

RFI #21-003 for the Impartial Hearing Officer System.

#	Question	Answer
1	Can you confirm that this system is a new requirement and there isn't a current contract for anything similar?	Providing a system for appeal procedures for students with disabilities is not a "new requirement" (Educ. Law § 4404(1); 34 CFR 300.511; 8 NYCRR 200.5[i]-[k]). NYSED does not currently contract directly with IHOs and/or a management entity to implement the requirements of due process.
2	Do the individuals have to be certified by NY state to offer this service?	The Commissioner of Education is responsible for certifying impartial hearing officers (Educ. Law § 4404(3); 8 NYCRR 200.1(x), 200.21).
3	Can we offer Conflict Caching before due process occurs?	NYSED is not familiar with the term "conflict caching." To the extent the questions involves a method of alternative dispute resolution, school districts must ensure that a mediation process is available (8 NYCRR 200.5(h)[1]), may establish procedures that provide for the parties who elect not to participate in mediation, the opportunity to meet with a disinterested party (8 NYCRR 200.5(h)[2]), and within 15 days of receiving a due process complaint notice from the parent, convene a resolution meeting with the parents and the relevant member or members of the committee on special education (8 NYCRR 200.5(j)[2]).
4	Do you need to submit to the RFI to be eligible for the RFP?	No.

5	Who schedules hearings? Who reschedules hearings?	Currently, IHOs are considered independent contractors and are responsible for managing their own caseloads and calendars.
6	<p>We received several questions about IHO requirements and qualifications</p> <ul style="list-style-type: none"> ○ Is NYS bar required, or any is licensure from any US state acceptable? ○ Will IHOs be expected to have received professional training in IDEA and/or reside in New York City before accepting cases? ○ Will they be required to be admitted to the New York bar and maintain CLE? does the RFI contemplate responses that would or could add further requirements or qualifications for IHOs beyond those currently in Regulation (e.g. duration or kind of experience; residence locale)? ○ Please specify and provide any Conflict of Interest regulations or rules that would apply to employees or contractors working for SED or the proposed management entity. ○ Would there be conditions on our continuation to be certified, such as residency requirements? 	<p>Requirements to be a certified hearing officer are enumerated in 8 NYCRR 200.1(x):</p> <ul style="list-style-type: none"> ○ 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 the Individuals with Disabilities Education Act (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 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;

		<ul style="list-style-type: none"> ○ 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. <p>See also 34 CFR 300.511(c)</p> <p>To the extent you are asking whether the RFI will contemplate responses that would or could add further requirements or qualifications for IHOs beyond those currently in regulation, the purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.</p>
7	What do the anticipated and possible impacts of the class action lawsuit have on the selected Vendor or process the selected Vendor will have to follow?	NYSED is seeking ideas and information from the Request for Information responses to inform future decisions. NYSED will consider any possible impact of litigation in decisions going forward, including if a request for proposal is issued. If an RFP is issued, the vendor selection process will follow standard competitive procurement bidding laws and regulations.
8	How does each complaint get assigned to an IHO (i.e., random, rotational, subject matter specific, etc.)?	Complaint assignments are rotational. Currently, the NYCDOE is required to appoint an IHO who shall be selected from a list of available impartial hearing officers who have successfully completed an impartial hearing officer training program conducted by the department according to a rotation selection process prescribed in regulations of the commissioner (Educ. Law 4404(1)[c]). School districts are required to maintain an alphabetical list of certified IHOs who are then appointed from such list beginning with the first name appearing after the impartial hearing officer who last served or, in the event no impartial hearing officer on the list has served, beginning with the first name appearing on such list. Should that impartial hearing

		officer decline appointment, or if, within 24 hours, the impartial hearing officer fails to respond or is unreachable after reasonable efforts by the district that are documented and can be independently verified, each successive impartial hearing officer whose name next appears on the list shall be offered appointment, until such appointment is accepted (8 NYCRR 200.2[e]).
9	Are there existing rules and procedures for the conduct of the due process complaint hearing procedure?	Procedures for due process hearings are outlined in 8 NYCRR 200.5(j).
10	What is the typical timeline for a due process complaint from filing to final determination?	Generally, the timeline to render a decision is addressed in 8 NYCRR 200.5(j)(3) and (5).
11	What is the criteria used to determine an “expedited hearing?”	The criteria for determining when to use an expedited due process hearing is described in 8 NYCRR 201.11(a).
12	What would the typical time frame be for an “expedited hearing”?	The time frames for an expedited due process hearing are described in 8 NYCRR 201.11(b)(3).
13	Are the processes/procedures any different for an “expedited hearing”?	An expedited due process hearing must be conducted in accordance with the procedures specified in 8 NYCRR 200.5(j) and 201.11(b).
14	Are the parties generally represented by counsel in connection with the filing and hearing of due process complaints?	NYSED does not have this information available and does not track this type of data. However, NYSED is typically copied on hearing requests and it appears that the vast majority of the parties are represented by counsel.
15	Please clarify the Rotational Exceptions referred to in Attachment A including potential consolidation/potential re-file and expedited/non-expedited split case.	In response to your question, please see the following attached PDFs: 1) “7-17-20 Memo to IHOs re waitlist protocol and pendency 7.17.20,” 2) “8-10-20 Memo to IHOs re waitlist protocol and pendency clarification 8.10.20,” and 3) “1-12-21 IHO prioritization letter – 011221 (pdf) – (#Legal 11412642).”

