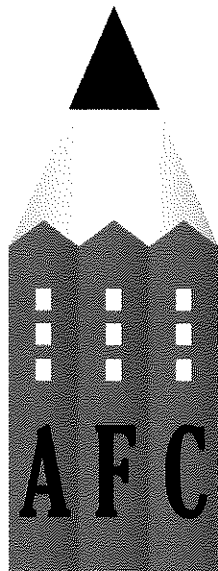


AFC'S GUIDE TO

Special Education Impartial Hearings

October 2015



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 you feel that your child is not receiving the proper special education services, you have the right to request an **impartial hearing**. This guide, which applies to all students with disabilities between the ages of 3 and 21 who are eligible for special education services in New York City, will answer many of your questions about the impartial hearing process. For more information about whether your child with a disability qualifies for 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 as a judge would. The hearing officer must be impartial 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 issue a written decision that explains why she ruled the way she did. The decision is final unless the parent or the DOE appeals the decision to the New York State Review Officer.

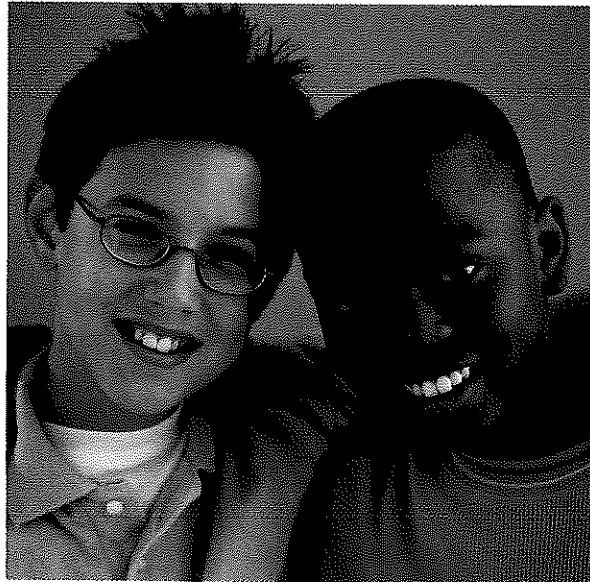
WHEN CAN YOU REQUEST A HEARING?

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

- You disagree with the program, services or supports included in your child's **Individualized Education Program (IEP)**.
- Your child is not getting the class, program, and/or services recommended on his or her IEP.
- Your child's school placement is not serving his or her needs.
- You disagree with your child's classification of disability.
- 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.

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 document 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; or
- Deliver the request in person to the Impartial Hearing Office and keep a date-stamped copy marked “Received” for your records.

Requests for impartial hearings should be sent to:

Stacey Reeves, Chief Administrator
Impartial Hearing Office
New York City Department of Education
131 Livingston Street, Room 201
Brooklyn, New York 11201
Phone: 718-935-3280
Fax: 718-935-2528
ihquest@schools.nyc.gov

You also need to send a copy of the hearing request to the New York State Education Department at the address listed below.

New York State Education Department
P-12: Office of Special Education
89 Washington Avenue, Room 309EB
Albany, New York 12234
ATTENTION: Impartial Hearing Reporting System



This process only applies in New York City. For information on requesting an impartial hearing in the rest of the state, please visit <http://www.p12.nysed.gov/specialed/formsnotices/dueprocess712.htm>.

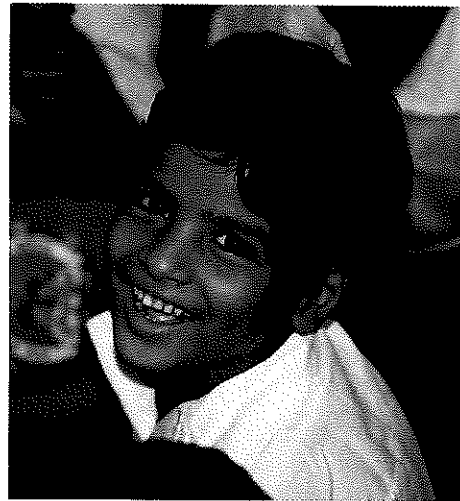
WHAT MUST THE HEARING REQUEST SAY?

The NYC DOE has developed a form you can use to request an impartial hearing. The form is available online at: <http://schools.nyc.gov/NR/rdonlyres/257381F6-B1EE-4451-A2B9-9C4D51833054/0/DPCRequestForm.pdf>.

