



**New York State Education Department  
Office of Special Education**

**QUESTIONS AND ANSWERS ON  
IMPARTIAL DUE PROCESS HEARINGS  
FOR STUDENTS WITH DISABILITIES**

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**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 parents<sup>1</sup> 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 or ask for a meeting with 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 that may arise about a 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 expensive, less time-consuming alternative to dispute resolution for both parties, allows the parties to discuss the issues and work together to develop a mutually agreeable solution and is a highly effective process in resolving issues related to special education matters. More information on the mediation process can be found on NYSED's [Special Education Mediation webpage](http://www.nysed.gov/special-education/mediation) (www.nysed.gov/special-education/mediation).

### **State Complaints**

If a parent, individual or organization believes that a school district or public agency has violated a requirement of the IDEA, the federal regulations or State law/regulations related to the education of students with disabilities, they may submit a written, signed State complaint to NYSED. The State complaint must allege a violation that occurred not more than one year prior to the date that the State complaint is received. Upon receipt of a written complaint by an individual or agency, NYSED must determine if the alleged violation occurred and issue a written decision of its findings within 60 calendar days of receiving the State complaint. More information on State complaints can be found on NYSED's [State Complaint webpage](http://www.nysed.gov/special-education/state-complaint) (www.nysed.gov/special-education/state-complaint).

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<sup>1</sup> Parent is generally defined as a birth natural or adoptive parent, a guardian, a person in parental relationship to the child or a surrogate parent (8 NYCRR § 200.1(ii)).

## **Impartial Hearings**

The parents or a school district may request an impartial due process hearing (referred to as an “impartial hearing” throughout this document) on any matter relating to a proposal or a 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 enforceable in any State court of competent 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 NYCRR<sup>2</sup> 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. Any administrative official or other 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 or the school district's withholding of 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 may result in the school district and the 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.

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<sup>2</sup> Title 8 of the New York Code of Rules and Regulations

A request for an impartial hearing must include:

- the name of the student;
- the address of the residence of the student;
- the name of the school the student is attending;
- a description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and
- a proposed resolution of the problem to the extent known and available to the parents at the time.

**5. Is there a sample form to request an impartial hearing?**

Yes, NYSED is required under federal law and regulations to develop a sample due process complaint notice form that may be used to request an impartial hearing to resolve a disagreement about the referral, evaluation or placement of a student or regarding the provision of FAPE for a student under the IDEA. This form can be found on the [Due Process Hearing webpage](http://www.nysed.gov/special-education/due-process-hearing) ([www.nysed.gov/special-education/due-process-hearing](http://www.nysed.gov/special-education/due-process-hearing)).

School districts must provide information to parents about the availability of this form. School districts, parents or their attorneys may choose to use this form or provide the required information in Question #4 in another format.

**6. How does a school district notify a parent if the district is the party initiating an impartial hearing?**

The parent will receive a copy of the school district's due process complaint notice.

**7. May a school district deny a parent's request for an impartial hearing?**

No. The school district does not have authority to deny a parent's written request for an impartial hearing upon receipt of a due process complaint notice. The board of education of the school district must appoint an IHO even if a party believes that the nature of the disagreement is not appropriate for an impartial hearing. An IHO is the only person with authority to determine whether an issue is subject to the due process complaint procedure and whether a written request for an impartial hearing is sufficient.

**8. Can a school district challenge a parent's due process complaint notice?**

If the party receiving the due process complaint notice believes the notice does not include all the required information, it must notify the IHO and the other party in writing within 15 days of receiving the due process complaint notice. Within five days of the receipt of the notice of insufficiency, the IHO must make a determination on the face of the notice of whether the notification meets the requirements and must immediately notify the parties in writing of such determination.