		See also 8 NYCRR 200.5(j)(3)(ii)(a) and (6)(iv).
16	Are there any restrictions on the location where mailings can originate? Would a centralized location be acceptable?	There are no restrictions on the location where mailings can originate. A centralized location could be appropriate.
17	<p>There were questions regarding whether hearings could be held remotely.</p> <ul style="list-style-type: none"> ○ The RFI references the possibility of Virtual Hearings as a result of regulatory change - Is there an estimated time frame for when this might happen? ○ Will hearings occur via telephone conference, video conference or in person? 	<p>Virtual hearings are currently permitted by the regulations. IHOs may conduct impartial hearings by video conference with consent of the parties, which may be obtained at the pre-hearing conference, or at a minimum of 10 days before the scheduled hearing date, provided that all personally identifiable data, information or records pertaining to students with disabilities during such hearing shall be subject to the requirements of section 200.5(e)(2) of this Part. 8 NYCRR 200.5(j)(3)(xii)(h)</p> <p>Further, the IHO may receive testimony by telephone or video conference, provided that such testimony shall be made under oath and shall be subject to cross examination (8 NYCRR 200.5(j)(3)(xii)[c]).</p> <p>Finally, when carrying out administrative matters relating to an impartial due process hearing, such as scheduling, exchange of witness lists and status conferences, the parent and the school district may agree to use alternative means of meeting participation, such as video conferences and conference calls (8 NYCRR 200.5(j)(3)[xvii]).</p>
18	<p>There were questions regarding whether all hearings would be virtual or whether in-person hearings in NYC would continue.</p> <ul style="list-style-type: none"> ○ Will same entity provide and arrange for all hearings [virtual and in-person]? 	IHOs must be able to travel to NYC because there is no guarantee that all of the hearings will be held virtually. The regulation permitting virtual hearings requires consent of the parties (8 NYCRR 200.5(j)(3)(xii)[h]). Therefore, any response to the RFI should address how the entity will provide and arrange for both virtual and in-person hearings.

	<ul style="list-style-type: none"> ○ Section 1.1 indicates the IHO must be available for hearings in the City of New York; is ability travel to NYC a requirement? ○ Will NYC cases be handled 100% virtually point forward? 	
19	Where do the hearings take place? Reference is made to the Columbus Circle area—is this a hearing location?	Columbus Circle is referenced in the NYCDOE’s June 2020 Compensation Policy and stated that (“[u]pon such prior approval, hearing officers who reside beyond 75 miles from Columbus Circle may be reimbursed for travel, on a per diem basis, at the current USA GSA mileage rate”). Prior to the COVID-19 pandemic, hearings were held in-person at the NYC Impartial Hearing Office 131 Livingston Street, Room 201 Brooklyn, New York 11201.
20	What are the requirements, if any, to determine the hearing location? Can an administrator/IHO provider conduct hearings in their own offices?	Every district identifies the location where hearings will be held; prior to the COVID-19 pandemic, NYCDOE hearings were held at the NYC Impartial Hearing Office 131 Livingston Street, Room 201 Brooklyn, New York 11201. Additionally, virtual hearings are currently permitted by the regulations (see 8 NYCRR 200.5(j)(3)(xii)[h]).
21	Can any aspect of the due process complaint procedure be determined based on written submissions only (i.e. no in person, oral testimony, rather solely based on documentary evidence)?	Yes, if such witness is made available for cross examination. The impartial hearing officer may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony shall be made available for cross examination (see 8 NYCRR 200.5(j)(3)(xii)[f]).
22	Are minors allowed to be called in hearings before the IHO?	Yes. The parents, school authorities, and their respective counsel or representative, shall have an opportunity to present evidence, compel the attendance of witnesses and to confront and question all witnesses at the hearing. Each party shall have the right to prohibit the introduction of any evidence the substance of which has not been disclosed to such party at least five business days before the hearing (see 8 NYCRR 200.5(j)(3)[xii]).

23	<p>Would the district's Implementation Unit continue to function independently of the hearing process? If not, does the RFI anticipate that proposals should address the implantation function as well?</p>	<p>The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.</p>
24	<p>If an RFP is proposed, [c]an the contract be split between entities? Meaning, if an agency like OATH gets the contract, will independent contractors still be permitted to continue to contract with NYS or NYS and keep taking cases?</p>	<p>The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.</p>
25	<p>There were several questions about what constitutes full time work.</p> <ul style="list-style-type: none"> ○ What is meant by "Full Time"? ○ Is "Full Time" determined hourly by day, per week, per month or per year? ○ Some current hearing officers already work what they consider Full Time doing this work, so what does Full Time mean? ○ What is and how do you define a full-time IHO? ○ If an IHO works full time as either an independent contractor or for another entity, does the RFI anticipate specifying whether the IHO will be paid benefits? ○ Define what you mean by full time IHO. ○ How many hours a week does a full time IHO need to work? ○ How are you defining working full time as an IHO? Would one way to measure full time be 	<p>The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.</p>

	<p>by number of cases open? Or by the number of hearings, status conferences, and/or preconference held?</p> <p>Please define “full-time” in this context (and the other two contexts in which the term is used in the RFI. Specifically, the RFI appears to contemplate potential contracts directly with individuals or with indirectly with individuals through a management entity; it refers to “contractual or other relationships” but it does not explain what is meant by a “full-time” IHO in either a direct contractual (independent contractor) sense or an indirect (IHOs work for or contract with a management entity) sense. Please clarify.</p>	
26	Will it also handle transcription?	The question is not clear. Thus, we cannot provide a response at this time.
27	Are cases prioritized purely on filing date, or is another method used? If so, please explain the method.	In response to your question, please see the following attached PDFs: 1) “7-17-20 Memo to IHOs re waitlist protocol and pendency 7.17.20,” 2) “8-10-20 Memo to IHOs re waitlist protocol and pendency clarification 8.10.20,” and 3) “1-12-21 IHO prioritization letter – 011221 (pdf) – (#Legal 11412642).”
28	If responsibility is ultimately turned over to a non-public management entity, will you commit to full co-	NYSED is committed to cooperating during any future transition or systems change.

