



**New York State
Education Department**

Request for Information (RFI)

for the

**Office of Special Education: Impartial Hearing Officer
System in New York City**

September 2021

**New York State Education Department
89 Washington Avenue, Room 112
Albany, NY 12234**

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NEW YORK STATE EDUCATION DEPARTMENT
Office of Special Education and Office of Counsel
Impartial Hearing Officer System
Request for Information – RFI #21-003

The New York State Education Department (NYSED) hereby issues this “Request for Information” (RFI) to solicit information from attorneys, law firms, law schools, institutions of higher education, current impartial hearing officers or administrative law judges, offices of court administration, centers for dispute resolution, non-profit or for-profit entities, and/or other State or local agencies regarding the creation of a new Impartial Hearing Officer (IHO) system for special education due process hearings in New York City. Specifically, NYSED is looking for information on creating a new system of full-time IHOs to resolve several thousand special education due process complaints annually. NYSED is considering how contractual or other relationships, either with individual IHOs or a management entity, could resolve outstanding noncompliance with respect to New York City Department of Education’s (NYCDOE) obligation to maintain a functional special education due process system.

1. INTRODUCTION

1.1 ORGANIZATION BACKGROUND

When a student is eligible for special education services, the federal Individuals with Disabilities Education Act (IDEA) requires the creation of an individualized education program (IEP). In New York, the creation of the IEP is delegated to a local Committee on Special Education (CSE), which includes the student’s parent (Educ. Law § 4402; 34 CFR 300.320 - 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the IDEA’s procedural protections is the opportunity to initiate an impartial due process hearing (Educ. Law § 4404[1]; 34 CFR 300.511; 8 NYCRR 200.5[i]-[k]). A hearing may be held regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; 34 CFR 300.507[a][1]). New York State has a two-tier system of administrative review, in which a hearing is administered by the school district and a party may appeal within 40 days for an impartial hearing decision to the State Review Office. Upon receipt of the parent's due process complaint notice, or the filing of the school district's due process complaint notice, the board of education is required to arrange an impartial due process hearing including appointment of an IHO (8 NYCRR 200.5[j][3]).

Although IHOs are appointed by local school boards, NYSED is responsible for certifying IHOs (8 NYCRR 200.1[x][4]), who must have the following qualifications:

- Be admitted to the practice of law and currently in good standing with a minimum of one year of practice and/or experience in one of the following areas: education, special education, disability rights, civil rights or administrative law;
- Possess knowledge of, and the ability to understand, the provisions of federal and State law and regulations pertaining to IDEA and legal interpretations of such law and regulations by federal and State courts;
- Possess knowledge of, and the ability to conduct hearings in accordance with appropriate standard legal practice and to render and write decisions in accordance with appropriate standard legal practice;
- Have access to the support (e.g., legal research materials such as Westlaw or Lexis) and equipment (e.g., phone with voice mail, current computer with updated software, printer, etc.) necessary to perform the duties of an IHO;
- Are not now, and have not been an officer, employee or agent of a New York State school district or a board of cooperative educational services of which such school district is a component for a period of at least two years;
- Are not an employee of the NYSED;
- Does not have a personal or professional interest which would conflict with his or her objectivity in a special education due process impartial hearing;
- Available to administer due process hearings in New York City in a timely manner, and
- Successfully complete the required training programs as required by NYSED.

1.2 CURRENT ENVIRONMENT AND PROJECT CONTEXT

Currently, NYCDOE’s special education due process hearing system is overwhelmed with an unprecedented number of due process complaints. Additionally, there is class action litigation pending (J.S.M., et al. v. N.Y.C. Dep’t of Educ., et al.) wherein plaintiffs allege that New York City students with disabilities are being denied a free appropriate public education (FAPE) due to delays in hearings and decisions on impartial due process complaints. Data shows a dramatic annual increase in special education due process complaint filings. In the 2020-2021 school year more than 14,000 special education due process complaints were filed in New York City (in comparison to the 2019-2020 school year wherein New York City received 3,469 fewer due process complaint filings). This volume of cases has resulted in a waitlist of approximately 7,000 due process complaints that do not yet have an IHO appointed.

6 Year Trend data of due process complaints filed in New York City

New York City	SY 15-16	SY 16-17	SY 17-18	SY 18-19	SY 19-20	SY 20-21
# Requests	5,026	5,779	7,144	9,694	10,797	14,266

In an effort to address this issue, NYSED has, among other things, continued to conduct IHO certification trainings. Training new IHOs requires significant resources to recruit, interview, train, and certify candidates. Since January 2020, NYSED has certified more than 100 new IHOs to work exclusively in New York City. Despite NYSED's efforts, and with the increasing number of cases, the hiring of new IHOs has not resulted in a significant reduction in the number of due process complaints awaiting IHO appointment. This is partly due to the fact that a large majority of IHOs take 50 or fewer cases. In addition, it takes many newly certified IHOs a substantial amount of time to get comfortable with the New York City impartial hearing system and begin taking cases.

For these reasons, NYSED is moving forward with this RFI to investigate developing an impartial hearing officer system in New York City based on contracting with each IHO or contracting with a management entity that would commit to resolving a minimum number of cases annually by providing full-time IHO candidates (to be certified by NYSED). It is the expectation of NYSED that responses to this RFI will address how the requirements of IDEA will be met and how NYCDOE's outstanding noncompliance with respect to maintaining a functional special education due process system will be resolved.