Instead of using the form, you can also write a letter to request an impartial hearing. 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 the child is homeless, provide some other contact information)
- New York City identification (or OSIS) number. You can find this number on the top left-hand side of the first page of your child's IEP
- Parent or guardian's name
- Parent's address and phone number. If you want to be contacted about the hearing by email, you should include your email address as well.
- Name and address 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 his or her special education needs
- Explain why your child's school placement is not meeting his or her special education needs
- Explain why your child is not receiving a free and appropriate public education

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.

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.

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 her current class, you can ask for a change of placement to another public school or program.
- **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 must find the school first and be prepared to explain why the private school is appropriate.
- **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 for your child. This provider may cost more than the set rate the DOE usually pays. In these cases, you will have to find the outside provider on your own.
- **INCREASED RATE, PRIVATE TUTOR.** Parents often seek tutoring for make-up or “compensatory” services for education or services the DOE did not provide. You may ask for an increase in the hourly rate the DOE usually pays, which is much lower than the market rate for tutoring. Parents will need to find the outside tutor in these cases.
- **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.

NOTE:

You must tell the DOE in writing at least 10 days before sending your child to 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.

For more information about legal remedies, read pages 37-40 of AFC’s **Guide to Special Education**, at http://www.advocatesforchildren.org/sites/default/files/library/guide_to_special_ed.pdf.

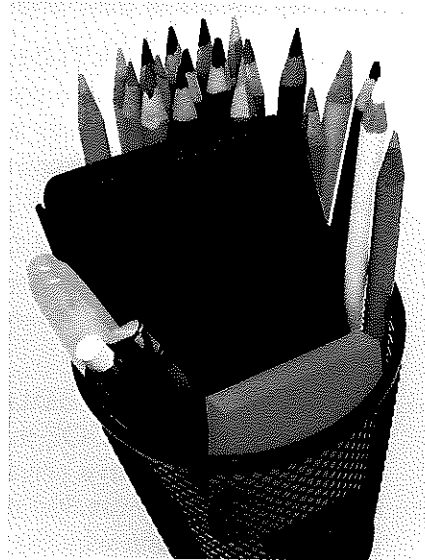
WHAT HAPPENS AFTER YOU REQUEST AN IMPARTIAL HEARING?

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.

Within 10 days of receiving your impartial hearing request, the **DOE** must respond to your request with a brief **answer** in writing.

In addition, within 15 days of receiving your hearing request, the DOE must contact you and schedule 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** 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 settlement** of the issues. Otherwise, you may lose your right to a hearing on the remaining issues. If you change your mind, you have three business days after signing the form to withdraw your agreement.

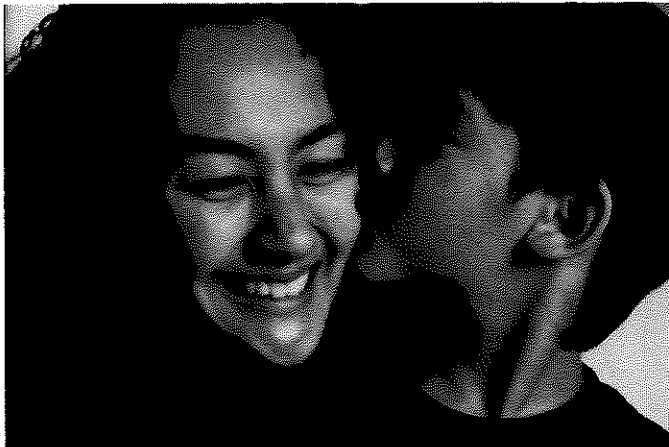
WHEN IS THE HEARING SCHEDULED?

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 settlement is reached at the end of 30 days, the Hearing Office or Hearing Officer should call you to schedule a hearing. You can also call the Hearing Office directly to schedule a hearing. If there is no chance of settlement, you and the DOE can agree to end the resolution period early and proceed directly to hearing.

The impartial hearing office or officer 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** call the hearing office at 718-935-3280 to let them know.

Along with the letter telling you 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;
3. Instructions on how to subpoena (request) documents;
4. Instructions on how to subpoena witnesses to appear and testify at the hearing; and
5. Instructions on how to request an interpreter if you do not speak English.



ADVOCACY TIP!

If no one from the DOE contacts you within 15 days to schedule a resolution session, call the hearing office to let them know. If no resolution session is scheduled, you can ask the impartial Hearing Officer to schedule the hearing.