	operation in processing the handover in order to insure (sic) success?	
29	What is the applicability of the reference to Mediation in Attachment A. What, if any, is the role of mediation in the due process complaint procedure. How often is it applicable?	Each school district must ensure that procedures are established and implemented to allow parties to resolve disputes involving any matter for which an impartial due process hearing may be brought through a mediation process, including matters arising prior to the filing of a due process complaint notice (8 NYCRR 200.5(h)[1]). Regarding applicability, please see the following attached PDF: Mediation Trends - New York City Department of Education October 5, 2021
30	<p>There were several questions about liability of IHOs.</p> <ul style="list-style-type: none"> ○ Do you expect that IHOs and others employed by or contracted with a non-public management entity will continue to maintain the immunity from liability presently accorded by caselaw, as they are now? ○ If an IHO contracted with or employed by a non-public management entity were sued for the exercise of their role, do you expect that the Attorney General’s office would defend them? ○ Would SED require individual contracting IHOs or managing entities to maintain independent malpractice insurance? If so, at what level of coverage? ○ There have been questions about liability insurance. My understanding is that IHO's function with a level of qualified immunity from personal lawsuits. Is this the case, and do 	<p>The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.</p> <p>With respect to your question concerning defense by the Attorney General, please see Public Officer’s Law § 17. Generally, the state shall provide for defense of employees in any civil action or proceeding arising out of an alleged act or omission which occurred or is alleged to have occurred while the employee was acting within the scope of his public employment or duties (Public Officer’s Law § 17(2)[a]). Note that the definition of employees does not include independent contractors (Public Officer’s Law § 17(1)[a]).</p>

	<p>IHOs in NYC face a different level of exposure?</p> <ul style="list-style-type: none"> ○ If an IHO works full time as either an independent contractor or for another entity, does the RFI anticipate specifying whether the IHO will be provided with professional liability insurance by a new management entity? 	
31	Does the IHO determine each issue raised or is the determination solely if there has been a due process violation and then the matter is referred back to the appropriate school district?	During an impartial hearing, an IHO has authority to address matters relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of a free appropriate public education to the child (8 NYCRR 200.5(j)[1]). Moreover, a decision made by an impartial hearing officer shall be made on substantive grounds based on a determination of whether the student received a free appropriate public education (8 NYCRR 200.5(j)(4)[i]).
32	Are medical evaluations of records required to be performed by IHOs?	Possibly. The hearing record must include: any and all exhibits admitted into evidence at the hearing, including documentary, photographic, audio, video, and physical exhibits; any other documentation deemed relevant and material by the IHO, and any other documentation as may be otherwise required (8 NYCRR 200.5(j)(5)(vi)(f) – [h]). Medical evaluations could be included in the record to the extent they relate to the identification, evaluation, or educational placement of a student with a disability, or the provision of a free appropriate public education to the child.

33	Will NYCDOE be responsible for final issuance of all decisions?	The final issuance of all decisions is the responsibility of the IHO (see 8 NYCRR 200.5(j)[5]).
34	How would the matter be filed/transferred to the administrator? Is it anticipated that the request for the appeal/hearing be filed directly with the administrator for processing...or would it be referred from the city?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
35	Would the existing neutrals be available to continue to hear cases through a new administrator?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
36	Please provide general information regarding other models in New York State and in other states that New York City and New York State has looked at as models to address the current backlog	Please see the following attached PDF: "NYS TwoTierStudy 12-15-14."
37	What if any regulatory approvals, licenses or permits would a new overall managing entity need to obtain?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
38	Is it possible to create a general contract for individual already certified IHO's requiring a minimum number of cases?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
39	Do you anticipate that IHOs will be able to work part time as IHOs?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any

		response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
40	Does the RFI anticipate that any successful respondent should or would grandfather in all currently certified IHOs?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
41	Does the RFI contemplate responses that would or could add further requirements or qualifications for IHOs beyond those currently in Regulation (e.g. duration or kind of experience; residence locale)?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
42	Are there mandatory oversight functions that cannot be delegated by SED to the contract entity under the law? If so, what are these?	Yes, the regulations require that IHOs are trained and certified by NYSED (see 8 NYCRR 200.1(x)[4]). Additionally, the IDEA confers monitoring and oversight responsibilities of the due process system to NYSED (see 20 USC § 1416(a)(1); 34 CFR 300.600).
43	What is the anticipated minimum term of the commitment?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
44	Will IHOs be exposed to graphic imagery or videos?	It is unlikely. The hearing record must include: any and all exhibits admitted into evidence at the hearing, including documentary, photographic, audio, video, and physical exhibits; any other documentation deemed relevant and material by the IHO, and any other documentation as may be otherwise required (8 NYCRR 200.5(j)(5)(vi)(f) – [h]). Any graphic imagery or videos would only be