1.3 INFORMATION REQUESTED

NYSED asks that interested parties, other than individual IHOs (see below) provide the following:

- 1) A clear description of the model and/or vision for a new special education due process system in New York City by including a detailed description of how this new system will work and how it will:
 - a. manage 14,000 or more due process complaints annually;
 - b. handle administrative tasks, such as mailing, filing, and billing, if applicable, as well as access to legal research tools such as Westlaw and/or Lexis and/or LRP's special education connection;
 - c. recruit qualified IHO candidates;
 - d. determine an appropriate rate of pay for IHOs and how that was determined
 - i. and how payment to IHOs would be structured, (i.e. annual salary; hourly rate; paid per case, per diem, etc.);
- 2) Information addressing the feasibility of such a system, including:
 - a. identification of obstacles that may arise as a result of implementing such a system and how they could be addressed;
 - b. a cost estimate for the proposed system
- 3) Identification of similar systems that might already exist and any data available explaining their operations, levels of success, limitations encountered and applicability to New York City;

- 4) For Management Entities, how data will be collected, maintained, and provided to NYSED;
 - a. see Attachment A for a list of the required data elements
- 5) Information describing how hearing decisions will be rendered within 45 days from the date a due process complaint is filed or from the expiration of the 30-day resolution period (75 days) as prescribed under federal and State law (20 U.S.C. § 1415(f); Education Law § 4404);
- 6) Any other relevant information that could assist NYSED in developing or utilizing such a system;
- 7) Respondent's name, title, contact information (including phone number and email) and affiliation, if any.

Alternatively, NYSED asks that interested individual IHOs provide the following:

- 1) Whether you would be willing to contract individually with NYSED, which includes the following responsibilities:
 - a. becoming a vendor in the New York State Financial System (SFS)
 - b. filling out a Vendor Responsibility Questionnaire see:
<https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire>
- 2) How payment to IHOs should be structured (i.e. salary; hourly rate; paid per case, per diem, etc.) and what you believe would be an appropriate rate;
- 3) What you think would be an acceptable required minimum amount of time devoted to being an IHO;
- 4) In consideration of your response to number 3, identify the number of cases you expect to be assigned to annually and the number of decisions you expect to render annually;
- 5) Address administrative tasks and how they would be completed as a contractual employee, including, but not necessarily limited to:
 - a. Mailing
 - b. Copying of files and maintaining electronic files
 - c. Legal research
 - d. Liability coverage
- 6) Any other relevant information that could assist NYSED in developing or utilizing a system of contractual IHOs;

- 7) Respondent’s name, title, contact information (including phone number and email) and affiliation, if any.

1.4 RFI CONTACT INFORMATION

Interested parties are encouraged to submit responses to the NYSED email address listed below prior to the deadline for submission. Please be aware, this is an invitation to provide NYSED with information regarding a full-time contract-based impartial hearing officer system for New York City and **not a request for proposals or offer of contract**. In addition, after reviewing RFI responses, NYSED may, at its discretion, follow up to request clarifying information or further discussion. Participation in this RFI is voluntary, and NYSED will not pay for the preparation of any information submitted by any individuals, organizations, or agencies for NYSED’s use of that information. NYSED may issue announcements amending this RFI in response to questions received.

NYSED Contact Information:

E-mail: NYCIHOSYSTEM@nysed.gov

Questions:

All questions regarding the RFI must be submitted in writing to the above email address by September 30, 2021. Answers will be posted by October 19, 2021.

1.5 ADMINISTRATIVE GUIDANCE FOR RESPONDENTS

RFI Schedule:

September 9, 2021	RFI published
September 30, 2021	Deadline for questions
October 19, 2021	Answers to questions issued
November 5, 2021	Deadline for receipt of responses
November 8, 2021	Evaluation of responses begins

2. RESPONSE REQUIREMENTS

NYSED requests that responses be returned in electronic format and will not accept paper submissions. NYSED can accept a variety of electronic formats including MS-Word, MS-Excel, MS-PowerPoint, Portable Document Format (.pdf) files, or other industry standard file types.

The response should include a cover letter on company letterhead characterizing your interest and background (i.e. individual IHO or management entity) and a separate response to the requested information specified in Section 1.3. Please do not provide any information that is not requested and submit your response in a format consistent with the questions posed in Section 1.3 above.

Responses should be labeled as “RFI 21-003 – *[RESPONDENT LEGAL NAME]* – IHO System Review” in the subject line of the email.

2.1 RESPONSE DUE DATE

Responses are due by 5:00 P.M. EST on November 5, 2021 and shall be sent via email to the following address: NYCIHOSYSTEM@nysed.gov

2.2 ADDITIONAL INFORMATION - posted separately to [RFI #21-003](#)

- 1) Current New York City IHO Compensation Policy - Impartial Hearing Officer Compensation Policy
- 2) Attachment A: Data Collection Required
- 3) Attachment B: # of cases per IHO
- 4) Attachment C: NYCDOE Hearing Officer Payments for Fiscal Years 17, 18 and 19