

INFORMATION ON IMPARTIAL HEARINGS

What is an impartial due process hearing? An impartial due process hearing is a forum for parents/guardians to resolve disagreements regarding identification, evaluation and assessment, eligibility determination, placement, and/or the provision of appropriate early intervention services for an individual child or family. Any parent, or with the consent of the parent, the parent's representative may request a hearing before in the Office of Administrative Law. A parent may request an impartial hearing in addition to requesting mediation or filing a complaint. The facts must be heard by impartial persons, who render written decisions based on a consideration of the law and facts within 30 calendar days of receipt of the request. Any party that disagrees with the written decision may appeal the decision to state or federal court. Eligibility, placement or services cannot be changed during due process proceedings unless both parties agree. However, parents/guardians may always withdraw their child and family from early intervention services at any time without penalty. If the dispute involves an initial IFSP, the child and family must receive any services not in dispute.

When can an impartial hearing be requested? An impartial hearing may be requested by a parent(s) at any time (e.g., prior to, during, or after formal mediation or complaint investigation).

How can an impartial hearing be requested? An impartial hearing may be requested by submitting a Formal Dispute Resolution Request Form, which can be obtained from the Service Coordinator or the Procedural Safeguards Office (toll-free 877-258-6585). This form should be completed by the parent and returned to the Procedural Safeguards Office:

Procedural Safeguards Office
NJ Department of Health and Senior Services
PO Box 364
Trenton, New Jersey 08625-0364
Fax: 609-292-0296

When the completed form is received by the Procedural Safeguards Office, the Office of Administrative Law will be contacted to hear the case. The hearing will be held within 20 calendar days of receipt of the Formal Dispute Resolution Request, at a time and place reasonably convenient to the parent(s).

How long will it take to get a decision? The hearing officer will issue a written decision within 30 calendar days of receipt of the request. If the parent(s) believe that the health and welfare of their child is at risk by any delay in the hearing process, an expedited hearing may be requested. If the Procedural Safeguards Office agrees, a hearing will be held within 10 calendar days of the request, and the hearing officer may issue an interim order and/or verbal decision at the end of the expedited hearing.

Who will be involved in the impartial hearing? In addition to the hearing officer and the parent(s), others participating in the impartial hearing will include party(ies) named in the Formal Dispute Resolution Request (e.g., service coordinator, REIC Executive Director, etc.) and any witnesses that will be called. A parent may also wish to bring a friend, parent advocate, or lawyer.

Do parents need a lawyer? No. Legal representation is not required. If the parent(s) does not have a lawyer, the other party cannot have a lawyer. If the parent(s) does plan to bring a lawyer, the parent(s) must notify the Procedural Safeguards Office in writing within 5 calendar days of receiving the notice of the hearing date. Upon request, the Procedural Safeguards Office will provide the parent(s) with a list of advocate and free or low-cost legal services.

What happens at an impartial hearing? At an impartial hearing, the hearing officer will introduce him/herself and ask the parties to introduce themselves. S/he will outline the procedure of the hearing so that both sides are aware of what is going to happen. S/he will ask if settlement discussion are possible, and will seek to facilitate a settlement if possible. If settlement is not possible, the hearing officer will provide each party an opportunity to present a brief opening statement, summarizing the issues in the case and the desired outcomes. Once the hearing begins, witnesses will be asked to leave the hearing room until they are called to testify. Before giving testimony, each witness will be asked to “affirm” that they will tell the truth. Each party will have a chance to present evidence, including documents and oral testimony by witnesses. Each party may cross-examine the witnesses for the other party. Hearing panelists may also ask questions of witnesses. Any party may object to the introduction of evidence, including any evidence that was not given to the other party at least 5 business days before the hearing. The hearing officer will rule on these objections. After all witnesses have been heard, the hearing officer will provide each party an opportunity to present a brief closing statement.

What happens when a decision is reached? The hearing officer will reach a decision within 30 calendar days of receipt of the completed Formal Dispute Resolution Request. That decision will contain an order to perform the tasks included in the decision. The Service Coordinator will modify the IFSP within 5 business days of receiving the decision. The Procedural Safeguards Office will follow up with the Service Coordinator to be sure that this is done.

What if you disagree with the decision? If any party disagrees with the decision, they may appeal to the United States District Court by calling the clerk of that court in Newark or to New Jersey Superior Court by contacting the clerk of the Superior Court in their county of residence.

What are the parent(s)' rights at an impartial hearing? At a hearing, a parent has the right to:

- Be accompanied and advised by counsel, individuals with special knowledge or training with respect to early intervention services for children, friends or family members;
- Inspect and review their child and family's early intervention record;
- Have an interpreter or translator to the maximum extent possible, as needed;
- Have all proceedings kept confidential;
- Present evidence, and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of evidence that was not disclosed at least 5 calendar days before the hearing;
- Obtain written findings of fact and decisions within 30 calendar days of the receipt of their request for a hearing;
- Obtain a written or electronic verbatim transcription of the hearing, whichever they choose;
- Have the terms of any agreement or decision placed in the IFSP within 5 business days after receipt of the decision; and
- Withdraw at any time.