		included in the record if they related to the identification, evaluation, or educational placement of a student with a disability, or the provision of a free appropriate public education to the child.
45	Please provide any model contracts in your possession from other states and sources (for example, contracts with managing entity or contract with individual IHO or with a group of several IHOs).	Please see the following attached PDFs: “Sample Contract 1 from D.C.” and “Sample Contract 2 Illinois.”
46	What percentage of hearings per year are expedited?	Less than one percent of hearings are expedited. Since 2002, there have only been 493 expedited hearings, and there have only been four expedited hearings to date since January 1, 2021.
47	What is the average length of a hearing?	As noted in the regulations, each party in a hearing has up to one day to present its case unless the impartial hearing officer determines that additional time is necessary (see 8 NYCRR 200.5(j)(3)[xviii]). However, the length of a hearing varies widely – anywhere from a single day to several days – due to a variety of factors. As noted in the attachment labeled “RFI Question 3_Adj Case lengths,” the average length of a hearing in 2021 was 347 days.
48	What is the average time to prepare for a hearing?	The average time to prepare for a hearing can depend on a variety of factors, including the issues raised in the due process complaint, the amount of evidence submitted by the parties, etc. NYSED does not have this information available, nor does it track this type of data.
49	Does the NYCDOE review all hearing transcripts? If not, what % do they review?	Generally, the NYCDOE does not review hearing transcripts. However, there are two situations where hearing transcripts would be reviewed: 1) when the NYCDOE receives a complaint from the court reporting agency, and 2) when the NYCDOE receives a complaint from a party regarding the IHO’s conduct during the hearing. To the extent that you have further questions on this matter, contact the NYCDOE.
50	Please provide any flow charts or operating manuals for the current operation.	NYSED does not have this information available. The NYCDOE may be able to provide this information.

51	Please provide any employee manual for employees of the current operation.	The only training manual that NYSED is aware of is the impartial hearing officer training manual developed by the NYCDOE. The NYCDOE may be able to provide this information.
52	Please provide resumes and experience of key personnel in the current system (anonymized).	The question is too broad, thus we cannot provide a response. At the state level, there are several staff members that oversee the operations of services provided to students with disabilities in New York State. At the city level, the NYCDOE may be able to provide this information.
53	Please provide any management proposals or studies commissioned or considered in the last 5 years (other than Deusdedi Merced's 2019 report).	In the last five years no other proposals or studied have been considered other than Deusdedi Merced's 2019 report.
54	Please provide any strategic plans for the current operation developed in the last 5 years.	NYSED has been working tirelessly on the NYCDOE's Compliance Assurance Plan since 2019. Accordingly, we recommend that you review the following attached PDF: "NYCDOE Compliance Assurance Plan May 2019."
55	Please provide financial statements (or equivalent) for the current operation, going back 7 years; please include a schedule of existing accounts payable and any debts.	NYSED does not have this information available. The NYCDOE may be able to provide this information.
56	What is the average payment to an IHO to resolve one due process complaint?	NYSED does not have this information available. The NYCDOE may be able to provide this information.
57	Please provide a list of contracts for any services not provided by hearing office employees, with the amount of each.	Generally, such contracts are not maintained by NYSED. However, NYSED does maintain the following contracts: Special Education Mediation Parts I and II (between NYSED and the New York State Dispute Resolution Association) for a combined total of approximately \$2 million and Professional Development for Impartial Hearing Officers (between NYSED and Special Education Solutions, LLC) for approximately \$2.3 million. The NYCDOE may be able to provide further information.

58	Can you provide redacted samples of the following documents: a) Statement of Agreement and Order b) Pendency Order c). Findings of Fact and Decision	Redacted copies of the NYCDOE impartial hearing decisions are available at: http://www.p12.nysed.gov/specialed/dueprocess/decisions/home.html .
59	Are there specific issues that are raised more often than others by either party as part of the due process complaint procedure?	Please see the following attached spreadsheet: “RFI Question #16_Frequency of ISSUE Type per SY.”
60	DOE representation: a) Please provide a list giving numbers of CSE and other representatives involved on the DOE side in the impartial hearing process (grouped by CSE where applicable), and whether they are full time or part time. (b) Please provide whatever data you have on the current caseloads of CSE and other DOE representatives. c) Please provide the number of attorneys involved on behalf of the DOE (e.g. in OLS, SEU, etc.), and whether they are full time or part time. d) Please provide whatever data you have on the current caseloads of the attorneys referred to in the preceding question. e) For the personnel (i.e. representatives and attorneys) listed in this section, what are the current and projected staffing and hiring plans?	NYSED does not have this information available. The NYCDOE may be able to provide this information.
61	Attachment B references ranges of caseloads and the number of IHOs that have accepted cases within that range. Additional data would be helpful including if this is an aggregate acceptance or a moment in time. If the number is a moment in time then the total number of cases accepted by an IHO within a fixed period (e.g. Fiscal / Calendar year) would be essential in	Please see the attached spreadsheet: “RFI Question 19_APPTS PER YEAR – trend.”

	determining overall IHO participation in the present process	
62	What percentage of cases each year are simple, medium, and complex cases?	Simple, medium, and complex are distinctions described in the NYCDOE’s June 2020 Compensation Policy. The NYCDOE may be able to provide this information.
63	Please provide more detail around "billing" activities in section 1.3.	<p>The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.</p> <p>To the extent it assists you in providing any further response to this RFI, please be aware that effective October 1, 2001, the Division of Budget approved a revised maximum compensation rate for IHOs at the rate of \$100 per hour for pre-hearing, hearing, and post-hearing activities. There is no maximum per diem on the number of hours for compensation or limit on an annual salary.</p>
64	Are there any other reporting requirements other than the aggregation of data as outlined in Attachment A?	No. Attachment A to the RFI requires prompt, timely and detailed data, not just aggregate data.
65	What is the average cost of each case filed? How does that compare to how much an IHO was paid to resolve the case? What other costs were expended for each DPC?	NYSED does not have this information available. The NYCDOE may be able to provide this information.
66	Section 1.4, Question 5 requests information describing information for how decisions from Vendor “will be rendered within 45 days from the date of a due process complaint or from the expiration of the 30-day resolution period...” Will NYCDOE please inform of	NYSED does not have this information available. The NYCDOE may be able to provide this information.

