



New York State Education Department
Office of Special Education

IMPARTIAL HEARING PROCESS FOR STUDENTS WITH DISABILITIES

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INTRODUCTION

Consistent with the Individuals with Disabilities Education Act (IDEA), the New York State Education Department (NYSED) has established due process procedures that provide specific options for concerns or disagreements that arise between parents¹ and school districts about the identification, evaluation, educational placement of, or the provision of a free appropriate public education (FAPE) to, a student with a disability or a student suspected of having a disability. NYSED encourages school districts and parents to work cooperatively to resolve disagreements that may occur through non-adversarial means whenever possible. For example, parents may contact their child's teacher, school administrators or the Committee on Preschool Special Education (CPSE) or Committee on Special Education (CSE) to discuss concerns about their child's education.

Mediation

When disagreements cannot be resolved through informal means, parents or school districts may request special education mediation. Mediation is a voluntary process in which parents of students with disabilities and school district personnel meet with a specially trained, impartial individual (i.e., a mediator) to resolve disputes about the student's special education program. A qualified and impartial mediator conducts the mediation sessions but does not issue a decision. An agreement reached by the parents and the school district is set forth in a written mediation agreement, which is binding upon the parties. All discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or court proceedings. Mediation is generally a less

Impartial Hearings

The parents or a school district may request an impartial due process hearing (referred to as an “impartial hearing” throughout this document) refusal to initiate or change the identification, evaluation or educational placement, or the provision of FAPE to a student. An impartial hearing is a formal process in which the parties (i.e., the parents and the school district) present their case and refute evidence before an impartial hearing officer (IHO) who issues a written decision. The IHO is not an employee of the school district or NYSED and is specifically trained to hear and decide special education cases. The IHO’s decision is legally binding and has the same legal jurisdiction (a State court that has authority to hear this type of case) or in a federal district court of the United States.

Overview of the Impartial Hearing Process

1. Either the parent or school district requests an impartial hearing relating to a disagreement on a special education matter.
2. The school district informs the parent of the availability of mediation, provides the parent with a copy of the Procedural Safeguards Notice, and informs the parent of any free or low-cost legal or other relevant services available in the area.
3. The school district selects the IHO through a rotational selection process in accordance with regulatory timelines. The board of education immediately appoints the IHO.
4. The school district convenes a resolution meeting for a parent requested hearing.
5. The IHO presides over the hearing at which the parties have an opportunity to present evidence and testimony.
6. The student remains in his or her current placement during the impartial hearing proceedings (unless the parents and school district otherwise agree and except as otherwise provided for expedited impartial hearings for certain disciplinary suspensions or removals of a student).
7. The IHO makes a decision and mails the finding of fact and decision to the parties and to NYSED in accordance with regulatory timelines.
8. The decision of the IHO is final unless appealed to a State Review Officer (SRO) of NYSED.

The following Questions & Answers (Q&A) provide responses to frequently asked questions about the impartial hearing process in New York State and compliments the federal and State legal and regulatory requirements by assisting all parties to better understand their responsibilities relating to impartial hearings so that disputes over special education are resolved in a legally compliant and timely manner. These responses are provided as informal guidance and are not legally binding but represent the interpretation by NYSED of applicable statutory and regulatory requirements and the circumstances presented.

A. REQUESTING AN IMPARTIAL HEARING

[8 NYCRR² Sections 200.5(i), 200.5 (j) and 201.11]

1. How does a parent request an impartial hearing?

A parent requests an impartial hearing by writing to the board of education of the child's school district. Personnel of the school district who receives the written request (also known as a due process complaint notice) must forward it immediately to the board of education, so the school district can immediately, but in no case later than two business days after the receipt of the request, initiate the process to select the IHO.

2. How long does a parent have to file a due process complaint?

The request for an impartial hearing must be submitted within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, except that the two-year timeline shall not apply to a parent if the parent was prevented from requesting the impartial hearing due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process complaint information from the parent that was required to be provided to the parent.

3. If a parent verbally requests an impartial hearing at a CSE or CPSE meeting, does he or she still need to submit the request in writing?

Yes. The request for an impartial hearing must be in writing.

4. What information should a parent provide in the written request for an impartial hearing?

The written request for the hearing must include information that describes the nature of the problem and facts relating to the problem, as well as a proposed resolution of the problem, to the extent known and available to the parent at the time of the written request for the hearing. A request for hearing is deemed sufficient unless there is an allegation that it is not. It is important for the parent or the attorney representing the parent to provide the school district with specific information about the student and the basis of the dispute. This notice to the school district will provide the school district with an understanding of the parent's concerns and parent working together to resolve the problem, possibly removing the need to proceed to an impartial hearing. The parent, or the attorney representing the parent, may not have a hearing unless the written request for the hearing includes the required information.

² Title 8 of the New York Code of Rules and Regulations

9. What happens if an IHO is insufficient?

A due process complaint notice that is found insufficient must be amended and resubmitted. A party may amend its due process complaint only if:

- (a) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or
- (b) the IHO grants permission, except that the IHO may only grant such permission at any time not later than five days before an impartial hearing commences.

