



AFC'S GUIDE TO

Special Education Impartial Hearings

March 2024



Advocates for Children of New York
Protecting every child's right to learn

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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.

INTRODUCTION

Students with disabilities and their parents have many rights under the law. The **Individuals with Disabilities Education Act (IDEA)** is a federal law that protects students with disabilities who need special education services. New York law also gives rights to students and their parents to ensure that students with disabilities get a free and appropriate public education.

If your child is not receiving the proper special education services, you have due process rights, including the right to request an **impartial hearing**. For more information about special education services, please see Advocates for Children's (AFC's) **Guide to Special Education**.

WHAT IS AN IMPARTIAL OR “DUE PROCESS” HEARING?

An impartial hearing is an administrative proceeding, like a trial, to resolve disagreements between a parent or legal guardian and a school about a child's special education services. An administrative law judge, called an Impartial Hearing Officer, runs the hearing and writes a decision in the case.

An Impartial Hearing Officer is an attorney certified by the New York State Education Department to conduct impartial hearings. The hearing officer acts like a judge. The hearing officer must be impartial, meaning they have to be fair, and cannot be an employee of the New York City Department of Education (DOE).

The **hearing officer's decision** must be based on witness testimony and evidence from documents presented by the parent and the DOE. After hearing all of the testimony and reviewing the evidence, the hearing officer will write a decision that explains why they have ruled the way they did. The decision is final unless the parent or the DOE appeals the decision to the New York State Review Officer.

WHEN CAN YOU REQUEST A HEARING?

You can ask for an impartial hearing if you think that the DOE is not providing your child with a **free and appropriate public education (FAPE)**. The following are some examples of when you may want to request an impartial hearing:

- You disagree with the program, services or supports on your child's **Individualized Education Program (IEP)**.
- Your child is not getting the class, program, and/or services recommended on their IEP.
- Your child's school or service provider(s) are not meeting their needs.
- You disagree with the DOE's decision that your child is not eligible for special education.
- You requested an independent educational evaluation for your child at DOE expense, and the DOE has refused to pay for it.

NOTE:

It's helpful to have a remedy in mind when you file for a hearing.
Be as specific as possible! See page 7 for more.

IMPORTANT:

The statute of limitations for special education cases is **two years**. This means that you must request an impartial hearing no later than two years after you knew, or should have known, that the DOE violated your child's rights. This time frame can only be extended in very limited circumstances, so be sure to request your hearing as soon as possible after you learn about the DOE's violation.



HOW DO YOU REQUEST A HEARING?

The hearing request, also called a “**due process complaint**,” must be made in writing to the New York City Impartial Hearing Office. Make sure to keep proof that the request was sent and received. We recommend that you:

- Email the request and follow up with a phone call if you don’t receive confirmation of your request via email;
- Send the request by certified mail, return receipt requested;
- Fax the request, save the fax confirmation sheet, and follow up with a phone call to confirm that the office received your request;

Requests for impartial hearings should be sent to:

Impartial Hearing Office
New York City Department of Education
131 Livingston Street, Room 201
Brooklyn, New York 11201
Phone: 718-935-3280
Fax: 718-391-6181
Email: IHOQuest@schools.nyc.gov

You also need to send a copy of the hearing request to the **New York State Education Department** by email at SpecEdIH@nysed.gov.

New York State Education Office of Special Education
Attention: Due Process Unit
89 Washington Avenue, Room 309EB
Albany, New York 12234



NOTE:

This process only applies in New York City. For information on requesting an impartial hearing in the rest of the state, please visit the [NY State Education Department’s website](#).

WHAT MUST THE HEARING REQUEST SAY?

New York has a form you can use to [request an impartial hearing](#). You can also write a letter to request an impartial hearing, instead of submitting the form. If you choose to write a letter, be sure to include the following information:

Information about your child

- Child's name and date of birth
- Child's address (if child is homeless, any other contact information)
- New York City identification (OSIS) number. You can find this number on the top left-hand side of the first page of your child's IEP next to "Local ID #" or on your child's report card
- Parent or guardian's name
- Parent's address and phone number and preferred contact method. If you want to be contacted about the hearing by email, you should include your email address.
- Name of the school that your child attends (if any)
- Geographic school district and CSE Region

Description of the problem

- Explain why your child's IEP is not meeting their special education needs
- Explain why your child's school placement is not meeting their special education needs
- Explain why your child is not receiving a free and appropriate public education

Proposed Solution

Explain what placement, services, or supports you want for your child. What should the DOE be ordered to do? Be specific about what you think is an appropriate education for your child, and be able to explain why.