	the relevant associated timelines, including, but not limited to: i. What is average processing time for NYCDOE to receive a complaint and then transfer to Vendor? E.g., If the average complaint is filed on Day 1 and it takes NYCDOE 15 days to process complaint and transfer to Vendor, Vendor will commence work on Day 16 and have 30 days to complete.	
67	How would the backlog be addressed in a timely manner then with such (sic) an entity/agency, such as OATH, with a small group of already certified adjudicators?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
68	What is the current caseload of each IHO serving in NYC and their past compensation? Is there any correlation to success of managing and disposing of due process complaints with amount of compensation?	NYSED does not have this information available. The NYCDOE may be able to provide this information. Additionally, it is unclear what is meant by “success of managing and disposing of due process complaints,” thus we cannot provide a response at this time.
69	Has the NYC/NYS considered giving us IHOs direct access to IHRS to input our own extensions or scheduling? Without access we end up doing a lot of paperwork, and then follow up.	Yes, this is being considered.
70	In Attachment B, # of cases per IHO, it indicates that there are 164 hearing officers but only accounts for 131 hearing officers, where do the other 33 fall?	At the time Attachment B was generated, the IHOs referenced in your question were not accepting cases.
71	Please provide the list of individual representatives along with, their firms and agencies currently representing Parents along with an estimate of how many cases they take on each year.	NYSED does not have this information available. The NYCDOE may be able to provide this information.

72	Re Attachment B: # of cases per IHO: chart: what is the time period covered by the chart with respect to the first line?	The data for Attachment B was pulled on August 20, 2021. The data reflects the case load for each IHO as of that date and does not reflect a broader time period.
73	How many full time staff in the City and State operate this system currently? Please provide a breakdown of their positions and the description of their responsibilities and salaries. Provide the breakdown of positions, descriptions of responsibilities of the NYC DOE support staff for the NYC DOE representatives in the NYC Impartial Hearing Office? What is the breakdown of hours that each person works?	The question is too broad, thus we cannot provide a response. At the state level, there are several staff members that oversee the operations of services provided to students with disabilities in New York State. At the city level, the NYCDOE may be able to provide this information.
74	What is the range of hours that a current NYC IHO works?	NYSED does not have this information. The NYCDOE may be able to provide this information.
75	How many NYC IHOs do you have? Please provide how many hours each NYC IHO works.	As of October 5, 2021, there are currently 161 IHOs working in New York City. With respect to the hours they work, NYSED does not have this information. The NYCDOE may be able to provide this information.
76	How many people currently handle and represent the DOE matters in the IHO impartial system? Please provide a list of all these individuals, their districts and the number of hours they directly work on these cases representing the DOE in these NYC cases.	NYSED does not have this information available. The NYCDOE may be able to provide this information.
77	How much does it cost the City to run the current Special ED IHO system? How much does it cost the State to run this system?	NYSED does not “run” the special education IHO system in New York City, or in any other school district. Rather, NYSED monitors each school district’s system, consistent with law and regulations (see 20 USC § 1416(a)(1); Education Law §§ 4404(a); 34 CFR 300.600). With respect to how much it costs New York City to run this system, The NYCDOE may be able to provide this information.

78	What is the budget you estimate an entity will require to address these problems?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
79	How much would it currently cost New York City to hire these (sic) many IHOs with benefits? Without benefits?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
80	What are the responsibilities of the current NYC IHOs? What percentage of the NYC IHOs responsibilities are administrative? How many hours do NYC IHOs spend on administrative work?	The responsibilities of the IHOs are outlined in regulation (see 8 NYCRR 200.5[j]). With respect to your questions regarding hours spent on administrative work, NYSED does not have access to this information. The NYCDOE may be able to provide this information.
81	Based on the number of full time IHOs estimated to take care of the current backlog, what is the estimated amount of space and private rooms needed to conduct these hearings?	<p>The space is provided by the school district, not NYSED. The NYCDOE may be able to provide this information.</p> <p>Additionally, the purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.</p>
82	Will the city or state provide any space and/or lower rent facilities to an entity interested in managing this system?	<p>Typically, individual school districts are required to provide hearing space.</p> <p>Additionally, the purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have</p>

		raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
83	Is the city and/or state willing and/or required to provide some or any administrative support services and equipment, including support staff, stenographers, video and/or phone equipment? Please describe these services.	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
84	For whatever services the city and/or state is unable or will not provide please provide information regarding the contracts and costs that are currently paid. Please also indicate at what cost these services are available to nongovernmental entities.	Please be aware that, in general, each district is responsible for setting up its own policy and procedures for administering due process hearings. (see 8 NYCRR 200.2[b]). The NYCDOE may be able to provide this information.
85	How many hearings has NYC conducted this past year? How many per day? How many do you estimate are necessary to address the backlog?	During the 2020-2021 school year, there were average of 31 hearings per day, with a minimum of one hearing per day and a maximum of 74 hearings per day. This information is reflected in the following attached spreadsheet: “RFI Question 45 2021 Hearing Events Held per day.”
86	For the complaint volume highlighted in 1.2, are complaints synonymous with hearings?	No, not all complaints result in a due process hearing. They may be settled, dismissed, etc., before a hearing takes place.
87	What percentage of the complaints proceed to a due process hearing? What percentage resolve prior to the actual hearing?	During the 2020-2021 school year, there were 11,603 complaints resolved. Of those complaints, 3,527 (30%) resulted in a decision, 4,878 (42%) had hearings but were resolved without a decision, and 3,198 (28%) were resolved without a hearing or a decision.
88	What do you believe is the reason for the increase in the due process complaint filings in NYC over the last 6 years?	There are many reasons/factors for the increase in due process complaints. Accordingly, we recommend that you please review the following attached PDF: “NYCDOE Compliance Assurance Plan May 2019.” The NYCDOE may be able to provide this information.

89	Section 1.2 of the RFI demonstrates that in the last three school years, the number of complaints filed increased by 50%, has there been an inquiry as to what has led to such a significant increase? If not, will there be an inquiry?	There are many reasons/factors for the increase in due process complaints. Accordingly, we recommend that you please review the following attached PDF: “NYCDOE Compliance Assurance Plan May 2019.” To the extent you are requesting a more specific explanation to this question, The NYCDOE may be able to provide this information.
90	Re Attachment C: Would it be possible to include columns which outline the number of cases (and/or the number of hours per case) next to each IHO payment amounts or at least for the top 5 vendors per fiscal year?	Attachment C was provided by NYCDOE. The NYCDOE may be able to provide additional information.
91	Do both parties pay for the due process complaint procedure? Or is it paid for by NYC only?	Districts pay for the hearing process.
92	What is the average time (number of hours spent by an IHO) that it takes to resolve a due process Simple complaint? Medium complaint? Complex complaint?	Simple, medium, and complex are distinctions described in NYCDOE’s June 2019 Compensation Policy. However, during the 2020-2021 school year, (final) appointment of an IHO to decision took an average of 263 days.
93	What would be a range of time (from quickest to longest) to resolve a due process Simple complaint? Medium Complaint? Complex Complaint? What are the key factors that determine the amount of time needed?	Simple, medium, and complex are distinctions described in NYCDOE’s June 2019 Compensation Policy. However, during the 2020-2021 school year, the minimum number of days from (final) IHO appointment to decision was nine days, and the maximum number of days was 1,406 days.
94	What is the estimated funding source, or budget for this project?	Generally, the funding source for special education is the IDEA. With respect to your question concerning the estimated budget, the purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information,

		recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
95	Has funding for a formal solicitation been secured?	Generally, the funding source for special education is the IDEA.
96	What is the anticipated volume of mailing required (e.g., number of correspondences per HO per week)?	NYSED does not have access to this information. However, most of this is done electronically.
97	What is the current cost of the present hearing officer system? Please describe what a successful delivery system would deliver and the criteria for prioritizing and evaluating success.	With respect to your question concerning the cost of the present hearing officer system, NYSED does not have this information available. The NYCDOE may be able to provide this information. A successful delivery system would be capable of meeting the timelines and requirements in law and regulations (see 8 NYCRR 200.5(j))
98	Please identify and provide copies of any existing contracts that must or could be carried over from the existing management structure or any new entity (transcription? translation? others?).	NYSED does not have this information available. The NYCDOE may be able to provide this information.
99	Broad strokes budgeting, payment, compensation, and total cost projections are sought in the RFI, but the data about the existing system provided as part of it is too limited to permit such projections from being undertaken. Specifically, no data is provided about the current backlog/waitlist of appointments and whether it is to be anticipated by and addressed in any proposal; a Compensation Plan is annexed to the RFI as is expenditure data annually per IHO, but the two do not connect — the Compensation Plan dramatically changed the one it superseded, but the 5 years of data on compensation end on June 19, 202 while the Compensation Plan for the existing system is effective June 1, 2020 rendering all but 3 weeks of the 5 years	While NYSED does not track compensation, we can provide the number of cases by case closed type and hearing officer for the 2020-2021 school year. Please see the following attached spreadsheet: “RFI QUESTION 59 – Frequency of CASE CLOSURE TYPE per IHO SY 2021.” The NYCDOE may be able to provide additional information.

	<p>of data not useful in analyzing the current Plan or projecting an alternative. Further, the five year data supplied reflects substantial year-on-year volatility and makes it essential to view a longer history retrospectively (sic) and, most importantly, the data from June 19, 2020 to date.</p> <p>Accordingly, please provide additional data about caseloads and compensation for the period July 1, 2011 through June 30, 2021; please include compensation for each IHO identified by a unique identifier and caseload information for directly comparable periods by the same unique identifiers. Please provide data about final determinations per IHO per year using the same identifier (that is cases resolved either by order, by dismissal, by settlement, or by withdrawal, annually per identified IHO). Please either provide the average cost per case filed annually and the average cost per case completed annually in the district and subdivided out by its Regions. Identify how District 75 cases are captured for these purposes or the data on which such a calculation could be based.</p>	
100	<p>In order to project staffing needs and workload even approximately substantial additional information about current practice is needed. Please further provide data that details the distribution of cases since July 1, 2011 counting distribution between what the district calls its CSEs versus cases litigated by community school-based teams; please provide the distribution of cases among Community School Districts (CSE and school-based), annually. Please provide the number of cases brought for parentally</p>	<p>NYSED does not have this information available. The NYCDOE may be able to provide this information.</p>