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 on the last IEP that you agreed upon. Your child also has the right to stay in last school placement that you and the DOE agreed upon. 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, the DOE might be ordered to continue to pay the tuition for this year while this year's hearing continues. You should ask the hearing officer 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 you have not agreed to the full IEP. For example, if your child received EI services and the DOE only finds your child eligible for speech therapy for preschool, but you think your child also needs occupational therapy, you can file a hearing to ask for occupational therapy. During the hearing, the DOE must provide your child with speech therapy since you and the DOE agree on that service.

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 **Turning 5 Guide** at http://www.advocatesforchildren.org/get_help/guides_and_resources under "Early Childhood."

WHERE DO HEARINGS TAKE PLACE?

Impartial hearings take place on the second floor of the DOE office at 131 Livingston Street in Brooklyn. The office is near many city bus and subway lines, and the Jay Street, Borough Hall, and Hoyt/Schermerhorn stations. Hearings are held around a table in small conference rooms equipped with a speaker phone.

NOTE: You have the right to request that the hearing take place somewhere else if you cannot travel to the Impartial Hearing Office. 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. Be sure to sign in on the second floor as soon as you arrive so the hearing officer knows you are there and ready to begin. You may represent yourself or find an advocate or attorney to represent you. You also 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 telephone if they cannot appear in person at the hearing.

The DOE presenting its case. The DOE representative is sometimes an attorney. The DOE may present its own witnesses, in person or by phone. The Impartial Hearing Officer, 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.

Whether your child attends the hearing is a personal choice. It may be very difficult for a child to participate in discussions about his or her special education needs. On the other hand, it may be useful for the hearing officer to hear your child describe his or her personal experiences. If your child wants to participate, you have the right to request that he or she 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 hearing officer to decide the appropriate outcome for your child.

At the beginning of the hearing, the hearing officer will ask you and the DOE for any documents you would like to put into evidence. He or she 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. Then the DOE will put on its case, when it will try to prove that the services offered to your child were appropriate. After the DOE representative questions each witness, you will get the chance to question, or **cross-examine**, them as well.

After the DOE's case is finished, it will be your turn to put on testimony from 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 in person or by phone, he or she may write a report that can be used as evidence during the hearing, but direct testimony is best. You may ask the hearing officer to let one of your witnesses testify first if the witness is unavailable later in the day.

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. Other witnesses cannot just talk; instead, you must ask questions for them to answer. After you are finished questioning a witness, the DOE will have the opportunity to cross-examine him or her. The hearing officer may also ask questions of the witness.

Once all of the witnesses are done testifying, the hearing officer will ask each side for a **closing statement**. In your closing statement, remind the hearing officer what you are asking for, and point out facts in the documents or witness testimony that support the result you want. This is your last chance to show the hearing officer 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.

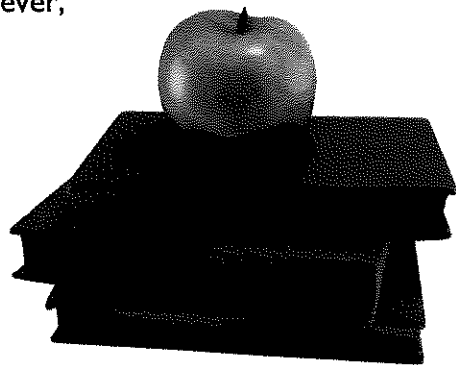
HOW DO YOU PREPARE FOR THE HEARING?

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. For example, if the DOE is not providing the services on your child's IEP, you should submit proof, through testimony and documents, showing that your child is not receiving the services. (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 his needs, evaluations or testimony from a service provider showing that your child needs different services would be helpful to the hearing officer.

Because the hearing officer'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, social history and other educational evaluations, recommendations from professionals, IEP's, descriptions of your child's school program, 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.

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. 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 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. The impartial hearing office will include a blank subpoena in the packet that tells you when your hearing date will be and how the hearing process works.

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.

You should fill out your subpoenas right away after you get the packet from the impartial hearing office. 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, phone contact sheets, 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. They can also testify by phone. Include the hearing time and place 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?

Send subpoenas to your case manager at the impartial hearing office. You can send them by mail, email, or fax, or deliver them in person. Be sure to confirm receipt and keep a copy for your records. The Hearing Officer 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 hearing officer signs a subpoena, send a copy to the person who is representing the DOE at the hearing. Ask that representative to serve the subpoena on the appropriate DOE employee, school, or office. Follow up if you don't hear back from the Impartial Hearing Office or DOE representative about your subpoenas.

