



Special Education Hearings

**What to expect at the OATH
Special Education Hearings
Division**

Office of Administrative Trials and Hearings

66 John Street, New York, NY 10038

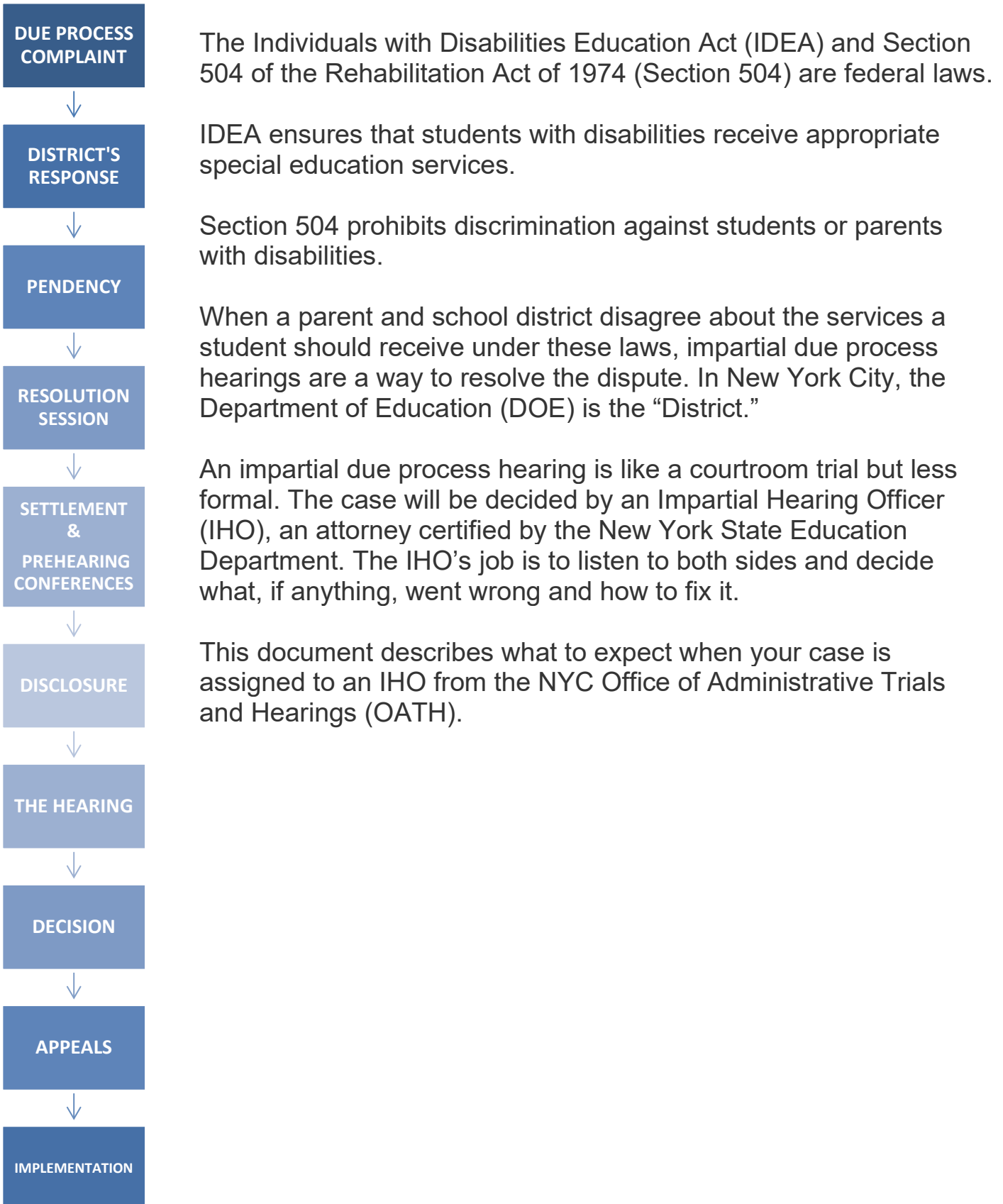
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Special Education Cases at OATH



Free Appropriate Public Education (FAPE)

FAPE: The District must provide every child who is eligible for special education services with a Free Appropriate Public Education. Disputes about special education can be “substantive” or “procedural.”

