



New York State
EDUCATION DEPARTMENT

Knowledge > Skill > Opportunity

Proposed Amendments to Sections 200.1 and 200.5 of the Regulations of the Commissioner of Education

**Office of Special Education
Presentation to the Board of Regents
March 2020**

Right to Due Process

In accordance with the Individuals with Disabilities Education Act (IDEA), New York State (NYS) Education Law and the rules and regulations promulgated thereunder:

- **Parents have a right to due process and may request an impartial hearing relating to the identification, evaluation or educational placement of their child with a disability, or the provision of a free appropriate public education to their child.**

New York's Due Process Data

- **January 2020 - Board of Regents discussion item regarding the shortage of Impartial Hearings Officers (IHO) in New York City (NYC)**
- **NYS exceeds the next most active state in due process filings (California) by 63%**
- **Overwhelming majority of due process complaints are filed in NYC**
- **In the 2018-19 school year, of the 10,189 due process complaints filed in NYS, 9,694 were in NYC**

Summary of Proposed Amendments

The Office of Special Education (OSE) is proposing amendments to sections 200.1 and 200.5 relating to special education impartial hearing officers (IHO) and due process system procedures in the following areas:

- **Expanding the Pool of Potential IHO Applicants in NYC**
- **Privacy**
- **Use of Video Conference**

Expanding the Pool of IHO Applicants

1. Widening the Pool of Attorney IHO Candidates to Become IHOs

In order to expand the pool of IHO applicants in NYC, the proposed rule:

- Removes the restriction that all IHO attorney candidates be licensed in NYS, thus expanding the pool of qualified candidates from neighboring states;
- Broadens the acceptable law practice and experience to also include reference to administrative law; and
- Reduces the number of years of experience required to be an IHO from two years to one.

Expanding the Pool of IHO Applicants

2. Allowing for Certification of Non-attorney IHOs

In order to expand the pool of IHO applicants in NYC, the proposed rule would also allow for the certification of non-attorney IHOs only in NYC. These IHO applicants:

- Must possess a minimum of a Masters degree in education, special education, psychology or a related field;
- Must have two years experience applying knowledge of federal law or State law and regulation pertaining to the IDEA, in education, special education or a related field;
- May only hear complaints filed in NYC;
- Must complete an extensive application and submit a resume, writing sample and three references, the same as attorney IHO applicants. All candidates are also required to be interviewed; and
- Once accepted by NYSED to become an IHO, must attend a rigorous five-day training program and pass a test before being certified as an IHO.

Privacy

To ensure the confidentiality of a student's personally identifiable information, the proposed rule also requires the following:

1. IHOs must maintain student confidentiality

- Clarifies that IHOs are required to maintain student confidentiality

2. IHOs must render decisions in a consistent format

- Require IHOs to render decisions in a format consistent with NYSED guidelines that comply with the Family Education Rights and Privacy Act (FERPA)
- Eliminates the need for school districts or NYSED to redact decisions before making them publicly available as required under the IDEA

Use of Video Conference

The proposed rule authorizes the use of video conferencing to allow IHOs to:

- 1. Receive testimony via video conference. IHOs may already receive testimony by telephone; and**
- 2. Conduct hearings by video conference.**
 - **Requires consent of parties.**
 - **All personally identifiable data, information or records pertaining to students with disabilities during such hearing are subject to federal and State law and regulations pertaining to student privacy.**

Timetable

- **March 2020 Board of Regents meeting –
For Discussion**
- **60-day public comment period in
accordance with the State Administrative
Procedure Act**
- **July 2020 Board of Regents meeting –
Adoption**