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

NOTE:

You are responsible for getting subpoenas to other agencies and witnesses who are not DOE employees. Have someone over the age of 18 who is not part of the hearing deliver the subpoena. **You may not deliver the subpoena yourself.**

SHARING DOCUMENTS

The DOE Representative **must** send you copies of all of the documents he or she plans 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. Do not send the documents to the Impartial Hearing Office. The DOE representative must receive these documents at least **five business days** before the hearing. You should also bring an extra set of copies of your documents with you to the hearing, to give to the hearing officer as evidence in your case.

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 hearing officer 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.

Be sure to keep proof that the DOE received your disclosure. Send documents by certified mail, return receipt requested, fax them and save the fax confirmation sheet, email with a return receipt requested, or hand deliver the documents and have the DOE date-stamp your copy to show they received the paperwork on time.

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 hearing officer issues his or her 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 WILL THE HEARING BE RECORDED?

The hearing is audio-recorded and a typed copy of the testimony, called a **transcript**, is made from the recording. You, the hearing officer, and the DOE representative will each receive a copy of the written transcript within a week or two after the hearing. 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.

Before the hearing begins, the hearing officer will sometimes lead an off-the-record, or unrecorded, discussion between you and the DOE to clarify the issue(s) you raised in your request and to see if you and the DOE can come to an agreement. If you prefer, you can ask the hearing officer to tape the discussion or hold it "on the record."

IS THE HEARING OFFICER'S DECISION FINAL?

The hearing officer's decision is final **unless** you or the DOE appeal the decision to the **New York State Review Officer**.

You should receive the rules for how to prepare an appeal along with a copy of the decision. To proceed with an appeal, you must hand-deliver to the DOE written notice of your intention to appeal within **25 days** of the hearing officer's decision. Next, send a **petition** to the State Review Officer. The petition explains the facts of the case and why you disagree with the hearing officer's decision. You must sign and swear under oath that everything in the petition is true. It is due **35 calendar** days after you receive the decision. If the decision was mailed to you, you can add four more days to that deadline.

If you win at the hearing and the DOE does not appeal, the DOE must comply with the decision within the timeframe set by the hearing officer. If the order does not include a specific deadline, the DOE has **35 calendar days** to complete whatever it was ordered to do. If you have trouble getting the DOE to implement the decision, please call Advocates for Children at 212-947-9779, ext. 577. You can also contact the DOE Impartial Hearing Order Implementation Unit at 718-935-3213.

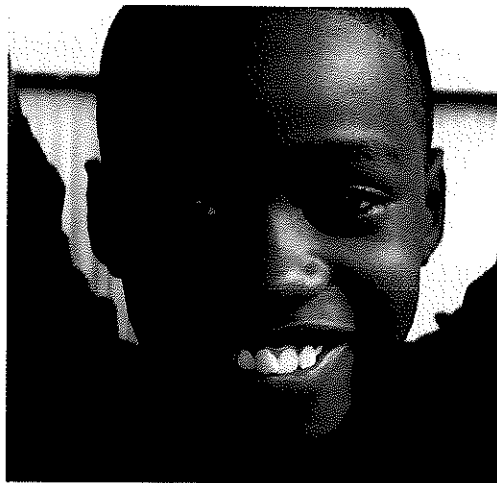
A NOTE ABOUT SETTLEMENTS

In September 2014, the DOE put in place a new procedure to settle certain cases for payment of tuition at private school, without the need for a hearing request:

- Within 15 days of receiving a 10-day notice, the DOE will send you a letter saying either that it will settle your case without your filing a hearing request, or that it will not settle at that time.
- If the DOE tells you that it is settling the case, the DOE will ask you for documents supporting the tuition amount, including your contract with the private school, proof of any payments you made to the school, and your child's attendance records. If you want the DOE to pay tuition directly to the school, you will need to send proof of your income too. If you are seeking services or amounts beyond tuition, 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. 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 file a hearing request and seek the relief at hearing. 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 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, his or her 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 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 **Mediation Center**, and send a copy to your child's school or CSE. 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. To learn more about mediation, please refer to the New York Peace Institute's guide on Special Education Mediation, available at: <http://nypeace.org/wp-content/uploads/2011/12/New-York-Peace-Institute-Manual-on-Special-Education-Mediation1.pdf>.

