, tutor, etc.) testify at the hearing. These witnesses may testify by telephone if they are unable to come in person to the hearing. In addition, the DOE will have one of its representatives presenting their case, often called the "hearing designee". This representative is often not an attorney, though s/he may be one. The DOE may also bring its own witnesses. Finally, an Impartial Hearing Officer (IHO), who acts as a judge, and a court reporter will be present. The court reporter will tape the hearing.



NOTE: The whole process, from the impartial hearing office's receipt of your written hearing request until you get the decision, must be completed within 45 working 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's representative have asked for the compliance date to be extended. Sometimes, if the parent and DOE representative are working on a settlement, the case may be adjourned and the IHO will ask you or the DOE to make a motion that the compliance date be extended.

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

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 referred to as **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— 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 Program will end at three years of age. If you choose to pursue your due process rights to mediation and/or 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.



Do you get to see the documents that the Department of Education (DOE) will use? Do they have to see your documents?

- ◆ **YES. The Regional CSE office is required to send you copies** of all of the documents they will use at the hearing at least **five work days** before the 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 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 them hand stamp your copy.

How is the hearing recorded?

The hearing is tape recorded and a record is kept of all testimony. The you, the IHO, and the DOE's representative will receive a copy of the written transcript of the tape about two weeks after the hearing. The IHO's decision must be based **only** on what is in the record 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 number of witnesses and the complexity of the case. The impartial hearing is an administrative hearing and is very 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 would prefer, you can ask the IHO to record that discussion.



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.

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.



To obtain evidence and testimony: USE A SUBPOENA



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 some one 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 you are requesting
- ◆ The impartial hearing office will include a few subpoena forms with the notice of your hearing date
- ◆ 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 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 (also 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)
- ◆ **WRITE** the name of your child
- ◆ **WRITE** your name and address
- ◆ **STATE** that you are requesting **all documentation** about your child
- ◆ **REQUEST SPECIFIC DOCUMENTS THAT YOU BELIEVE 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, 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.



TIP: When filling out the subpoena form, you should 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
- ◆ **FOR A PERSON TO TESTIFY:** Write the name and address of the person you want to come to testify at the hearing (or by phone). Include the hearing time and place.



Where do you send your subpoenas?

- ◆ Make at least 2 copies of each subpoena — keep 1 copy for your records, send (or fax) 1 copy to the impartial hearing office. You can also send 1 copy directly to the institution from which you are requesting documents (the CSE office or school)
- ◆ Send the subpoena by mail or fax, or deliver it in person to the impartial hearing office for them to certify and enforce. The IHO will then sign the subpoena.
 - ◇ The impartial hearing office will **ONLY** deliver your subpoenas for **DOE employees and offices**.
 - ◇ For subpoenas of agencies or witnesses who **ARE NOT DOE employees**, **YOU are responsible** for serving those subpoenas. You should have someone over the age of 18 who is not part of the hearing deliver the subpoenas to the people you wish to appear. You may not deliver the subpoena yourself.

How do you get people you wish to give testimony at the hearing?

- ◆ It is best to call your possible witnesses to let them know you want them to testify **BEFORE** you send them a subpoena. At this time, you should find out when they will be available to testify.
 - ◇ 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. Remember, you must send this report along with all other documents you want to use as evidence to the CSE.
- ◆ The DOE witnesses will usually testify first, so expect your first witness to begin testifying approximately an hour after the hearing is scheduled to start.
 - ◇ You can ask the IHO to allow one of your witnesses to testify first if your witness is unavailable later in the day.

TIP: It is best to have witnesses testify in person. Telephone is the second best way. However, if a witness cannot appear, even by telephone, a 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. Witnesses who have a professional relationship with your child, such as teachers, aides, and doctors are also helpful.