

# Update on the NYC Impartial Hearing System

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# Introduction

- Eligible children with disabilities have a right to FAPE
- When a dispute arises, parent/school district can request hearing
- State educational agency must ensure impartial, timely hearings, ability to exercise hearing rights, and qualified hearing officers (HO)
- In NYS, SED certifies who is qualified to serve as HO, but each school district is responsible for administration of hearings
- NYC created an impartial hearing office to administer hearings

# 7-PAK States - Comparisons

Figure 1  
2017-18 Comparisons with Similar Size States – Most Recent Data Available

	NY	CA	FL	IL	NJ	PA	TX
DPCs FILED	7601	4670	207	283	1271	897	341
% MORE		63%	3572%	2586%	498%	747%	2129%

Source: The Center for Appropriate Dispute Resolution in Special Education (CADRE)



# Number of Complaints

Figure 2  
NYC Trend – Complaints Filed

	SY 2014-15	SY 2015-16	SY 2016-17	SY 2017-18	SY 2018-19	SY 2019-20
<b>STATEWIDE</b>	5200	5464	6282	7635	10189	8156 (as of 01/10/20)
<b>NYC</b>	4734 (91%)	5026 (92%)	5779 (92%)	7144 (94%)	9694 (95%)	7887 (97%)
<b>ROS</b>	466 (9%)	438 (8%)	503 (8%)	491 (6%)	495 (5%)	269 (3%)

Source: New York State Education Department



# Net Effect

Figure 3  
Calendared Matters - NYC

SCHOOL YEAR	AVG. PER DAY
2014-15	55
2015-16	69
2016-17	89
2017-18	106
2018-19	133
2019-20	99 <small>(as of 01/10/20)</small>

Source: New York State Education Department

- NYC hearing office has 13 hearing rooms
- A hearing/conference can last a few minutes to a full day
- On average, there are more than 100 matters per day on the calendar



# Net Effect

Figure 4  
Number of Granted Extensions

	SY 2014-15	SY 2015-16	SY 2016-17	SY 2017-18	SY 2018-19	SY 2019-20
<b>STATEWIDE</b>	15067	17447	24778	36369	53562	25326 (as of 01/10/20)
<b>NYC</b>	14111 (94%)	16599 (95%)	23768 (96%)	35157 (97%)	52226 (98%)	24561 (97%)
<b>ROS</b>	956 (6%)	848 (5%)	1010 (4%)	1212 (3%)	1335 (2%)	765 (3%)

Source: New York State Education Department



# Net Effect

Figure 5  
Average Case Length

	SY 2014-15	SY 2015-16	SY 2016-17	SY 2017-18	SY 2018-19	SY 2019-20
STATEWIDE	146	155	175	196	220	251 (as of 01/10/20)
NYC	149	159	181	202	225	259
ROS	115	114	114	120	139	135

Source: New York State Education Department



# Net Effect

Figure 6  
Open/Late Cases

	NYC	ROS
OPEN CASES	10181	211
LATE CASES	6803	25

Source: New York State Education Department (as of 01/10/20)

*“[T]he brevity of the 45-day requirement indicates Congress’s intent that **children not be left indefinitely in an administrative limbo** while adults maneuver over the aspect of their lives that would, in large measure, dictate their ability to function in a complex world.”*

Engwiller v. Pine Plains Cent. Sch. Dist. (S.D.N.Y.)





# Net Effect

Figure 7  
Amount Paid in Settlements and Judgments (Millions) – NYC Only  
Percentage of Law Claim Settlements and Judgments Paid

FISCAL YEAR	AMOUNT PAID	% OF LAW CLAIMS PAID OUT
2017	\$279.7M	82%
2018	\$303.0M	76%

Source: Office of the Comptroller of the City of New York

Final Federal Appropriations, FY 2020 – New York State

**\$800M**



## It's fixable ...

- Though the numbers confirm the magnitude of the problem that confronts the NYC hearing system, it's fixable
- It's not something that can be done overnight, but doable within a reasonable time
- It will require our collective involvement; cooperative purpose, and some heavy lifting
- SED is committed to improving NYC's hearing system's efficiency, timeliness, and overall operation



# Multiple Solutions Needed

- Eliminate requiring orders for uncontested pendencies
- Promote, increase use of, other dispute resolution processes
- Eliminate 30-day cap on extending 45-day timeline
- Require adequate compensation for IHOs
- Establish minimum/maximum number of cases IHOs may accept
- Consider alternative options to hearing participation



## Expand Pool of Qualified IHOs

- Currently, 69 IHOs are signed up to serve in NYC but, in the past year, only a few (and often none) are available to accept cases on a per day basis
- As a result, as of early January 2020, there are over 1300 complaints (of the 10,181 open cases) awaiting an appointment of an IHO
- NYS law is more prescriptive than federal law on who can serve, and consideration should be given to aligning NYS law with federal law
- Use of attorneys admitted in other states, as well as non-attorneys, and relaxing the required minimum experience, are options to consider to expand the pool of qualified candidates



# Use of Non-Attorneys as IHOs

- IDEA does not require IHOs to be licensed attorneys
- Most states, however, favor attorneys
  - IHOs must possess knowledge of, and ability to understand, federal and state special education law and legal interpretations of the law by courts
  - IDEA requires IHOs to be able to conduct hearings and write decisions in accordance with appropriate, standard *legal* practice
- Use of non-attorneys is an option to consider among others



# Questions

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