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

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)

Advocates for Children of New York, Inc.

151 West 30th Street, 5th Floor

New York, NY 10001

Phone • 212-947-9779

Fax • 212-947-9790

info@advocatesforchildren.org

www.advocatesforchildren.org

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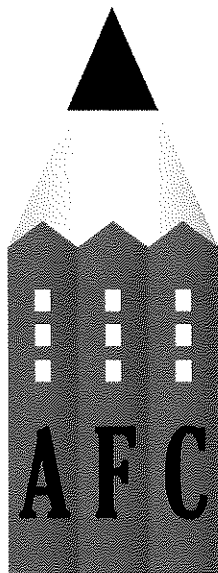
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AFC'S GUIDE TO

Special Education Impartial Hearings

October 2015



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 you feel that your child is not receiving the proper special education services, you have the right to request an **impartial hearing**. This guide, which applies to all students with disabilities between the ages of 3 and 21 who are eligible for special education services in New York City, will answer many of your questions about the impartial hearing process. For more information about whether your child with a disability qualifies for 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 as a judge would. The hearing officer must be impartial 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 issue a written decision that explains why she ruled the way she did. The decision is final unless the parent or the DOE appeals the decision to the New York State Review Officer.

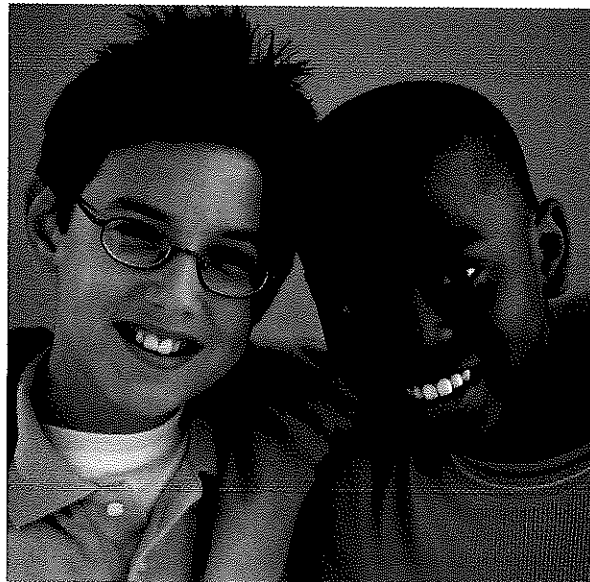
WHEN CAN YOU REQUEST A HEARING?

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

- You disagree with the program, services or supports included in your child's **Individualized Education Program (IEP)**.
- Your child is not getting the class, program, and/or services recommended on his or her IEP.
- Your child's school placement is not serving his or her needs.
- You disagree with your child's classification of disability.
- 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.

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 document 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; or
- Deliver the request in person to the Impartial Hearing Office and keep a date-stamped copy marked “Received” for your records.

Requests for impartial hearings should be sent to:

Stacey Reeves, Chief Administrator
Impartial Hearing Office
New York City Department of Education
131 Livingston Street, Room 201
Brooklyn, New York 11201
Phone: 718-935-3280
Fax: 718-935-2528
ihquest@schools.nyc.gov

You also need to send a copy of the hearing request to the New York State Education Department at the address listed below.

New York State Education Department
P-12: Office of Special Education
89 Washington Avenue, Room 309EB
Albany, New York 12234
ATTENTION: Impartial Hearing Reporting System



This process only applies in New York City. For information on requesting an impartial hearing in the rest of the state, please visit <http://www.p12.nysed.gov/specialed/formsnotices/dueprocess712.htm>.

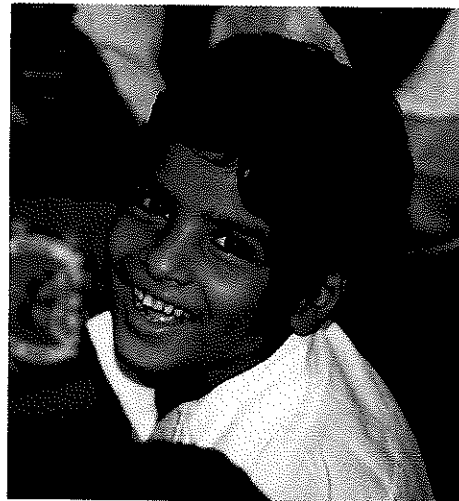
WHAT MUST THE HEARING REQUEST SAY?