	placed students, by district or region, annually for the same ten year period (3602-c cases).	
101	Please provide per centage data for the same 10 year period of number of cases in which a translator has been required at the hearing and for the decisions; please provide a list of languages for which translation has been required.	NYSED does not have this information available. The NYCDOE may be able to provide this information. It is a district's responsibility to ensure interpreters are available and provided at all stages of a hearing (see 8 NYCRR 200.5(j)(3)[vi]).
102	Please provide the total number of transcripts per year for the ten year period and the mean, median, and standard deviation of the number of pages per transcript (or the data on which to base such a calculation).	The distinctions you identify are described in the NYCDOE's June 2019 Compensation Policy. The NYCDOE may be able to provide this information.
103	Please provide data about the number of hearings conducted per day, separating telephonic hearings/in-person hearings/PHCs, for the same ten year period.	NYSED does not have this information available. The NYCDOE may be able to provide this information.
104	Please provide a current count of: the number of non-attorney CSE litigators assigned by the district per region and in toto; the number of IHRO litigators assigned by the district per region and in toto; and the number of attorney litigators currently assigned by the district per region and in toto. This number is essential to any assessment of how many simultaneous hearings per day can be scheduled in a proposed plan.	NYSED does not have this information available, nor do we track this type of data. The NYCDOE may be able to provide this information.
105	Please provide a count for the same ten year period of the number of Complaints filed pro se per region and in toto.	NYSED does not have this information available. However, NYSED is typically copied on hearing requests and it seems that the vast majority of the parties are represented by counsel. The NYCDOE may be able to provide this information.
106	Please provide a count per region and in toto of the number of complaints seeking compensatory remedies.	Please see the following attached spreadsheet: "RFI QUESTIONS 66-69 Frequency of ISSUE TYPE per District SY 2021."

107	Please provide a count per region and in toto of the number of cases seeking tuition reimbursement.	Please see the following attached spreadsheet: “RFI QUESTIONS 66-69 Frequency of ISSUE TYPE per District SY 2021.”
108	Please provide a count by region and in toto of the number of cases annually in which pendency is sought and provided either by order or agreement or consent.	NYSED does not have this information available. The NYCDOE may be able to provide this information.
109	Please provide a count per region and in toto of the number of complaints seeking IEEs annually for the ten year period.	Please see the following attached spreadsheet: “RFI QUESTIONS 66-69 Frequency of ISSUE TYPE per District SY 2021.”
110	A comprehensive understanding of the current (failing) management structure is essential in developing projections for potential staffing of a successful entity. Please provide a full line item budget for the Impartial Hearing Office, including lines, part-time staffing, titles, salaries (or ranges for salary by title), and job descriptions and all OTPS line items, for the ten year period; please also provide table of organization with titles and names of incumbents.	NYSED does not have this information available. The NYCDOE may be able to provide this information.
111	Please describe any minimum physical plant requirements for a proposed delivery system over all: number of in-person hearings, minimum facility requirements (size of hearing room, computer and web access, photocopy/printing facilities, conference rooms, waiting rooms, any minimum essential requirements for face-to-face hearings, and the minimum number of such simultaneous hearings for which support must be guaranteed).	Regulations do not address physical plant requirements. The “NYCDOE Compliance Assurance Plan May 2019” addresses physical plant issues on page 19 and cites that: <ul style="list-style-type: none"> ○ NYCISO's physical space is limited and inadequate; ○ Hearings are only held in NYCDOE's Brooklyn North FSC location and not in the other boroughs in New York City; ○ Hearings are not scheduled for a full day and may be limited to one hour due to limited space availability; ○ There are 10 hearing rooms with, on average, 122 calendared matters per day for those rooms; ○ There is inadequate waiting room space for parents, attorneys, and witnesses, and the lunch room also serves as the holding room for the NYCDOE’s reassigned teachers;

		<ul style="list-style-type: none"> ○ Hearing spaces are uncomfortably hot or cold requiring doors to remain open during hearings, violating the confidentiality of students, there is limited access to amenities, and the space is unkempt. <p>Virtual hearings are currently permitted by the regulations (see 8 NYCRR 200.5(j)(3)(xii)(h)). Further, the IHO may receive testimony by telephone or video conference, provided that such testimony shall be made under oath and shall be subject to cross examination (8 NYCRR 200.5(j)(3)(xii)(c)).</p> <p>A written or, at the option of the parents, electronic verbatim record of the proceedings before the impartial hearing officer shall be maintained and made available to the parties (8 NYCRR 200.5(j)(3)[v]).</p> <p>At all stages of the proceeding, where required, interpreters of the deaf, or interpreters fluent in the native language of the student's parent, shall be provided at district expense. (8 NYCRR 200.5(j)(3)[vi]).</p> <p>Additionally, the purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.</p>
112	Please indicate whether videoconference facilities are a required component (to support video hearings).	<p>Virtual hearings are currently permitted by the regulations (see 8 NYCRR 200.5(j)(3)(xii)[h]). Further, the IHO may receive testimony by telephone or video conference, provided that such testimony shall be made under oath and shall be subject to cross examination (8 NYCRR 200.5(j)(3)(xii)[c]).</p> <p>Additionally, the purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by</p>