ADVOCACY TIP:

Be sure to include ALL of the required information in your hearing request and be as detailed as possible.

If you aren't, the DOE representative may argue that your hearing request is incomplete or inadequate, and your case might be dismissed.

WHAT CAN YOU GET FROM A HEARING?

What you ask for in a legal proceeding is called a “**remedy.**” Here is a list of some remedies that parents may ask for in their impartial hearing request.

- **PRIVATE EVALUATIONS.** If you feel that the DOE’s evaluation of your child is not accurate or thorough enough, you may ask for the DOE to pay for an evaluation conducted by someone outside of the DOE.
- **PUBLIC SCHOOL PLACEMENT.** If your child is not making progress in their current class, you can ask for a change of placement to another public school or class setting.
- **PRIVATE SPECIAL EDUCATION SCHOOL.** Parents may ask the DOE to pay for a special education program in a private school. In these cases, the parent should find the school first and be prepared to explain why the private school is appropriate.

You must tell the DOE in writing at least 10 days before enrolling your child in a private school (a 10-day notice). Within 15 days of receiving the notice, the DOE will tell you either that it will settle your case without your filing a hearing request, or that it will not settle at that time. Even if the DOE does not settle then, it may still settle after you file the hearing request

- **INCREASED RATE, RELATED SERVICES.** If the DOE recommended related services for your child but hasn’t provided those services, you can ask that the DOE pay for a private service provider through something called a Related Service Authorization (“RSA”). If you find a provider who will take the RSA, but not the standard RSA rate, or a provider who won’t accept the RSA, you may need to file a hearing.
- **INCREASED RATE, PRIVATE TUTOR.** Parents often seek tutoring for make- up or “compensatory” services for education or services the DOE did not provide. The DOE sometimes issues a letter called a “P3” letter for tutoring to pay for a state certified special educator to work with your child. If you find a provider who will accept a P3 but not the standard P3 rate, or a provider who won’t accept a P3, you may need to file a hearing.
- **COMPENSATORY SERVICES.** If your child has not received recommended services or an appropriate placement, you may seek any of the above remedies as compensation to make-up for time and educational services your child has missed.

For more information about legal remedies, see [AFC’s Guide to Special Education](#).

WHAT HAPPENS AFTER YOU REQUEST AN IMPARTIAL HEARING?

After the Impartial Hearing Office receives your request for a hearing, they will send a copy to the DOE office responsible for your child's case.

Soon after receiving the hearing request, an Impartial Hearing Officer (IHO) should be assigned to your case.

Starting January 1, 2024, all hearing requests are assigned to an IHO from the Office of Administrative Trials and Hearings (OATH).

Within 10 days of receiving your hearing request, the DOE must respond to your request with a brief response in writing, if it has not sent you a Prior Written Notice about what was in your hearing request.

Within 15 days of receiving your hearing request, the DOE must contact you and hold a **resolution session**. A resolution session is a meeting between you and someone from the DOE where the DOE will try to address the issues raised in your hearing request. These meetings can be a good opportunity to resolve problems quickly without having to go through a hearing. You must respond to the resolution session invitation.

A resolution session can be **waived**, or skipped, only if you and the DOE both agree to do so. If the resolution session is not waived, then you must attend the meeting. You do not have to agree to settle your hearing at the resolution session. You also may agree to a **partial resolution** of the issues. If this happens, you will still have a hearing on the remaining issues.

THE RESOLUTION AGREEMENT:

The Resolution Agreement is the form you will sign if you and the DOE resolve some or all of the concerns raised in your hearing request. This form is a legal contract that the DOE must follow, and it is enforceable in court. Read this form carefully before you sign it, and make sure it says exactly what was discussed. If you and the DOE only resolved some of your concerns at the meeting, the Resolution Agreement must say that the agreement is only a **partial resolution** of the issues. Otherwise, you may lose your right to a hearing on the remaining issues. If you change your mind after signing the agreement, you have three business days after signing the form to withdraw your agreement.