**9. What happens if an IHO determines that a parent's due process complaint notice 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 must a school district do when it receives the parent's written request for an impartial hearing?**

Upon receipt, the parent's written request for an impartial hearing must be 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 a copy of NYSED's [Procedural Safeguards Notice: Rights for Parents of Children with Disabilities, Ages 3-21](http://www.nysed.gov/special-education/procedural-safeguards-notice-rights-parents-children-disabilities-ages-3-21) ([www.nysed.gov/special-education/procedural-safeguards-notice-rights-parents-children-disabilities-ages-3-21](http://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

must invite the parent to participate in a CSE/CPSE meeting and/or encourage mediation. However, the board of education cannot delay initiating the impartial hearing once a written request for the hearing is received. The process to select the IHO must begin immediately, but in no case later than two business days after receipt of the written request for the hearing. The board of education must then immediately appoint the IHO. The school district and parent may pursue a CSE/CPSE meeting and/or mediation while maintaining the request for an impartial hearing. The parent may also choose to withdraw his or her request for an impartial hearing while he or she pursues a CSE/CPSE meeting, mediation, and/or a state complaint using the procedures indicated below referencing withdrawals. The withdrawal should be in writing.

## **B. APPOINTMENT OF AN IHO**

**[8 NYCRR Sections 200.2(e) and 200.5(j)]**

### **1. How is an IHO appointed?**

Selection of an IHO must be made on a rotational basis from an alphabetical list beginning with the first name after the IHO who last served in the school district, proceeding through the list until an appointment is accepted. If no IHO on the list has served in that school district, then selection must be made beginning with the first name on the list.

### **2. When must the process to select the IHO begin?**

Following receipt of a written request for an impartial hearing from a parent, or the filing of a request by a school district, the school district must immediately, but not later than two business days, initiate the process to select an IHO using a rotational selection process in accordance with State regulatory requirements. Once initiated, the selection process should continue in an expeditious manner. Once selected, the IHO must be immediately appointed by the board of education or by the designated representatives from the board.

### **3. Does a school district need to wait until the board of education meets and appoints the IHO?**

No. The board of education or trustees must immediately appoint an IHO to conduct the hearing. A board of education may designate one or more of its members to appoint the IHO.



#### **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.

- 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
- when a parent files a due process complaint notice, the hearing or pre-hearing conference must commence within the first 14 days after:
  - the IHO receives the parties' written waiver of the resolution meeting; or
  - the IHO received the parties' written confirmation that a mediation or resolution meeting was held but no agreement was reached; or
  - 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 need for a more costly, adversarial, and 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

non-attorney advocate attends the meeting on behalf of the parent. School districts and parents are encouraged to cooperate in determining who will attend the resolution meeting, because a resolution meeting is unlikely to result in a resolution of the dispute if the parties cannot agree on who should attend.

**3. When does the resolution meeting occur?**

The school district must convene a resolution meeting within 15 calendar days of receiving the due process complaint notice from the parent. The meeting must occur unless the parent and school district agree, in writing, to waive the resolution process, or agree to use the mediation process.

**4. Can the resolution meeting be scheduled on a day that school is not in session (e.g., breaks or holidays)?**

Yes. Even during periods when school is closed, the school district must hold the resolution meeting within 15 days of receiving notice of the parent's due process complaint notice. The only exceptions to this requirement are if the parent and school district agree in writing to waive the resolution meeting, or the parent and school district agree to use mediation. The school district may not suspend the 15- day timeline for convening a resolution meeting while schools are closed for breaks or holidays. Such a delay would be inconsistent with the 30-day resolution period and would also delay the initiation of the 45-day timeline for issuing a final decision in an impartial hearing.

**5. What if the parent cannot attend the resolution meeting in person?**

The school district must attempt to schedule an in-person meeting with the parent within 15 days of receiving the parent's due process complaint notice. If the school district notifies the parent of its intent to schedule a resolution meeting within the 15- day timeline and the parent informs the district in advance of the meeting that circumstances prevent the parent from attending the meeting in person, it would be appropriate for a school district to offer to use alternative means to ensure parent participation, such as video conferences or conference telephone calls, subject to the parent's agreement. Whether the meeting is conducted in person or by alternative means, the school district must include the required participants and be prepared to discuss with the parent the facts that form the basis of the due process complaint and any possible resolution of the complaint.

