

MEDIATION AND IMPARTIAL HEARINGS



Under the federal law IDEA (the Individuals with Disabilities Education Act), states must give parents two options for resolving disagreements with the school districts: mediation and impartial hearing. What are the differences between mediation and impartial hearing?

MEDIATION

1. Conducted with a neutral third party who helps the others to determine their options and reach their own decisions. The mediator does not have power to issue a decision to resolve the dispute.
2. Usually held without attorneys. As mediation does not prove right or wrong positions in relation to the law, attorneys are often unnecessary.
3. Rules of evidence are not used. There is no need to prepare evidence in advance, call expert witnesses, or keep the procedure on only the issues initially raised as being in dispute.
4. No one is forced to agree to anything they don't want. Final resolutions are always within the parties' control.
5. When resolution is reached, an agreement is drawn up at the mediation session. It may be implemented immediately.
6. Mediation is usually scheduled between two and four weeks of receipt of request. The State Education Department (SED) contracts mediation services. Mediation is free.

IMPARTIAL HEARING

1. Conducted in front of a neutral Impartial Hearing Officer (IHO) who gathers evidence and issues a decision favoring one party over the other.
2. Usually held with attorneys. As hearings are based on facts and procedural issues, attorneys attempt to argue for their case and find fault with the other party's positions and issues.
3. Rules of evidence hold. Evidence each party intends to use must be presented beforehand and the proceedings must stay within the framework of that evidence.
4. Decisions are made by the hearing officer. Parties have no control over the outcome, except to appeal the decision.
5. A hearing officer has 45 days to make a decision. Parents and districts may have to wait $\frac{1}{4}$ of a school year before the decision can be enacted.
6. Hearings are usually scheduled between four and six weeks of the request. Parents do not have to pay for an impartial hearing. But they are responsible for paying a lawyer or advocate if they hire one, and are entitled to reimbursement of these legal fees if they win. While a parent who wins doesn't pay, school districts' expenses are enormous.

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MEDIATION

7. Mediation practice is based on strengthening communication and understanding. Thus, after mediation sessions, parties usually feel their relationship has improved.

IMPARTIAL HEARING

7. Impartial hearings are legal proceedings. Parties speak to the officer, not each other, and a winner and a loser is determined.

ACCESSING MEDIATION

Parents may request mediation directly through the mediation center located in the borough of their child's school. Each borough has a mediation center, known as a Community Dispute Resolution Center (CDRC).

CDRCs are part of the United Court System

The CDRCs are city- and state-funded centers which are part of the Unified Court System. These mediation centers handle a variety of disputes, including custody and visitation cases, community disputes (landlord/tenant, merchant/customer), interpersonal disputes (neighbor/neighbor, parent/child), lemon law arbitration, small claims disputes, and early intervention and special education disputes.

Mediators are specially trained as mediators, not special education experts

Mediators are trained as "generalist mediators" who receive additional training for handling special content cases. Mediators are not special education experts. They are process experts who are highly skilled in helping people explore all the options available to them, discuss their issues and interest in supportive, forward thinking style, and provide an atmosphere where trust, confidentiality and impartiality are supported. Mediators also have access to the expertise of the State Education Department's Office for Special Education, for technical assistance on regulatory issues.

Mediation is voluntary

Mediation is voluntary on the part of the parties. Parents may bring anyone they wish to mediation sessions. School districts must bring personnel who are authorized to enter into agreements related to the issues in dispute, and who are familiar with the specific issues programs in dispute.

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MEDIATION CENTERS

THE BRONX

IMCR Dispute Resolution Center
384 East 149th Street, Room 330
Bronx NY 10455
T: (718) 585-1190
Fax: (718) 585-1962
www.imcr.org

BROOKLYN

The New York Peace Institute
210 Joralemon Street, Suite 618
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info@nypeace.org

MANHATTAN

The New York Peace Institute
111 John Street, Suite 600
New York, NY 10038
T: (212) 577-1740
Fax: (212) 577-1748
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QUEENS

Community Mediation Services, Inc.
89-64 163rd Street
Jamaica, NY 11432
T: (718) 523-6868
Fax: (718) 523-8204
www.mediatenyc.org

STATEN ISLAND

NY Center for Interpersonal Development
(SI Dispute Community Resolution Center)
130 Stuyvesant Place, 5th Floor
Staten Island, NY 10301
T: (718) 815-4557
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