WHEN IS THE HEARING SCHEDULED?

The DOE has 30 days from receipt of your hearing request to try to resolve your complaint. This time period is called the **resolution period**. If no resolution is reached at the end of 30 days, an administrator from OATH or the OATH IHO will contact you to schedule a hearing. You can also call the OATH IHO directly to schedule a hearing. If there is no chance of resolution or settlement, you and the DOE can agree to end the resolution period early and proceed directly to hearing.

An OATH administrator or OATH IHO will contact you to schedule the hearing and will notify you in writing of the date and time of the hearing. If you cannot make the hearing on the date scheduled, you **MUST** contact the OATH IHO to let them know. The OATH IHO may send you instructions for the hearing via email or by mail. You can find a [general guide of the process](#) on the City's website.

In 2022, OATH began to take over the impartial hearings that had been run by the Impartial Hearing Office at the DOE for many years. This transition took 2 years where some hearings were assigned to DOE IHOs and some hearings were assigned to OATH IHOs. Since January 1, 2024, all hearings are being assigned to OATH IHOs.

Special Education Hearings Division

Office of Administrative Trials and Hearings
66 John Street, 11th Floor
New York, NY 10038

Email: sehd@oath.nyc.gov

Phone: (212) 436-0821

Website: <https://www.nyc.gov/site/oath/special-ed/due-process-hearings.page>

WHERE DOES YOUR CHILD GO TO SCHOOL AFTER YOU REQUEST A HEARING?

During any hearing or appeal of the hearing, your child can continue to receive the class and services that you and the DOE agreed upon in the last IEP or that were ordered by a hearing officer. Your child also has the right to stay in the last agreed upon or ordered school placement. This right is called **pendency** or **stay put**. For example, if the DOE reduces the amount of speech therapy on your child's IEP from four times per week to two times per week, and you file a hearing to challenge that decision, your child has the right to keep getting speech therapy four times per week until the hearing officer makes a decision.

If your child attends a private school that the DOE paid for last year through an order or an IEP, the DOE should pay the tuition for this year while this year's hearing continues. The DOE should provide any pendency services or placement in a **Pendency Agreement** after you request a hearing. If the DOE does not or does not agree to pendency, then you should ask the OATH IHO for a **pendency order** to make sure that the DOE gives your child the services on the last agreed upon IEP and last agreed upon school placement.

There is a special pendency rule if your child is transitioning from Early Intervention (EI) to preschool special education services. If you disagree with the special education services recommended on your child's **first** preschool IEP and you request an impartial hearing, the DOE must provide any special education services that you and the DOE agree to, even though



NOTE:

Pendency can be complicated for students moving from preschool to kindergarten or from the Early Intervention program to the DOE's special education system. For more information on pendency rules for younger children, see AFC's Guide to Early Intervention and [AFC's Transition to Kindergarten: A Guide for Students with Disabilities](#).

you have not agreed to the full IEP. For example, if your child received occupational therapy and speech therapy through EI but the DOE only finds your child eligible for speech therapy for preschool, you can file a hearing to ask for occupational therapy if you believe your child needs this service. During the hearing, the DOE must provide your child with speech therapy since you and the DOE agree on that service but not occupational therapy since that service is in dispute.

HOW DO HEARINGS TAKE PLACE?

Impartial hearings take place online via a video conference or phone. If you would prefer for the hearing to be held in person, you should ask your OATH IHO. In person hearings take place at the OATH office located at 100 Church Street in Manhattan.

If you need an interpreter or accommodations for the hearing, you should ask the OATH IHO for that before the hearing.

For the first hearing date, the OATH IHO will schedule two, back-to-back hearings. The first hearing will be a Settlement Conference with an OATH Settlement Officer and DOE representative to see if any matters can be settled. If a full settlement cannot be reached, then the OATH IHO will hold a Pre-Hearing Conference immediately after to discuss what the hearing will be about, how many witnesses might testify and when the hearing will occur.

WHO SHOULD ATTEND THE HEARING?