The NYC DOE has developed a form you can use to request an impartial hearing. The form is available online at: <http://schools.nyc.gov/NR/rdonlyres/257381F6-B1EE-4451-A2B9-9C4D51833054/0/DPCRequestForm.pdf>.

Instead of using the form, you can also write a letter to request an impartial hearing. 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 the child is homeless, provide some other contact information)
- New York City identification (or OSIS) number. You can find this number on the top left-hand side of the first page of your child's IEP
- Parent or guardian's name
- Parent's address and phone number. If you want to be contacted about the hearing by email, you should include your email address as well.
- Name and address 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 his or her special education needs
- Explain why your child's school placement is not meeting his or her 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 her current class, you can ask for a change of placement to another public school or program.
- **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 must find the school first and be prepared to explain why the private school is appropriate.
- **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 for your child. This provider may cost more than the set rate the DOE usually pays. In these cases, you will have to find the outside provider on your own.
- **INCREASED RATE, PRIVATE TUTOR.** Parents often seek tutoring for make-up or “compensatory” services for education or services the DOE did not provide. You may ask for an increase in the hourly rate the DOE usually pays, which is much lower than the market rate for tutoring. Parents will need to find the outside tutor in these cases.
- **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.

NOTE:

You must tell the DOE in writing at least 10 days before sending your child to 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.

For more information about legal remedies, read pages 37-40 of AFC’s **Guide to Special Education**, at http://www.advocatesforchildren.org/sites/default/files/library/guide_to_special_ed.pdf.

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.

Within 10 days of receiving your impartial hearing request, the **DOE** must respond to your request with a brief **answer** in writing.

In addition, within 15 days of receiving your hearing request, the DOE must contact you and schedule 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** 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 settlement** of the issues. Otherwise, you may lose your right to a hearing on the remaining issues. If you change your mind, 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 settlement is reached at the end of 30 days, the Hearing Office or Hearing Officer should call you to schedule a hearing. You can also call the Hearing Office directly to schedule a hearing. If there is no chance of settlement, you and the DOE can agree to end the resolution period early and proceed directly to hearing.

The impartial hearing office or officer 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** call the hearing office at 718-935-3280 to let them know.

Along with the letter telling you 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;
3. Instructions on how to subpoena (request) documents;
4. Instructions on how to subpoena witnesses to appear and testify at the hearing; and
5. Instructions on how to request an interpreter if you do not speak English.



ADVOCACY TIP!

If no one from the DOE contacts you within 15 days to schedule a resolution session, call the hearing office to let them know. If no resolution session is scheduled, you can ask the Impartial Hearing Officer to schedule the hearing.

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 on the last IEP that you agreed upon. Your child also has the right to stay in last school placement that you and the DOE agreed upon. 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, the DOE might be ordered to continue to pay the tuition for this year while this year's hearing continues. You should ask the hearing officer 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 you have not agreed to the full IEP. For example, if your child received EI services and the DOE only finds your child eligible for speech therapy for preschool, but you think your child also needs occupational therapy, you can file a hearing to ask for occupational therapy. During the hearing, the DOE must provide your child with speech therapy since you and the DOE agree on that service.

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 **Turning 5 Guide** at http://www.advocatesforchildren.org/get_help/guides_and_resources under "Early Childhood."

WHERE DO HEARINGS TAKE PLACE?

Impartial hearings take place on the second floor of the DOE office at 131 Livingston Street in Brooklyn. The office is near many city bus and subway lines, and the Jay Street, Borough Hall, and Hoyt/Schermerhorn stations. Hearings are held around a table in small conference rooms equipped with a speaker phone.

NOTE: You have the right to request that the hearing take place somewhere else if you cannot travel to the Impartial Hearing Office. 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. Be sure to sign in on the second floor as soon as you arrive so the hearing officer knows you are there and ready to begin. You may represent yourself or find an advocate or attorney to represent you. You also 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 telephone if they cannot appear in person at the hearing.

The DOE presenting its case. The DOE representative is sometimes an attorney. The DOE may present its own witnesses, in person or by phone. The Impartial Hearing Officer, 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.

Whether your child attends the hearing is a personal choice. It may be very difficult for a child to participate in discussions about his or her special education needs. On the other hand, it may be useful for the hearing officer to hear your child describe his or her personal experiences. If your child wants to participate, you have the right to request that he or she 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 hearing officer to decide the appropriate outcome for your child.