		<p>NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.</p>
113	<p>If the proposal is for a management entity, is it anticipated that the contract would be exclusive or might there be more than one such entity providing portions of the service (some types of Complaint processed by one entity others by another) or more than one entity providing hearing services simultaneously.</p>	<p>The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.</p>
114	<p>In order to determine the ultimate success of present training of new IHOs it would be important to more fully understand the natural progression of accepting cases based on their "certification date".</p>	<p>NYSED will take this comment into consideration. To the extent this is a question, the question is unclear.</p>
115	<p>Will NYCDOE further describe the requirements for IHO training and certification, including length of training, when it is offered, the manner it is offered (on/off-line, self-paced or instructor-led, etc.)?</p>	<p>Law and regulation require that IHOs are trained and certified by NYSED, not the NYCDOE (see Educ. Law § 4404(1)(c) 8 NYCRR 200.1(x)[4]). Thus, NYSED defines the length and manner of the training program, as well as the venue where training is offered.</p>
116	<p>Is there a cost for training the vendor is responsible for covering?</p>	<p>Since NYSED is the entity responsible with for training and certifying IHOs, the cost for such training would be covered by NYSED (See Educ. Law § 4404(1)(c) and 8 NYCRR 200.1(x)[4]).</p>
117	<p>What is the required training program and how long does the training last? How is it conducted (in person/virtual?) Is there a training manual or plan that is available? What types of training materials are used?</p>	<p>With respect to your question, please refer back to Section 1.1 of the RFI. As noted, NYSED is responsible for certifying and training IHOs (see Educ. Law § 4404(1)(c) and 8 NYCRR 200.1(x)[4]), and we are not requesting proposals with respect to our training process at this time.</p>

118	What type of training is currently provided for IHOs who work exclusively in New York City?	The training program provided to IHOs by NYSED is the same inside and outside of New York City. Nothing prohibits the NYCDOE, or any other district from providing additional training to its IHOs.
119	If a company proposes their own secure cloud-based tracking system what security standards will NYCDOE require?	As your question appears related to the NYCDOE’s security standards, not NYSED, the NYCDOE may be able to provide this information. However, please be aware that any such system must comply with all applicable State and federal laws governing confidentiality and electronic transactions to ensure the safety, integrity and confidentiality of student records and the due process system (<u>see i.e.</u> NYS Educ. Law 2-d; NYS Technology Law 106-b; federal Family Educational Rights and Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA) and the Children’s Online Privacy Protection Rule [COPPA]).
120	What system is used to back up and archive ongoing and closed cases and all related materials?	Boards of education are required to report information relating to the impartial hearing process including, but not limited to, the request for initiation and completion of each impartial hearing to the Office of Special Education of the State Education Department in a format and at an interval prescribed by the commissioner (8 NYCRR 200.5(j)(3)[xvi]). This is done electronically through the Impartial Hearing Reporting System (IHRS). IHRS is a web-based data collection system designed to records information about the impartial hearing process at critical points, beginning with the initial written request for a hearing and ending with the implementations of decisions rendered in the hearing. You may access the IHRS at Portal.nysed.gov. The NYCDOE may be able to provide information on its own systems.
121	Would a new managing entity inherit the archive referred to in the preceding question?	Yes, it is expected that a new managing entity would be provided access to the Impartial Hearing Reporting System (IHRS) located at Portal.nysed.gov.

122	Will a future arrangement with a new management entity track and compare future data to existing data?	Data will continue to be collected consistent with State and federal reporting requirements. For example, data regarding mediation and resolution are reported consistent with the State Performance Plan and Annual Performance Report.
123	How will a new management entity assess, measure and track due process complaints going forward?	The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.
124	Will a new management system track how many pendency, tuition reimbursement, and compensatory relief cases are filed each year and in each district?	As previously described in Attachment A to the RFI, data required to be reported to NYSED includes “Case Issues.” As a result, a new management system will need to track the number of pendency, tuition reimbursement, and compensatory relief cases.
125	Will computer systems/databases interact and sync with SED and NYC hearing offices going forward?	The computer systems and databases at NYSED currently sync, interact with, and transfer files to the New York City Impartial Hearing Office. Going forward, it is NYSED’s expectation that this will continue.
126	What document management system does NYCDOE for evidence and documentary submissions?	As your question appears related to the document management system maintained by NYCDOE, not NYSED, the NYCDOE may be able to provide this information.
127	What other NYCDOE systems will IHOs require access to?	It is NYSED’s understanding that IHOs do not have access to the NYCDOE systems. Only the NYCDOE employees have access to the NYCDOE systems. However, IHO’s do have read-only access to the IHRS located at Portal.nysed.gov.
128	Does NYCDOE have system requirements for access to its systems it can supply?	It is NYSED’s understanding that only the NYCDOE employees have access to the NYCDOE systems.

129	Please provide the data structure for the current databases of retrospective data with which any new system will have to interact, both at SED and NYC Hearing Office levels. That is, the fields and their data characteristics.	Data structures and data types have been provided in Attachment A to the RFI.
130	Please provide a description of how the City and State databases currently interact and who has Read, Write, or other access to what portions of each database.	With respect to State databases, IHO's have read-only access to the IHRS located at Portal.nysed.gov. With respect to New York City's databases, it is NYSED's understanding that only the NYCDOE employees have access to the NYCDOE systems.
131	We received several questions that are unrelated to the RFI that ask for information regarding other NYSED initiatives and/or ongoing litigation.	No response will be provided to questions unrelated to the RFI. The purpose of this RFI is for NYSED to solicit information from interested parties to help inform future decisions by NYSED. Any response you can provide to the questions you have raised, further information, recommendations, or suggestions in response to the RFI may be submitted until November 5, 2021.