You must appear at the hearing at the scheduled date and time. The OATH IHO will send you an invitation and link via email. You may represent yourself (this is called “Pro Se”) or find an advocate or attorney to represent you. You may have witnesses testify at the hearing, such as your child’s teacher(s), doctor, tutor, therapist, or other people involved with your child. These witnesses may testify by joining the video conference and/or by submitting a written **affidavit**. The DOE

WHAT IS AN AFFIDAVIT?

An affidavit is a written, sworn statement. The person making the statement is the affiant and is swearing to the truth of the statement. An affidavit is typically written as numbered sentences. This makes it easy to refer to a part of the statement by number.

representative is sometimes an attorney. The DOE may present its own witnesses, via video conference or affidavit. The OATH IHO, who will act as the judge, and a court reporter will also be present. The court reporter will prepare a written transcript of the hearing and the OATH IHO will record the hearing.

Whether your child attends the hearing is a personal choice. It may be very difficult for a child to participate in discussions about their special education needs and experiences. On the other hand, it may be useful for the IHO to hear your child describe their personal experiences. If your child wants to participate, you have the right to request that they be allowed to do so. You may want your child to be present for only part of the hearing.

WHAT HAPPENS AT A HEARING?

An impartial hearing is a legal proceeding similar to, but less formal than, a trial in a courtroom. At the hearing, you have the right to present evidence through documents and witness testimony. The DOE can put on its own case, and it will be up to the OATH IHO to decide the appropriate outcome for your child.

At the beginning of the hearing, the OATH IHO will ask you and the DOE for any documents you would like to put into evidence and any such documents will be entered into the record as exhibits. They may ask each side if they would like to make an **opening statement**. An opening statement is a brief summary of the case and what you hope to prove at the hearing. Next, the DOE will put on its case, when it will try to prove that the services offered to your child were appropriate. The DOE can do this by entering exhibits and by calling witnesses to testify. After the DOE representative questions a witness by direct examination or by the witness providing sworn testimony in a written affidavit, you get the chance to question the witness through **cross-examination**, and for this, the witness must be present at the hearing to answer your questions.

After the DOE's case is finished, it will be your turn to put on your case by calling your own witnesses. Witnesses who have a professional relationship with your child, such as teachers, school aides, or therapists, are usually the most helpful. If someone cannot testify at the hearing or by affidavit, their written report or assessment can be used as evidence in the hearing. You may also request another hearing date for when your witness is available. Any witness you present must be available at the hearing to answer cross-examination questions from the DOE representative.

If you are representing yourself at the hearing, when you are testifying, you can just talk about the situation with your child. Try to be as logical, clear and specific as possible. You may also provide a written affidavit as your testimony. Other witnesses cannot just talk while providing testimony; instead, a witness can only answer a question on either direct or cross examination. The OATH IHO may ask questions of any witness.

Once all of the witnesses are done testifying, the OATH IHO will ask each side for a **closing statement**. In your closing statement, remind the OATH IHO what you are asking for and point out facts in the exhibits or witness testimony that support you. This is your last chance to show the OATH IHO why you should win the hearing, so don't be afraid to take your time or ask for a short break if you need a moment to decide what you want to say.

NOTE:

During COVID, it became the norm to provide witness testimony by a written affidavit rather than questioning a live witness. While there are pros and cons to either type of testimony, many OATH IHOs prefer witness testimony by affidavit because it speeds up the hearing process.

HOW DO YOU PREPARE FOR THE HEARING?

Be prepared to explain how the DOE has not offered your child an appropriate education. Think about what you are asking for, how you can show your child needs it, and what evidence shows that the DOE has not done enough to meet your child's needs. Once you have stated in your hearing request that the DOE is not providing an appropriate education to your child, NY State law requires the DOE to prove that they DID provide an appropriate education to your child (in the legal field, this is called their "burden.") Even though it is their burden to prove that they provided an appropriate education, it is helpful if you have proof that the DOE is not providing the services on your child's IEP **that you can share at the hearing**, through testimony and documents. (See the following page for information on how to get these documents and arrange for your child's service providers to testify). If you believe that your child's IEP or school placement does not meet their needs, evaluations or testimony from a service provider showing that your child needs different services are helpful to the hearing officer.

Because the IHO's decision is based only on information presented at the hearing, it is very important to have documentary evidence and witness testimony to support your case.