At the beginning of the hearing, the hearing officer will ask you and the DOE for any documents you would like to put into evidence. He or she 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. Then the DOE will put on its case, when it will try to prove that the services offered to your child were appropriate. After the DOE representative questions each witness, you will get the chance to question, or **cross-examine**, them as well.

After the DOE's case is finished, it will be your turn to put on testimony from 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 in person or by phone, he or she may write a report that can be used as evidence during the hearing, but direct testimony is best. You may ask the hearing officer to let one of your witnesses testify first if the witness is unavailable later in the day.

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. Other witnesses cannot just talk; instead, you must ask questions for them to answer. After you are finished questioning a witness, the DOE will have the opportunity to cross-examine him or her. The hearing officer may also ask questions of the witness.

Once all of the witnesses are done testifying, the hearing officer will ask each side for a **closing statement**. In your closing statement, remind the hearing officer what you are asking for, and point out facts in the documents or witness testimony that support the result you want. This is your last chance to show the hearing officer 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.

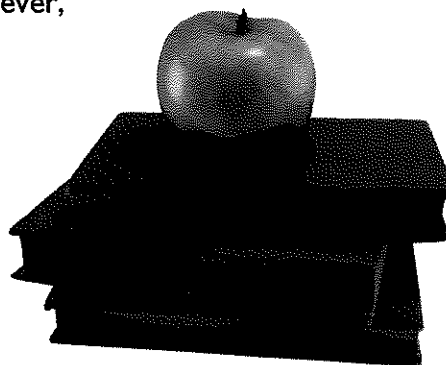
HOW DO YOU PREPARE FOR THE HEARING?

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. For example, if the DOE is not providing the services on your child's IEP, you should submit proof, through testimony and documents, showing that your child is not receiving the services. (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 his needs, evaluations or testimony from a service provider showing that your child needs different services would be helpful to the hearing officer.

Because the hearing officer'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, social history and other educational evaluations, recommendations from professionals, IEP's, descriptions of your child's school program, 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.

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. 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 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. The impartial hearing office will include a blank subpoena in the packet that tells you when your hearing date will be and how the hearing process works.

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.

You should fill out your subpoenas right away after you get the packet from the impartial hearing office. 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, phone contact sheets, 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. They can also testify by phone. Include the hearing time and place 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?

Send subpoenas to your case manager at the impartial hearing office. You can send them by mail, email, or fax, or deliver them in person. Be sure to confirm receipt and keep a copy for your records. The Hearing Officer 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 hearing officer signs a subpoena, send a copy to the person who is representing the DOE at the hearing. Ask that representative to serve the subpoena on the appropriate DOE employee, school, or office. Follow up if you don't hear back from the Impartial Hearing Office or DOE representative about your subpoenas.

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

NOTE:

You are responsible for getting subpoenas to other agencies and witnesses who are not DOE employees. Have someone over the age of 18 who is not part of the hearing deliver the subpoena. **You may not deliver the subpoena yourself.**

SHARING DOCUMENTS

The DOE Representative **must** send you copies of all of the documents he or she plans 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. Do not send the documents to the Impartial Hearing Office. The DOE representative must receive these documents at least **five business days** before the hearing. You should also bring an extra set of copies of your documents with you to the hearing, to give to the hearing officer as evidence in your case.

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 hearing officer 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.

Be sure to keep proof that the DOE received your disclosure. Send documents by certified mail, return receipt requested, fax them and save the fax confirmation sheet, email with a return receipt requested, or hand deliver the documents and have the DOE date-stamp your copy to show they received the paperwork on time.

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 hearing officer issues his or her 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 WILL THE HEARING BE RECORDED?

The hearing is audio-recorded and a typed copy of the testimony, called a **transcript**, is made from the recording. You, the hearing officer, and the DOE representative will each receive a copy of the written transcript within a week or two after the hearing. 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.

Before the hearing begins, the hearing officer will sometimes lead an off-the-record, or unrecorded, discussion between you and the DOE to clarify the issue(s) you raised in your request and to see if you and the DOE can come to an agreement. If you prefer, you can ask the hearing officer to tape the discussion or hold it "on the record."

IS THE HEARING OFFICER'S DECISION FINAL?

The hearing officer's decision is final **unless** you or the DOE appeal the decision to the **New York State Review Officer**.