10. What happens to the timeline of the hearing if the due process complaint is amended?

The applicable timelines for an impartial hearing, including the timelines for the resolution process, must recommence at the time the party files the amended due process complaint notice. The timelines do not recommence at the time the party initially requests to amend its complaint or amends the complaint without written agreement by the other party or permission from the IHO as referenced above.

11. When is a written request by a parent for an impartial hearing considered "received" by the school district?

A written request by a parent for an impartial hearing is considered "received" on the first business day it is delivered to the school district. A business day means Monday through Friday, except for federal and State holidays (unless holidays are specifically included in the designation of business day).

12. What happens if a parent requests an impartial hearing?

Upon receipt, the parent's written request for date stamped and immediately forwarded to the person(s) the board of education has designated to begin the rotational selection process for an IHO. The school district must then inform the parent of the availability of mediation and provide [Procedural Safeguards Notice](#) NYSED's [Rights for Parents of Children with Disabilities, Ages 3-21](#) (www.nysed.gov/special-education/procedural-safeguards-notice-rights-parents-children-disabilities-ages-3-21) and a list of low-cost legal and other relevant services in the area available to the parent(s).

13. May a board of education of the school district delay the initiation of an impartial hearing to see if the CSE or CPSE and parent(s) can resolve the matter outside of the impartial hearing, through mediation or participation in the resolution process?

No. A school district and the parent should continue to work together to resolve the problem that forms the basis of the due process complaint notice. The school district

4. Must an IHO be immediately available to hear a case in order to be appointed?

An IHO may not accept appointment of a case unless he or she is available to make a determination of sufficiency of a due process complaint notice within five days of receiving such a request and to initiate the hearing.

- x when a school district files a due process complaint notice, the hearing or prehearing conference must commence within 14 days after the date upon which the IHO is appointed; or
- x when a parent files a due process complaint notice, the hearing or pre-hearing conference must commence within the first 14 days after:
 - o the IHO receives the parties' written waiver of the resolution meeting; or
 - o the IHO received the parties' resolution meeting but no agreement was reached; or
 - o the expiration of the 30-day resolution period, whichever occurs first, unless the parties agree in writing to continue mediation at the end of the 30-day resolution period, in which case, the hearing or pre-hearing conference shall commence within the first 14 days after the IHO is notified in writing that either party withdrew from mediation.

5. May parties to a hearing mutually agree to a particular IHO, disregarding the rotational selection process?

No. The IHO must be selected according to a rotational selection process.

C. RESOLUTION PERIOD

[8 NYCRR Section 200.5(j)(2)]

1. What is a resolution meeting?

A resolution meeting is a dispute resolution process that takes place after a parent files a due process complaint. Resolution meetings allow parents of the student and the school district the opportunity to resolve issues before an impartial hearing happens. The purpose of the resolution meeting is to achieve a prompt and early resolution of a parent's due process complaint to avoid the time-consuming impartial hearing.

2. Who participates in a resolution meeting?

The parent and school district determine the relevant members of the CPSE/CSE to attend the resolution meeting. The school district must convene a resolution meeting with the parent and relevant members of the CPSE/CSE who have specific knowledge of the facts identified in the parent's due process complaint. The resolution meeting must include a representative of the school district who has decision-making authority on behalf of the district. An attorney of the school district may not attend the resolution meeting unless the parent is accompanied by an attorney. This is true even if a

7. Can the parties waive the resolution meeting?

Yes, but only by written agreement of both parties.

8. What if the school district does not schedule the resolution meeting?

If the school district fails to schedule and hold the resolution meeting within 15 calendar days of receiving the parent's due process participate in the meeting, the parent may seek the intervention of the hearing officer to begin the impartial hearing timeline.

9. Are discussions at the resolution meeting confidential?

No. Discussions at the resolution meeting are not confidential and may be used as evidence in an impartial hearing or court proceeding. However, the parent and the school district may agree to keep them confidential and may sign a confidentiality agreement or include such agreement in the resolution agreement resolving the dispute. However, the school district cannot require a confidentiality agreement as a condition of participation in the resolution meeting.

10. What if the parties change their mind about the agreement after the resolution meeting?

Either party may void the resolution agreement within three business days of the agreement's execution.

11. What if an agreement is not reached during the resolution meeting?

If the school district has not resolved the due process complaint within 30 days of the receipt of the due process complaint notice, the impartial hearing may occur.

D. IMPARTIAL HEARING PROCEDURES

[8 NYCRR Sections 200.5(i), 200.5 (j), 200.16(g) and 201.11]

1. Where are impartial hearings conducted?

An impartial hearing must be conducted at a location that is reasonably convenient to the parent and the student involved. The specific location is usually determined by the school district in consultation with the IHO and the parent. The location of the impartial hearing must ensure that it is closed to the public, unless otherwise requested by the parent to be open, and must ensure that the hearing is conducted with confidentiality protected and without unnecessary interruptions. To avoid delays in scheduling hearings, in large school districts, multiple locations for hearings may need to be established. The IHO ultimately determines whether the time and place for the hearing is reasonably convenient to the parent and student involved.