Psychological and other educational evaluations, recommendations from professionals, descriptions of your child's school program and classroom, and testimony from professionals who work with your child can all help prove your case. You will need to



prepare questions to ask your witnesses ahead of time, and be ready to question the DOE's witnesses as well. You should also testify about your own knowledge of your child and your family's experiences with the DOE.

Because hearings are typically held virtually by video conference (remember, you can also ask for it to be in person or appear by phone if you prefer those options), you must prepare how you will appear and how you will share any documents you wish to have considered by the IHO. You will need to email documents before the hearing (see below for more on preparing documents). While you may call into a hearing by phone, it is better if you can see the faces of the various participants and vice versa so that you have a better sense of what is happening at the hearing. In order to appear on a screen for the hearing you must prepare to access the internet on a device (smartphone, tablet, computer) and be in a location that is quiet and where you are alone. You must also be able to access emailed documents on a device or have those documents printed out before the hearing.

HOW DO YOU GET EVIDENCE FOR THE HEARING?

To get documents and testimony from witnesses that are not in your control, use a subpoena. A **subpoena** (pronounced *suh-pee-na*) is a legal paper used to request documents or the appearance of a witness at the hearing. Subpoena forms and instructions are available on the [OATH website](#).

You may request existing documents about your child from the DOE or any school your child has attended. You also may request that someone testify about your child at

the impartial hearing. Usually, you should only subpoena people who you are sure will be helpful to your case, such as a teacher or evaluator who will support the result you want.

When filling out the subpoena forms, you typically will want to send one to:

- Your child’s school, for your child’s school records;
- The CSE, for any additional special education records; and
- Any other institution, agency, or office that has educational or medical evaluations on your child that may help you prove your case and that will not give you the documents upon request.

HOW DO YOU FILL OUT A SUBPOENA?

FOR ALL SUBPOENAS:

- Write the name and date of birth of your child.
- Write your name, address and other contact information.
- Write the case number for the impartial hearing, if you know it.

FOR DOCUMENT SUBPOENAS:

- Write the name or title of the agency head, such as the school principal or CSE chairperson, 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 for the agency to respond to the subpoena (usually at least five business days).
- Write that you are requesting **all documentation** about your child
- Request **specific** documents that you think will be helpful. For example, useful documents could include requests for evaluations of your child, letters between you and the school, disciplinary or anecdotal reports, progress reports, printouts of communication or special education logs (for example, a “SEIS report” which stands for Special Education Student Information System), and results of standardized tests. Be sure to list any specific documents on your subpoena that you think you might need, even though you have already asked for all of the documents in your child’s file.



FOR WITNESS SUBPOENAS:

- In addition to the requirements for all subpoenas listed above, write the name and address of the person you want to come and testify at the hearing. If you do not remember the name, you can give the job title. Include the hearing time and video link or dial-in information, if available, on the subpoena.
- It's best to call possible witnesses before you send them a subpoena to let them know you would like them to testify. When you speak to them, find out when they will be available to testify.

WHERE DO YOU SEND SUBPOENAS?

Email or mail subpoenas to the OATH IHO *and* the DOE representative. The OATH IHO will then sign the subpoena as written or will change the subpoena after hearing from both you and the DOE about why you need the documents.

The DOE representative is responsible for ensuring compliance with subpoenas to DOE employees, schools, or offices. Once the OATH IHO signs a subpoena, you can ask the DOE representative to “serve” the subpoena on the appropriate DOE employee, school, or office. Follow up if you don't hear back from the OATH IHO or DOE representative about your subpoenas.

If the DOE does not produce the documents requested in your subpoena, make sure to let the OATH IHO know.

NOTE:

You are responsible for getting subpoenas to other agencies and witnesses who are not DOE employees. You can do this by email, mail or in person.

SHARING AND PREPARING DOCUMENTS

The DOE Representative **must** send you copies of all of the documents they plan to use at the hearing at least **five business days** before the hearing. This is called “**disclosure.**”

YOU are also required to send as **disclosure** copies of all the documents that you want to use as evidence at the hearing to the DOE representative assigned to your case

at least 5 business days before the hearing. Sometimes, the OATH IHO will ask to be copied on the disclosure emails, so that they can see that disclosure was sent and when. It is extremely important that you follow these rules and **disclose** your evidence within the proper timelines. If you do not disclose your documents within the proper timelines and the DOE representative **objects**, the OATH IHO may refuse to allow those documents to be entered into evidence. On the other hand, you should also object to any DOE documents that may be harmful to your case if the DOE did not disclose them to you at least five business days before the hearing.