You should receive the rules for how to prepare an appeal along with a copy of the decision. To proceed with an appeal, you must hand-deliver to the DOE written notice of your intention to appeal within **25 days** of the hearing officer's decision. Next, send a **petition** to the State Review Officer. The petition explains the facts of the case and why you disagree with the hearing officer's decision. You must sign and swear under oath that everything in the petition is true. It is due **35 calendar** days after you receive the decision. If the decision was mailed to you, you can add four more days to that deadline.

If you win at the hearing and the DOE does not appeal, the DOE must comply with the decision within the timeframe set by the hearing officer. If the order does not include a specific deadline, the DOE has **35 calendar days** to complete whatever it was ordered to do. If you have trouble getting the DOE to implement the decision, please call Advocates for Children at 212-947-9779, ext. 577. You can also contact the DOE Impartial Hearing Order Implementation Unit at 718-935-3213.

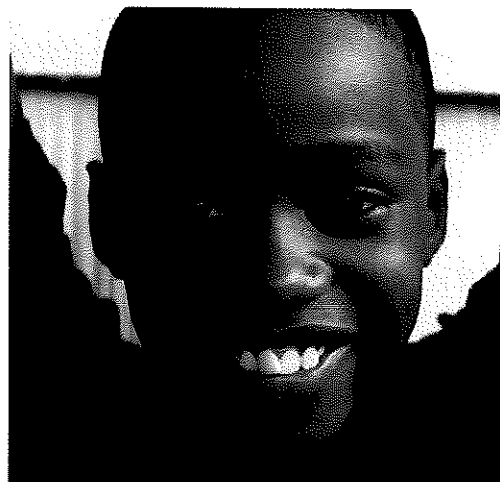
A NOTE ABOUT SETTLEMENTS

In September 2014, the DOE put in place a new procedure to settle certain cases for payment of tuition at private school, without the need for a hearing request:

- Within 15 days of receiving a 10-day notice, the DOE will send you a letter saying either that it will settle your case without your filing a hearing request, or that it will not settle at that time.
- If the DOE tells you that it is settling the case, the DOE will ask you for documents supporting the tuition amount, including your contract with the private school, proof of any payments you made to the school, and your child's attendance records. If you want the DOE to pay tuition directly to the school, you will need to send proof of your income too. If you are seeking services or amounts beyond tuition, 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. 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 file a hearing request and seek the relief at hearing. 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 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, his or her 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 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 **Mediation Center**, and send a copy to your child's school or CSE. 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. To learn more about mediation, please refer to the New York Peace Institute's guide on Special Education Mediation, available at: <http://nypeace.org/wp-content/uploads/2011/12/New-York-Peace-Institute-Manual-on-Special-Education-Mediation1.pdf>.

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

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)

Advocates for Children of New York, Inc.

151 West 30th Street, 5th Floor

New York, NY 10001

Phone • 212-947-9779

Fax • 212-947-9790

info@advocatesforchildren.org

www.advocatesforchildren.org

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Call AFC's Education Helpline
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Read Paige's Story

Paige, a bright third grade student on the autism spectrum, sat at home for nearly two months waiting for a school placement that would meet her needs.

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Help Advocates for Children assist more New York City students

Who We Are

Who We Are

At Advocates for Children of New York (AFC), we are dedicated exclusively to protecting every child's right to an education, focusing on students from low-income backgrounds who are struggling in school or experiencing school discrimination of any kind.

For more than 40 years, our staff of attorneys and education specialists have successfully helped hundreds of thousands of families by providing free legal and advocacy services, including representation at school-related hearings and appeals, and teaching families what they need to know to stand up for their children's educational rights.

AFC also works to change education policy so that the public school system serves ALL children of New York City effectively. For more information about Policy & Initiatives and Litigation, please click on the links.

To learn more about the populations we serve, go to:

- Early Childhood
- Students with Disabilities
- Students who are Over-Age for their Grade Level
- Immigrant Students and English Language Learners
- Students Facing Disciplinary Issues
- Youth Involved in the Juvenile & Criminal Justice Systems
- Students Involved in the Child Welfare System
- Students in Temporary Housing
- Students Attending Charter Schools

To read about some of the students AFC has helped, please go to Success Stories.

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Advocates for Children of New York 161 West 30th Street 6th Floor New York, NY 10001 (212) 647-9779 Fax (212) 647-9780 info@advocatesforchildren.org [Contact Us](#) [Privacy](#)