**6. What if the parent does not want to participate in the resolution meeting and the school district does not agree to waive the meeting?**

If the parent does not participate in the resolution meeting that the school district attempts to convene within 15 days of receiving the parent's due process complaint notice, the school district must continue to make diligent efforts throughout the remainder of the 30-day resolution period to ensure the parent's participation in a resolution meeting. At the conclusion of the 30-day resolution period, the school district may request that a hearing officer dismiss the complaint when the district is unable to obtain the participation of a parent in a resolution meeting, despite making reasonable efforts to obtain the parent's participation and documenting its efforts.

**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 complaint notice or fails to 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 in the native language of the student's parent if needed?**

The school district is responsible for arranging for the presence and payment of interpreters.

**3. Under what circumstances may an IHO communicate with one party without the other party present?**

No ex parte communication (communication with one party without the other party present) should occur regarding the hearing issues. An IHO may discuss logistical information regarding a hearing with one or more of the parties such as the need for interpreters and accommodations, dates and times of the hearing, and whether the hearing is to be open or closed to the public. However, an IHO must refrain from communicating with any party or party representative about an issue of fact or law related to the hearing except upon notice with opportunity for all parties to participate. Allegations that improper ex parte communication contacts compromised an IHO's impartiality may be brought to the IHO as a basis for recusal or a complaint may be filed under 8 NYCRR Section 200.21 once the hearing has concluded (see Section {G} below).

**4. Must a parent or a school district have an attorney to represent them at an impartial hearing?**

No. Parents and school districts may represent themselves pro se (i.e., without an attorney) at an impartial hearing or may be represented by a non-attorney advocate.

**5. What does "open hearing" mean?**

An "open hearing" means that any interested individual may observe the impartial hearing. A parent may request that the impartial hearing be open to the public. The IHO remains responsible for ensuring that the parties to the hearing and the individuals observing the hearing conduct themselves in an orderly manner. Parents should note that confidentiality is waived in an open hearing.

**6. What happens if mediation is requested after an impartial hearing has been requested?**

If, after a request for an impartial hearing has been received, the parents and school district initiate mediation to resolve the dispute that is subject to the impartial hearing, the impartial hearing must still continue unless the request for the impartial hearing is withdrawn. The use of mediation may not deny or delay a parent's right to an impartial hearing. However, a party may request an extension of an impartial hearing in order to pursue mediation.

**7. Is the student required to attend the hearing?**

No. The parent has the right to determine whether the student attends the hearing.

**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 IHO may bar any party that fails to comply with this requirement from introducing the relevant evidence, including evaluations or recommendations at the hearing without the consent of the other party.

**12. Does the IHO have discretion to grant extensions to the due process timeline?**

Yes, however only at the request of one of the parties to a hearing may an IHO grant extensions of time beyond the required time period for the IHO to render and mail the decision. The reason for the extension must be documented in the hearing record. In deciding whether to grant a party's request for an extension, the IHO should consider whether the delay in the hearing will positively contribute to, or adversely affect, the child's educational interest or whether a party has been afforded a fair opportunity to present its case at the hearing in accordance with the requirements of due process; any adverse financial or other detrimental consequences likely to be suffered by a party in the event of delay; and whether there has already been a delay in the proceeding through the actions of one of the parties. The IHO must not solicit extension requests or grant extensions on his or her own behalf or unilaterally issue extensions for any reason. An extension may be for no more than 30 days and only one extension may be granted at a time.

**13. Does the IHO have to respond in writing to a request for an extension?**

Yes. The IHO must promptly respond in writing to each request for an extension and must set forth the facts relied upon for each extension granted. The response must

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 schedule of remaining hearing dates to ensure that the IHO's decision is issued by the revised decision due date.

**15. Can multiple due process complaints concerning the same student be consolidated?**

Yes. Due process complaint notices that are filed while an impartial hearing is pending before an IHO involving the same parties and the same student with a disability may be consolidated. Consolidation means that the separate impartial hearing requests involving the same parties and student with a disability would be heard by the same IHO. Once appointed to a case in accordance with the rotational selection process, the IHO with the pending due process complaint must be appointed to a subsequent due process complaint unless that IHO is unavailable. This would be an exception to the IHO rotational selection process.