Substantive disputes are about the type and amount of services that are appropriate for the Student. For example, substantive claims may include disagreements about whether the Individualized Education Program (IEP) gives the Student the help they need in reading, or whether a school can meet the Student’s needs.

Procedural disputes are about whether the District followed the evaluation or IEP processes in the law. For example, procedural claims include whether the IEP team met without the Parent or whether evaluations were done in the required timelines.

These are just some examples of the types of disagreements that can be resolved through an impartial due process hearing.

Right to an Attorney

You have the right to consult with an attorney. You can also bring an attorney or advocate to your hearings and conferences. If you hire an attorney and prevail in your hearing, you may be entitled to reimbursement from the District for the cost of reasonable attorneys’ fees. Many organizations provide free or low-cost help to families in New York City who are involved in the special education hearing process. A [list of Special Education Parent Centers, Legal Services and Advocacy Organizations](#) is available on [OATH’s website](#). Please consider contacting one of these organizations for help understanding the hearing process or if you need help finding an attorney or advocate.

Note: This partial listing of legal services organizations is provided as a public service. OATH does not give legal advice and does not recommend any attorney or organization.

Getting a Hearing

A Parent or the District can request an impartial due process hearing by filing a Due Process Complaint (DPC). The DPC should explain the problem (or what the District did incorrectly) and propose how the District should fix the problem. Information about how to file a DPC is on the DOE's website, [here](#).

Before Your Hearing

1. District's Response

When you file a DPC, the District must respond in writing within 10 days unless it has already sent you a document called a Prior Written Notice (PWN) that addresses all the issues in the DPC.

2. Pendency or "Stay Put"

During a hearing, the Student has the right to the program and services the Parent and the District agreed to before the disagreement happened. These are called "Stay put" or "Pendency" services. Pendency services should go into effect right after the DPC is filed and do not need to be paid back, even if you eventually lose the case.

If you and the District cannot agree on Pendency services, you can ask the IHO for a Pendency Hearing.

Pendency Hearings are short hearings where both sides say what they believe were the last agreed-upon services that the Student should receive as Pendency services. The IHO will decide what Pendency services will be. You or the District can appeal the IHO's Pendency decision (see page 9 for more information about appeals).

3. Resolution Session & Timelines

After you file a DPC, you and the District generally have 30 calendar days to try to resolve the case on your own. This is called the Resolution Period. The District must schedule a “Resolution Meeting” no later than 15 days after you file a DPC.

It is important to respond to this invitation because the hearing can be delayed or dismissed if you do not participate in the Resolution Meeting.

The purpose of the Resolution Meeting is for you and the District to discuss the case and try to resolve the issues in the DPC. The Resolution Meeting must include someone from the District who has information about the case and the power to resolve the issues in the DPC.

In general, the Resolution Period ends 30 days after you file the DPC. If you and the District meet and cannot reach a resolution, you can ask the IHO to end the Resolution Period earlier.

After the Resolution Period ends, the IHO has 45 days to hold a hearing, review the evidence, and issue a final decision. This 45-day deadline is called the “compliance date.” If you or the District need more time, then you or the District can ask the IHO to extend the compliance date.

Disciplinary Cases: The timelines are different if your DPC is related to the removal of your child from their school for disciplinary reasons. The resolution period for disciplinary cases is 15 days, and the District must schedule a Resolution Meeting no more than 7 days after the DPC. A hearing must be held within 20 school days from the filing of the DPC. A decision must be made within 10 school days after the hearing.

4. Settlement Conference

At the end of the Resolution Period, the IHO may invite you and the District to two back-to-back meetings: a Settlement Conference and a Pre-Hearing Conference (PHC). Both are usually held by video conference.

It is important to respond to all invitations from the IHO. Your case may be delayed or dismissed if you do not participate.