On the day of the hearing, the documents that were disclosed and selected to be used as evidence will be entered into the record as exhibits. Exhibits must be labeled and numbered in a specific way (called “Bate stamped”). An Exhibit List should also be prepared as a coversheet for the exhibits.

Parent exhibits are labeled by letters and each page of an exhibit must have a page number on it. It is typical for the hearing request to be entered as a Parent exhibit so on the first page of the hearing request, in the bottom right corner, you should label “Ex. A-1”, which stands for Exhibit A page 1. If there are 3 pages of the hearing request then the next page should be labeled “Ex. A-2” and the following page as “Ex. A-3.” If your next exhibit is your 10 Day Notice, then it should be labeled in the bottom right corner with “Ex. B-1”, and so forth. Parent exhibits start from A and go through the alphabet to Z. If you have more than 26 exhibits, then the exhibits start from the beginning of the alphabet with double letters so the exhibit after Exhibit Z is Exhibit AA, then BB, and so forth.

Since hearings are typically held virtually, disclosure and exhibits are also typically sent via email. Exhibits can be stamped by adding text boxes at the bottom of each page in Adobe or another PDF program or you could also print out all the exhibits and “stamp” them by hand by simply writing the exhibit labels directly onto each page. If you print and stamp your exhibits by hand, then you will need to scan them in order to email them or, you could mail a printed copy to the DOE and to the OATH IHO. Instructions for exhibits and an Exhibit List form are available on the [OATH website](#).

Compiling and stamping documents for disclosure and evidence can take a lot of time! Make sure you have a plan for how you will prepare your exhibits and allow plenty of time to do so.

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 complexity of the case.

The entire hearing process, from the end of the resolution period until the OATH IHO issues their decision, must be completed within 45 calendar days, unless you or the DOE representative ask for the timeline to be extended. This deadline is called the “**compliance date**.” This deadline is not always met.

HOW MUCH WILL A HEARING COST?

An impartial hearing does not have to 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 service providers when you request a hearing. You can get a list of attorneys by calling AFC’s Helpline at (866)427-6033. If you pay an attorney to represent you and you win at the hearing, you are entitled to reimbursement for reasonable attorney’s fees.

HOW WILL THE HEARING BE RECORDED?

The Settlement Conference before the Pre-Hearing Conference is not recorded and is confidential.

All subsequent hearings are recorded audio-visually as well as typed. The typed recording of the hearing is called a **transcript**. You, the hearing officer, and the DOE representative will each get a copy of the written transcript within a week or two after each hearing date via email or via mail, upon request. The hearing officer’s decision can be based only on what is recorded in the transcript (“**on the record**”) at the hearing and on the documents put into evidence.

ADVOCACY TIP:

If you and the DOE reach an agreement at the hearing, ask the hearing officer to put the agreement on the record and to order the DOE to follow the terms of the agreement.

IS THE HEARING OFFICER'S DECISION FINAL?

The OATH IHO's decision is final **unless** you or the DOE appeal the decision to the New York State Review Officer. For more information about the State Review Office and procedures, please visit: www.sro.nysed.gov.

You should receive the rules for how to prepare an appeal along with a copy of the decision. To appeal all or part of a decision, you must hand-deliver ("serve") to the DOE written Notice of Intention to appeal with a Case Information Statement within 25 calendar days of the hearing officer's decision. You can find a [form on the SRO website](#) that combines the Notice of Intention and Case Information Statement. You may serve the DOE by email if the DOE agrees to email service.

Next, a Notice of Request for Review, Request for Review and Affidavit of Verification must be served on the DOE within 40 calendar days of the OATH IHO's decision. Forms for these documents are also available on the [SRO website](#). The Request for Review explains the facts of the case and why you disagree with the OATH IHO's decision in numbered paragraphs. You can file a Memorandum of Law in support of your appeal at the same time.

If you win at the hearing and the DOE does not appeal, the DOE must follow the directions of the order within the timeframe set by the OATH IHO. If the order does not include a specific deadline, the DOE has **35 calendar days** to complete whatever it was ordered to do.