**16. Who determines that cases should or should not be consolidated?**

The determination that cases should or should not be consolidated is made solely by the IHO and does not rely on agreement of the parties. The IHO may consolidate the new due process complaint with the pending complaint or determine that the new complaint proceed separately as an individual hearing before the same IHO. The IHO must issue a written order as to whether he or she will or will not consolidate the complaints. The written order must include the reason(s) (i.e., analysis) for the IHO's decision.

**17. What happens to the timeline of the hearing if due process complaints are consolidated?**

If the due process complaints are consolidated, the timeline for issuance of a decision in the earliest pending due process complaint will apply.

## **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:

- 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.
  - “Commencement of the hearing” means the first date the hearing is held after the initial prehearing conference, if a prehearing conference is conducted.
  - “Without prejudice” means that the party who requested the hearing and later voluntarily withdraws the request can request the hearing again on the same issue(s) at a later date provided the subsequent hearing request is made within the applicable time period set forth in the law.
- For withdrawals made after commencement of the hearing, the party seeking to withdraw the due process complaint must immediately notify the IHO and the other party. The IHO must issue a written order terminating the hearing. This written order is known as an “Order of Termination.”
  - The withdrawal is presumed to be without prejudice except that the IHO may, at the request of the other party and upon notice and an opportunity for the parties to be heard, issue a written decision that the withdrawal will be with prejudice. “With prejudice” means that the party requesting the hearing cannot request a subsequent hearing on the same issue(s) included in the first request for hearing unless the IHO’s decision is appealed to a State Review Officer (SRO) who rules against the IHO’s determination.

## **19. Can a due process complaint be re-filed after it has been withdrawn?**

Yes, unless withdrawn with prejudice. If the party subsequently files a due process complaint within one year of the withdrawal of a complaint that is based on or includes the same or substantially similar claims as made in a prior due process complaint that was previously withdrawn by the party, the school district must appoint the same IHO appointed to the prior complaint unless that IHO is no longer available to hear the re-filed due process complaint. This would be an exception to the IHO rotational selection process.

## **20. What is the student’s status during an impartial hearing?**

During the pendency of any impartial hearing or any subsequent appeal to an SRO, unless the local board of education and the parents otherwise agree, the student must remain in the then-current placement of such student. This does not apply to hearings involving preschool students with disabilities and/or impartial hearings involving the discipline of students with disabilities. During the pendency for any due process proceeding relating to the evaluation and initial placement in special education, unless the local board of education and the parents otherwise agree, the student shall not be evaluated and shall remain in the then-current educational placement of such student or, if applying for initial admission to a public school, must be placed in the public-school program until all such proceedings have been completed.

## **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 pendency and should render a written 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 two years' practice and/or 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;
- (2) have access to the support and equipment necessary to perform the duties of an IHO;
- (3) be independent, shall not be an officer, employee or agent of the school district or of the board of cooperative educational services of which such school district is a component, or an employee of NYSED, shall not have a personal or professional interest which would conflict with his or her objectivity in the hearing, and shall not have participated in any manner in the formulation of the recommendation sought to be reviewed; and
- (4) be certified by the commissioner of education as an IHO eligible to conduct hearings pursuant to Education Law, Section 4404(1) and subject to suspension or revocation of such certification by the commissioner for good cause in accordance with the provisions of State regulations.



**2. Are there any prohibitions on who can become an IHO?**

Yes, certain prohibitions apply. No individual employed by a school district, school or program serving students with disabilities placed there by a school district CPSE or CSE may serve as an IHO and no individual employed by such schools or programs may serve as an IHO for two years following the termination of such employment, provided that a person who otherwise qualifies to conduct a hearing under this section must not be deemed an employee of the school district, school or program serving students with disabilities solely because he or she is paid by such schools or programs to serve as an IHO.

**3. Can a parent or school district ask an IHO to recuse him/herself from administering an impartial hearing?**

Yes, however an IHO is not required to recuse him/herself upon receiving such a request from a parent or school district. If an IHO declines to recuse him/herself upon receipt of a request to do so, the matter may be included in an appeal of the IHO's decision to the SRO.

