



**Department of
Education**

Chancellor Richard A. Carranza

Office of General Counsel

January 12, 2021

Via Email

Re: Prioritization of Cases for Assignment to Impartial Hearing Officers

Dear Counsel:

We are writing to give you more information about a case survey we sent you (<https://forms.office.com/Pages/ResponsePage.aspx?id=tyxJGEXvYUWFcQx5fesB4aJbxRNxjVClk4Wtbj4rAFURVRNRVgyMThCSUpCSkZMVjhOWIzWklLNCQIQCN0PWcu>), which asked you to categorize your pending due process cases. Many of you have raised questions and concerns about this survey, and we want to explain both its purpose and why we need your cooperation in filling it out.

As you know, there is currently a large backlog of due process complaints that have not yet been assigned to a hearing officer. Waiting for a hearing officer can have a particularly severe impact on some students, including students who are not currently receiving any special education services, those receiving limited services, or those whose families bear the financial burden of services while waiting for resolution of their due process complaints.

DOE, as well as NYSED and Class Counsel representing students in a lawsuit concerning delays in the impartial hearing process (*J.S.M., et al. v. NYC Department of Education, et al.*, 20 CV 705 (E.D.N.Y.)), received reports of concerns that the chronological assignment of hearing officers did not equitably address the complaints and agree there is a need to prioritize certain cases on the waitlist. No method of prioritization will be perfect, but a framework like the one in the survey will address the most pressing cases. The survey categories reflect a compromise that both addresses the underlying goal and can be implemented. Although each case has nuances, every case should fit into one of the categories. *JSM* counsel, DOE, and NYSED all support promptly prioritizing cases based on the survey. If you believe that you have a case with exigent circumstances not captured by these categories and would like to request immediate appointment of a hearing officer, you should contact IHWaitlist@schools.nyc.gov with an explanation of the urgency. When appropriate, DOE will seek approval from NYSED to prioritize cases based on exigent circumstances.

We ask for your cooperation with this survey to help us protect the most vulnerable New York City special education students. Starting Tuesday, January 19, 2021, DOE will begin to prioritize IHO assignment to those cases for which responses have been received, based on IHO availability. The cases for which no response has been received will not be prioritized for assignment. Please note that you may fill out the survey for a case *at any time*, after which the case will be prioritized accordingly.

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