2. Who is responsible to arrange for an interpreter of the deaf or an interpreter fluent
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The school district is responsible for arranging for the presence and payment of interpreters.

3.

8. Is a prehearing conference required?

A prehearing conference is not currently required under State regulations however use of a prehearing conference is strongly encouraged.

9. What is the purpose of a prehearing conference?

A prehearing conference is used to simplify and or clarify the issues; establishing date(s) for the completion of the hearing; identifying evidence to be entered into the record; identifying witnesses expected to provide testimony; and/or addressing other administrative matters as the IHO deems necessary to complete a timely and efficient hearing.

10. How may a prehearing conference be conducted?

A prehearing conference with the parties may be conducted in person or by telephone.

11. Can a parent present evidence at an impartial hearing?

Yes. The parents, school authorities, and their respective counsel or representative, must have an opportunity to present evidence, compel the attendance of witnesses and to confront and question all witnesses at the hearing. Additionally, all evidence must be disclosed by each party to all other parties at least five business days before the hearing. This five-day disclosure requirement applies to all evidence and an F 190TETQq0 0

become part of the record. If an oral request for an extension is made on the record, the IHO may render an oral decision to that request but must subsequently provide that decision in writing and include it as part of the record.

14. What happens to the timeline for a decision when an extension is granted?

For each extension granted, the IHO must set a new date for rendering his or her decision, and notify the parties in writing of such date, and as required, revise the

18. Can a parent or school district withdraw their request for a due process hearing?

Yes. A party may withdraw a request for a due process hearing as follows:

- x Prior to the commencement of the hearing, a voluntary withdrawal by the party (i.e., parent or school district) requesting the hearing must be deemed by the IHO to be without prejudice unless the parties otherwise agree.
 - o “Commencement of the hearing” means the initial prehearing conference, if a prehearing conference is conducted.
 - o “Without prejudice” means that the party voluntarily withdraws the request can request the hearing again on the same

21. What happens if there is a dispute about pendency?

If there is dispute as to the status of the student during the impartial hearing (i.e., pendency), this issue should be raised immediately with the IHO. The IHO may conduct a hearing to determine the student's decision regarding pendency as soon as possible and prior to determining any other issue relating to the evaluation, identification or placement of a student. The decision of the IHO relating to pendency may be immediately appealed to the SRO.

22. Who has the burden of proof in an impartial hearing?

Pursuant to State law, the burden of proof in an impartial due process hearing to challenge the recommendation of a CPSE or CSE, or otherwise challenge actions or omissions relating to the provision of FAPE to a student with a disability, is placed on the school district (or State agency) providing special education to the student, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement.

23. Can testimony in an impartial hearing be given by telephone?

Yes, The IHO may receive testimony by telephone, as well as by video, provided that such testimony must be made under oath and subject to cross examination.

E. IMPARTIAL HEARING OFFICERS

[8 NYCRR Sections 200.1(x) and 200.21(b)]

1. What qualifications are needed for an individual to become certified as an IHO?

An IHO must:

- (1) Be an individual admitted to the practice of law in the State of New York who is currently in good standing and who has a minimum of five years of professional experience in the areas of education, special education, disability rights or civil rights; or be an individual certified by the State of New York as an IHO on September 1, 2001;

F. EXPEDITED IMPARTIAL HEARINGS

If a parent files a due process complaint, the decision is due not later than 45 days from the day after one of the following events, whichever shall occur first:

- 1) both parties agree in writing to waive the resolution meeting;
- 2) after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
- 3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or school district withdraws from the mediation process; or
- 4) the expiration of the 30-day resolution period.

In cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the IHO closes the record. Once a record is closed there may be no further extensions to the hearing timelines. Consistent with the intent of rendering timely decisions, if the new decision date is earlier than the 14th day from the date the IHO closes the record, the earlier date should be the new decision date.

2. How is a decision of an IHO enforced?

The decision of an IHO is final and binding upon the parties, unless appealed to NYSED's Office of State Review (OSR) (as of the event a school district does not implement the decision of an IHO, the parent(s) can file a 60-day State complaint with NYSED or go to court. In the event the parent does not implement the decision of the IHO, the school district may pursue the matter in court.

3. Are impartial hearing decisions publicly available?

Yes. Impartial Hearing Decisions are posted on the NYSED website. These decisions have been redacted to remove all personally identifiable information. More information can be found on the [Due Process Hearing webpage](http://www.nysed.gov/special-education/due-process(tio)6(n)-3(/)8(d)-3(u)-3(e)TETQq00) (www.nysed.gov/special-education/due-process(tio)6(n)-3(/)8(d)-3(u)-3(e)TETQq00)

party must file the notice of intention to seek review, notice of request for review, request for review, and proof of service with the OSR within two days after service of the request for review is complete. The rules of procedure for appeals before a SRO are found in Part 279 of the Regulations of the Commissioner of Education. A copy of the rules in Part 279 and model forms are available at the Office of State Review website (www.sro.nysed.gov).

5. How long does the appeal process take?

The SRO must ensure that, not later than 30 d2RO n1 12 Tf2073 6172 (e)-I[(Ho)3 0jETQq0.[(Ho)ip