**4. Can a complaint against an IHO be filed by the parent or school district?**

Yes, either a parent or a school district may file a complaint against an IHO either individually or jointly.

**5. How is a complaint against an IHO filed?**

Complaints alleging the misconduct or challenging the competence of an IHO must be made in a signed written statement to the commissioner of education and must contain a concise statement and documentation of the facts upon which the complaint is based as required by State regulations. Please submit your complaint to [specedih@nysed.gov](mailto:specedih@nysed.gov).

**6. Is there a time limit to filing a complaint against an IHO?**

A written letter of a complaint against an IHO should be submitted, if possible, not later than one year after the date of the alleged misconduct or incompetence.

**7. What happens if a complaint is founded?**

If, upon a review of the facts, the commissioner finds misconduct or incompetence on the part of the IHO, the commissioner of education may issue a warning letter to the IHO containing an order for corrective action, or, depending on such factors as the level of misconduct or incompetence and the number of prior findings of misconduct or incompetence against the IHO, the certification of the IHO may be suspended or revoked.

## **F. EXPEDITED IMPARTIAL HEARINGS**

[8 NYCRR Sections 200.5(j), 201.2(f), 201.11]

### **1. What is an expedited impartial hearing?**

An expedited impartial hearing is an impartial hearing conducted in an expedited manner under certain limited circumstances, usually involving the placement of a student with a disability in an interim alternative educational setting (IAES) because of issues arising from the discipline of such student.

### **2. Is the timeline the same for an expedited impartial hearing and a non- expedited impartial hearing?**

No. The school district must arrange the expedited hearing according to the timeline identified in State regulations, unless the parent and school district agree in writing to waive the resolution meeting or agree to use mediation:

- A resolution meeting must occur within seven days of receiving notice of the due process complaint notice.
- The expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint notice.
- The expedited due process hearing must occur within 20 school days of the date the complaint requesting the hearing is filed.
- The impartial hearing officer must make a determination within 10 school days after the hearing.
- The impartial hearing officer shall mail a copy of the written, or at the option of the parents, electronic findings of fact and the decision to the parents, to the board of education and to NYSED's Office of Special Education within 10 school days after the hearing.

### **3. Can the timeline of an expedited impartial hearing be extended?**

No. There can be no extension to the timeline of an expedited impartial hearing.

## **G. IMPARTIAL HEARING DECISIONS AND APPEALS**

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

### **1. How long does it take for an impartial hearing decision to be rendered?**

If a school district files a due process complaint, the IHO's decision must be rendered and mailed or provided electronically to the parties not later than 45 days (30-days for a preschool child) from the day after the school district's complaint is received by the other party and NYSED.

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 14<sup>th</sup> 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 further discussed in question 4, below). In 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 NYSED's Office of Special Education website. These decisions have been redacted to remove all personally identifiable information. More information can be found on NYSED's [Due Process Hearing webpage](http://www.nysed.gov/special-education/due-process-hearing) ([www.nysed.gov/special-education/due-process-hearing](http://www.nysed.gov/special-education/due-process-hearing)).

## **4. Can an IHO's decision be appealed?**

Yes. Within 40 days of the date of the decision, the parent and/or the school district has a right to appeal the decision to an SRO under Education Law Section 4404 and the IDEA.

If either party plans to appeal the decision, a notice of intention to seek review must be personally served upon the opposing party no later than 25 days after the date of the decision sought to be reviewed.

An appealing party's request for review must be personally served upon the opposing party within 40 days from the date of the decision sought to be reviewed. An appealing

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](http://www.sro.nysed.gov)).

**5. How long does the appeal process take?**

The SRO must ensure that, not later than 30 days after the receipt of a request for a review, a final decision is reached and a copy of the written decision, or at the option of the parents, electronic findings of fact and the decision, is mailed to each of the parties, except that a SRO may grant specific extensions of time beyond this period at the request of either party.

**6. Can the decision of the SRO be appealed?**

The written decision of the SRO shall be final, however either party may seek judicial review by means of a proceeding pursuant to article 4 of New York's Civil Practice Law and Rules or 20 U.S.C. Section 1415.