The DOE has an office that is dedicated to following these orders, called the [Implementation Unit](#).

If you have trouble getting the DOE to follow an order you have received, please call Advocates for Children at 646-532-6078.



A NOTE ABOUT SETTLEMENTS

The DOE has a procedure to settle certain cases for payment of tuition at private school each school year, without the need for a hearing request.: The DOE does not always stick to the timeframes in this process.

The process is:

- Within 15 days of receiving a 10-day notice, the DOE will send you a letter saying either that it would like to settle your case , or that it will not settle at that time, and you will have to file a hearing request.
- If the DOE tells you that it is interested in settling the case, the DOE will ask you for documents supporting the tuition amount. If you are seeking services or payment other than tuition in your child’s case, send the DOE documents supporting these payments or services as well.
- After you send the DOE the documents, the DOE will send you a “**settlement offer**”, telling you how much the DOE is offering to pay to resolve your case. You can either agree to that amount or negotiate with the DOE on the amount you want the DOE to pay. If you and the DOE do not agree, you can still file a hearing request. Like Resolution Agreements, you can agree with the DOE to settle some claims and file a hearing request for the rest. The DOE has a goal to settle cases within 90 days of sending the letter stating that they intend to settle the case.
- Even if the DOE does not settle after the 10-day notice, it may still settle after you file the hearing request.

If you are seeking a payment for private school tuition, the DOE is supposed to automatically refer your case for settlement after receiving the 10-day notice if:

- The DOE paid the school tuition through a settlement or an unappealed decision awarding the same placement in the prior year and the DOE program recommendation (what’s on the IEP) remains the same as in the prior year; or
- The student is entering the last grade at a school that in the prior years the DOE had paid for through settlement or a hearing officer’s decision.

IS THERE AN ALTERNATIVE TO THE IMPARTIAL HEARING PROCESS?

Yes. Mediation is an option where you and the DOE try to work out disagreements about your child's special education services. A mediator will be assigned to help you with this process. The mediator does not make decisions or issue orders. The mediator is not on anyone's side; instead, their job is to help both sides come to an agreement. Agreements reached during mediation are binding on you and the DOE.

Mediation is most effective when you are seeking services at your child's public school or at a different public school program. Mediation is not an option if you want funding for a non-approved private school placement.



If you want to mediate your case, write a letter requesting mediation to your local **Community Dispute Resolution Center**, and send a copy to your child's school or CSE. You can request mediation at the same time as an impartial hearing request and in place of/in addition to a Resolution Session. 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 mediation and a resolution session is that at mediation, there is a neutral party helping you and the DOE settle your differences.

Community Dispute Resolution Centers:

IMCR Dispute Resolution

384 East 149th St, Suite 330

Bronx, NY 10455

Phone: 718-585-1190

Fax: 718-585-1962

Email: imcrmediate@aol.com

Peace Institute

210 Joralemon St, Suite 618

Brooklyn, NY 11201

Phone: 718-834-6671 ext. 220

Fax: 718-834-6681

Email: chimes@nypeace.org

**Queens Community Mediation
Services**

89-64 163rd St
Jamaica, NY 11432
Phone: 718-523-6868 ext. 268
Fax: 718-523-8204
Email: spetza@mediatenyc.org

**NY Center for Interpersonal
Development (NYCID)**

130 Stuyvesant Place, 5th Fl
Staten Island, NY 10301
Phone: 718-815-4557
Fax: 718-876-6068
Email: specialeducation@nycid.org

**This guide and additional resources on educational
services in New York City are available on our website,
www.advocatesforchildren.org.**

Are you reading a printed copy of this tip sheet?

Scan the QR code below to open the online version and access the hyperlinks:





Our Mission

Advocates for Children of New York (AFC)'s mission is to ensure a high- quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. AFC achieves this through four integrated strategies:

- Free advice and legal representation for families of students;
- Free trainings and workshops for parents, communities, and educators and other professionals, to equip them to advocate on behalf of students;
- Policy advocacy to effect change in the education system and improve education outcomes; and
- Impact litigation to protect the right to quality education and to compel needed education reform.

Still have more questions? Please call the Jill Chaifetz Education Helpline:

Monday through Thursday
10 am to 4 pm
866-427-6033 (toll free)

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