



**THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK**

---

Interim Commissioner of Education  
President of the University of the State of New York  
89 Washington Avenue, Room 111  
Albany, New York 12234

E-mail: [commissioner@nysed.gov](mailto:commissioner@nysed.gov)  
Twitter: @NYSEDNews  
Tel: (518) 474-5844  
Fax: (518) 473-4909

December 10, 2019

Ms. Regina Skyer  
Ms. Jesse Cole Cutler  
Mr. Greg Cangiano  
Ms. Diana Gersten  
Ms. Sonia Mendez-Castro  
Ms. Abbie Smith  
Law Offices of Regina Skyer and Associates, L.L.P.  
142 Joralemon Street, Suite 11C  
Brooklyn, NY 11201

Dear Ms. Skyer and Associates:

Thank you for your letter of November 27, 2019. Some of the issues you raised in your letter are among the serious concerns regarding the New York City Department of Education's (NYCDOE) special education due process system that prompted the New York State Education Department ("NYSED") to issue the New York City Department of Education (NYCDOE) a Corrective Action Plan ("CAP") this May. As part of the CAP, the NYCDOE is required to address numerous findings facing its special education due process system. While some of these required changes have been implemented, until substantial improvements in the entire due process system are demonstrated, NYSED will continue to work with NYCDOE on implementing the remaining required elements of the CAP. Additionally, in response to the worsening situation in NYCDOE's due process system, NYSED has recently required additional changes to better ensure fairness to parties awaiting an impartial hearing officer (IHO) appointment.

As you are no doubt aware, the NYCDOE is experiencing an unprecedented number of special education due process complaints. While there are currently 68 certified impartial hearing officers available for appointment, as part of its efforts to improve due process, NYSED has undertaken a four-pronged approach to increasing the number of IHOs taking on cases.

First, NYSED staff systematically canvassed all currently certified IHOs working in New York City with lower case-loads to encourage them to take on additional cases. Second, NYSED staff canvassed IHOs in the rest of state to ascertain their availability and willingness to accept NYCDOE cases. NYSED has expanded its outreach to recruit a new class of potential IHOs for training. NYSED has also contacted the New York City Bar

Association, regarding the need for IHOs and it agreed to post a link to NYSED's IHO application materials. Additionally, NYSED obtained approval for additional funding to publish the IHO job posting on general job search websites, including Indeed and Monster.com, and through bar associations in and around the New York metropolitan area. Fourth, NYSED is reviewing and evaluating its Commissioner's regulations pertaining to IHOs to allow NYSED to recruit talented and dedicated IHOs from a wider pool of candidates, a review that includes the consideration of eliminating certain restrictions that exceed the federally mandated requirements. Further, NYSED staff are presently reviewing all applications submitted thus far and in anticipation of a reasonably sized class, is working to amend its contract with its consultant, to provide training to a new class of IHOs in early 2020.

It is important to note, however, that NYSED has experienced a high-level of attrition of IHOs from the classes NYSED recruited, trained, and certified in 2014 and 2018. Therefore, NYSED continues to work with NYCDOE to improve IHO working conditions, including an improved IHO compensation policy, so as to ensure timely and meaningful due process for NYC parents.

Below are a few of the immediate steps NYSED has asked NYCDOE to take:

*Improve IHO Compensation:*

In the CAP, NYSED mandated that NYCDOE revise its current compensation policy for IHOs and subsequently instructed NYCDOE to engage the IHOs in the process of the rewrite. At a meeting held in New York City on October 17, 2019, NYSED met with 33 IHOs to review NYCDOE's proposed revised compensation policy and sought written feedback from those unable to attend the meeting. NYSED continues to receive additional comments by email and is working to finalize a revised policy.

*Improve Impartial Hearing Space:*

In the CAP, NYSED required the NYCDOE to take immediate action steps to improve and expand the impartial hearing space at 131 Livingston Street in Brooklyn. In response, NYCDOE has built four additional hearing rooms resulting in a total of 14 hearing rooms being available.

*Implement Pendency Automatically:*

Also in the CAP, NYSED mandated that NYCDOE stop requiring IHOs to issue an order for uncontested pendency. NYSED has had ongoing discussions with NYCDOE regarding this requirement, and NYCDOE informs us that they are working on implementing a new system to ensure that a hearing and a pendency order for an uncontested matter is no longer required. NYSED's position is that these hearings should not be held because they cause delays for the parties and are utilizing resources that need to be reallocated in the overloaded due process system to claims requiring a hearing. Further, a pendency placement is automatic and cannot be contingent on an IHO order.

*Make Mediation and Alternative Dispute Resolution More Readily Available:*

In accordance with the CAP, NYCDOE has submitted plans to make better use of mediation and IEP facilitation. NYCDOE has agreed to hire three persons devoted to alternative dispute resolution in their NYC Impartial Hearing Office; which will also help reduce the backlog. Additionally, NYSED is completing the Request for Proposals (RFP) process for a new state-wide contract for mediation training that is expected to attract more parents and schools to use mediation.

*Improve Case Management for IHOs:*

NYCDOE used an IHO assignment system that automatically appointed IHOs on rotation, whether or not an individual IHO was actually available to hear a case. NYCDOE also allowed IHO's to review a student's file before deciding to keep a case. Education Law §4404 requires a rotation system whereby an IHO's availability is confirmed before being assigned a new case. NYCDOE's automatic appointment system led to an excessive number of improper recusals. During the 2018-2019 school year there were 12,708 recusals for 4,257 cases; among these, 1,637 cases had three or more recusals of appointed IHOs and 174 cases had between 10-47 IHO recusals. Further, since the substantial increase in due process complaint filings, NYSED received and continues to receive numerous complaints from parents and their representatives who have been subjected to a series of protracted delays, although data reflects that an IHO had been appointed to their case.

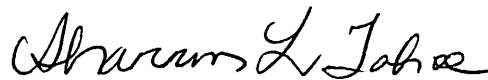
Therefore, in the interest of fairness, by letter dated November 18, 2019, NYSED's Office of Special Education directed the NYCDOE to assign cases to an IHO in the order of complaint filing date, with the oldest cases being assigned first. Simultaneously, NYSED provided guidance to the IHOs on what constitutes justifiable reasons for recusing from a complaint, e.g. when an IHO has a personal or professional interest that would conflict with his or her objectivity in the hearing or when the IHO becomes unavailable due to extenuating personal reasons.

It is important to note that these interim measures were required while a long-term change to the rotation system is being implemented. Before the November 18, 2019 letter, in the CAP, NYSED mandated the NYCDOE to revise its current rotational system of appointing IHOs before determining their availability. In response, NYCDOE submitted a proposed plan that would involve their office first confirming an IHO's availability before assigning him or her a case. It is expected that this new and improved rotational system will substantially reduce the number of recusals in New York City due process cases, thereby increasing timely and meaningful due process for New York City parents. NYSED and NYCDOE are working with IT staff members for a successful implementation of a new rotation system.

In addition to the measures described above, NYSED is working on several other matters to ensure the functioning of the New York City special education due process system. Please be assured that it is of paramount concern to NYSED that parents of the

students of the City School District of New York have access to meaningful due process and mediation in order to resolve complaints regarding their children's access to quality education. If your office has specific recommendations in these regards, I invite you to submit them to my attention.

Sincerely,



Shannon L. Tahoe  
Interim Commissioner

c: John D'Agati  
Kim Wilkins  
Chris Suriano  
Joanne LaCrosse  
Cathryn Tisenchek  
Kevin Smith