At a Settlement Conference, a Settlement Officer will meet with you and the District to see if you can reach a full or partial settlement. If you and the District want to settle without a hearing, both sides should both come to this meeting with the information and authority needed to make a settlement agreement.

Settlement conferences are off the record. All settlement offers made at this conference are confidential. That means that settlement discussions cannot be introduced later as evidence in a hearing.

5. Pre-Hearing Conference

If all the issues are not resolved at the Settlement Conference, you will immediately join a Pre-Hearing Conference (PHC) with the IHO assigned to decide your case. The PHC is recorded. Afterward, you will get either a transcript of everything that was said or a written summary from the IHO.

During the PHC, the IHO will ask questions such as

- What needs to be decided at hearing?
- How many witnesses will there be?
- Does either side needs a “subpoena” for [witnesses](#) or [documents](#) to use at their hearing? (Detailed subpoena instructions and subpoena forms are on the [OATH website](#).)

The IHO will also ask if anyone needs language services or accommodations during the hearing. At the PHC, the IHO usually schedules a date for the hearing.

6. Disclosure

At least 5 business days before the hearing, each side must send to the other side and to the IHO any documents they want to use at the hearing. This is called “disclosure.” Disclosure can include evaluations, test results, letters, and other evidence that you want to present at the hearing.

Each side must also share the names of witnesses they plan to have testify. You must briefly summarize what each witness will testify to. A witness list form, and detailed instructions for how to use it, are on [OATH’s website](#).

Disclosures ensure that both sides have a fair opportunity to prepare for the hearing. If either party fails to provide disclosure or the names of witnesses at least 5 business days before the hearing, the other side may stop that evidence from being introduced.

During Your Hearing

1. Location

Hearings are usually held virtually via video conference or telephone. Tell the IHO if you want your hearing to be held in person.

2. Parents' Rights

At a hearing, you have the right to:

- present evidence and have witnesses attend and testify
- question and cross-examine the District's witnesses
- get a written transcript of the hearing at no cost
- have the Student present
- have the hearing open to the public
- represent yourself or hire an attorney or advocate to represent you

3. Burdens of Proof

According to New York State law, the District has the job (also called the "burden") of producing documents and persuading the IHO about each element of the case, with one exception: Parents who place their child in a private school and request that the District pay for the child's tuition have the burden of persuading the IHO that the private school is appropriate.

Because of this, the District usually presents its case first.

4. Exhibits

Both sides have the right to introduce evidence. Evidence includes documents or other information that you want the IHO to consider before making a final decision (evaluations, test results, emails, videos, reports, etc.).

On the day of hearing, each side should bring a list of all the evidence they want the IHO to admit to the official record; this is called an "exhibit list." Detailed instructions and an [Exhibit List form](#) are on the [OATH website](#).

The District may object to some or all of your exhibits. If there is an objection, you may have to explain what the document or item is, how you got it, and why it is relevant. The IHO will decide whether to admit the exhibit.

5. Opening Statements

At the beginning of the hearing, each side can choose to make an opening statement. An opening statement is an opportunity to summarize what the case is about and what evidence each side plans to introduce.

In opening statements, Parents often state why or how the District did not offer the Student a free appropriate public education (FAPE) and what kind of school, class, or other services are necessary to fix the problem.

The District may state whether it believes that the District provided a FAPE and why the District disagrees with the solution the Parent is proposing.

6. Witnesses

After opening statements, each side has a chance to call witnesses and ask them questions. Each person who testifies at the hearing must be sworn in by the IHO.

Witnesses' answers are evidence and help the IHO decide the facts of the case. Witnesses may speak about anything relevant to the case, including the Student's academic, social, and emotional skills, how an evaluation or IEP was developed, or what services the Student needs to make progress.

You or your attorney can also show witnesses documents, such as an evaluation, and can ask the witness about that document.

District witnesses often include someone who attended the IEP meeting, teachers, therapists, and others who know the Student.

- After each witness, the other side will have a chance to “cross-examine” the witness – meaning you or your attorney may ask questions about any topic relevant to the hearing.
- The IHO may also question the witnesses. The process repeats itself until all witnesses are called.

Parent witnesses often include teachers, providers, evaluators, or others who know the Student.

- Parents can also be witnesses in their own cases. If you have an attorney or advocate, that person can ask you questions. If you are representing yourself, you can make a list of questions and can ask them yourself or can ask a friend or the IHO to read the questions to you. You can also testify in the narrative, which means that you just “tell your story.”
- After each of your witnesses testifies, the District will have the chance to cross-examine them. The IHO may also ask questions.

7. Closing Statements

At the very end of the hearing, both sides have an opportunity to say again what they are asking the IHO to order and to summarize the law and the facts (witness testimony and documents) that support their position. Closing statements may be done orally (“on the record”) at the end of the hearing or in writing after the hearing.

After Your Hearing

1. Transcripts

After the hearing, you will get a written transcript of everything said on the record at your hearing. If you need the transcript to write your closing statement, you can ask the IHO for time to do this.

2. Decision

After the hearing ends, the IHO will issue a written “Finding of Fact and Decision” (FOFD). In the FOFD, the IHO will decide whether the District provided the Student with a FAPE or any other issues. If the IHO decides that the District did not provide a FAPE, the FOFD will say what, if anything, the District must do to fix the problem.

3. Appeals

IDEA claims: If you disagree with a Pendency Order or FOFD, you may appeal to a State Review Officer (SRO) of the New York State Education Department. If you plan to appeal, you must let the District know within 25 days of the order. You must file the appeal within 40 days of the order. The District must follow the same rules if it appeals. Each Pendency Order and FOFD includes information about how to appeal.

Section 504 claims: If you disagree with an IHO’s decision under Section 504, you must file a challenge to it in Federal District Court within 90 days.

4. Implementation

If the IHO orders the District to provide services or pay for other remedies, the DOE’s Impartial Hearing Order Implementation Unit will work with you or your attorney to make sure the DOE follows the order. For more information, visit the [DOE’s website](https://infohub.nyced.org/working-with-the-doe/special-education-providers/impartial-hearing-order-implementation-unit) at <https://infohub.nyced.org/working-with-the-doe/special-education-providers/impartial-hearing-order-implementation-unit>.

Will You Need An Interpreter?

If you need an **interpreter** for your hearing, OATH will provide one for free.

In addition, OATH provides free **document translation**. If you have documents in a language other than English, ask your IHO about free translation.

More Information

More information is available in **A Parent's Guide: Special Education in New York State for Children Ages 3-21**, available on the New York State Education Department (NYSED) website at

<https://www.p12.nysed.gov/specialed/publications/policy/parentsguide.pdf>

New York State Laws and Regulations Related to Special Education and Students with Disabilities are on NYSED's website at

<http://www.nysed.gov/special-education/new-york-state-laws-and-regulations-related-special-education-and-students>

The **OATH forms** described above are on OATH's website at

<https://www.nyc.gov/site/oath/special-ed/forms.page>

- **Notice of Appearance Form:**
https://www.nyc.gov/assets/oath/downloads/pdf/SEHD_Notice-of-appearance-w-intrusions-EN.pdf
- **Document Subpoena (with instructions):**
https://www.nyc.gov/assets/oath/downloads/pdf/SEHD_Document-Subpoena-w-intrusions-EN.pdf
- **Witness Subpoena (with instructions):**
https://www.nyc.gov/assets/oath/downloads/pdf/SEHD_Witness-Subpoena-w-instructions-EN.pdf
- **Exhibit List:** <https://www.nyc.gov/assets/oath/downloads/pdf/SEHD-Parent-Exhibit-List.pdf>
- **Witness List:** <https://www.nyc.gov/assets/oath/downloads/pdf/SEHD-Parents-Witness-List-ENG.pdf>
- **List of Parent Centers and Advocacy Organizations:**
<https://www.nyc.gov/assets/oath/downloads/pdf/Parent-Centers-Advocacy-Orgs-ENG.pdf>