



**New York State Education Department
Office of Special Education**

DUE PROCESS SYSTEM

JUNE 2022

¡Bienvenido/as!

Jere jeff!

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Welcome!

The New York State Education Department's Office of Special Education has developed this presentation for parents and families of students with disabilities and other special education stakeholders to obtain information regarding special education due process rights and the initiatives in place to address the backlog of due process complaint hearings in New York City.

LEARNING OBJECTIVES

- Overview of due process rights afforded to students with disabilities
- Information on technical assistance support available to families of a student with a disability
- Information on the transition, over time, of the New York City Department of Education's due process impartial hearing system to the New York City Office of Administrative Trials and Hearings (OATH)
- An overview of the Accelerated Order of Relief legislation

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This presentation will include information on:

- Overview of due process rights afforded to students with disabilities;
- Information on technical assistance support available to families of a student with a disability;
- Information on the transition, over time, of the New York City Department of Education's due process impartial hearing system to the New York City Office of Administrative Trials and Hearings (referred to as OATH); and
- An overview of the Accelerated Order of Relief legislation.

DUE PROCESS RIGHTS

Individuals with Disabilities Education Act (IDEA) and New York State law provide for three distinct dispute resolution mechanisms:

- Mediation
- State Complaint
- Due Process Complaint



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Let's start with the first objective of this presentation: an overview of the due process rights afforded to students with disabilities. The Individuals with Disabilities Education Act (IDEA) and New York State law provide for three dispute resolution options:

- Mediation;
- State Complaint; and
- Due Process Complaint.

SPECIAL EDUCATION MEDIATION

Is a voluntary process in which parents of students with disabilities and school district personnel meet with a specially trained, impartial individual (i.e., a mediator) to work out differences in a collaborative way.



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The first due process right for families is requesting mediation. Mediation is a priority for the New York State Education Department (NYSED). Special education mediation is an effective dispute resolution option. It is a voluntary process in which parents of students with disabilities and school district personnel meet with a specially trained, impartial individual (i.e., a mediator) to work out their differences in a collaborative way.

Special education mediation is conducted by trained mediators from 21 Community Dispute Resolution Centers (CDRC). The NYSED has a contractor that provides training for special education mediators.

Information on mediation is available through the Office of Special Education's Partnership Family and Community Engagement Centers.

SPECIAL EDUCATION MEDIATION (continued)

- Mediation can be requested by the parent or the local educational agency (LEA) and is voluntary for both parties
- A parent may elect to engage in mediation while also pursuing an impartial hearing
- During the 2019-20 and 2020-21 school years, of those cases that proceeded to mediation in NYS, 83.3% resulted in agreement between parents and school districts

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Mediation is a highly effective process to resolve issues relating to special education. In both the 2019-20 and 2020-21 school years, of those cases that proceeded to a mediation session in New York State, 83.3 percent resulted in agreement between parents and school districts.

In mediation, the focus is on establishing collaboration and communication between the parties. Mediation allows the parties to discuss the issues and work together to develop a mutually agreeable, legally binding solution. In addition, mediation is provided at no cost to the parents and school district and is usually the least adversarial way of resolving disputes.

To summarize:

- Mediation can be requested by the parent or the local educational agency (LEA) and is voluntary for both parties.
- A parent may elect to engage in mediation while also pursuing an impartial hearing.
- Cases that proceed to mediation in New York State often result in agreement between parents and school districts. In fact, New York State has consistently had the highest special education mediation agreement rates in the country.

SPECIAL EDUCATION MEDIATION CURRENT IMPROVEMENT ACTIVITIES

1. To increase the awareness and use of mediation across the State, the New York State Education Department (NYSED) awarded two contracts to:
 - a. promote the use of mediation and provide rigorous training to mediators on special education; and
 - b. collect and report mediation data and provide reimbursement for the cost of mediations held across the State.
2. Outreach efforts have shifted to a systemic approach, in conjunction with the use of Statewide data to pinpoint regions/specific areas in need of supports.
3. Through a May 2019 Comprehensive Compliance Assurance Plan (CAP) developed for the New York City Department of Education (NYCDOE), the district has identified a plan for the increased use of mediation.
4. In collaboration with its contractor, NYSED has developed an updated brochure on mediation.

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Current improvement activities related to Special Education Mediation include the following:

1. To increase the awareness and use of mediation across the State, the NYSED awarded two contracts to:
 - a. promote the use of mediation and provide more rigorous training to mediators on special education requirements, procedures, and processes; and
 - b. collect and report mediation data and provide reimbursement for the cost of mediations held across the State.
2. Outreach efforts via the contract have shifted to a systemic approach in conjunction with the use of Statewide data to pinpoint regions/specific areas in need of supports.
3. Through a May 2019 Comprehensive Compliance Assurance Plan (CAP) developed for the New York City Department of Education, the district has identified a plan for the increased use of mediation.
4. In collaboration with its contractor, the NYSED has developed an updated brochure on mediation and widely distributed it through the Office of Special Education Partnership's Family and Community Engagement Centers.

STATE COMPLAINT

- May be filed by parent, individual or organization
- Allege a violation of a Federal or State law or regulation
- Submit a written, signed State complaint to the New York State Education Department's (NYSED) Office of Special Education
- NYSED must receive complaint within one year of violation
- NYSED issues a decision within 60 days of receipt of complaint (except where there are exceptional circumstances)
- More information regarding [State complaint procedures](#), including a sample State complaint form, can be found at www.nysed.gov/special-education/state-complaint



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The second due process right for families is filing a State complaint. A State complaint may be filed by a parent, individual, or organization. The State complaint is filed against a school district or public agency alleging that it has violated a law or regulation regarding the education of a child with disabilities.

The complaint is submitted to the New York State Education Department's Office of Special Education. It must have an original signature. The New York State Education Department must receive the complaint within one year of the alleged violation and will issue a decision within 60 days of receipt of the complaint (unless there are exceptional circumstances and an extension is granted).

DUE PROCESS COMPLAINT

- A written request for an impartial hearing
- Filed by either a parent or a school district
- Relates to a disagreement on a special education matter
- The hearing is a formal process in which the parent and district present their case and evidence before an impartial hearing officer who issues a written decision

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The third due process right for families is filing a Due Process Complaint. A due process complaint is a formal written request submitted by either the parent or school district to the other party asking for an impartial hearing, stating the problem and the proposed resolution. Upon receiving this request, the district is required by regulation to appoint a hearing officer immediately. The hearing is a formal process in which the parent and district present their case and evidence before an impartial hearing officer who issues a written decision within a specific regulatory timeline.

REQUIREMENTS REGARDING RESOLUTION SESSIONS

- State regulations require that parent-requested due process impartial hearings include a resolution period where the parties try to resolve the complaint before moving to an actual impartial hearing. Within 15 days of receiving a due process complaint notice from the parent, the school district must convene a resolution meeting.
- This resolution meeting between the parent and district must occur during the 30-day resolution period unless waived by both parties in writing or they agree to use mediation to resolve the dispute.

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REQUIREMENTS REGARDING RESOLUTION SESSIONS (continued)

- The resolution meeting must include the parents and the relevant members of the committee on special education (CSE) or committee on preschool special education (CPSE), as determined by the school district and the parent, who have specific knowledge of the facts in the complaint.
- The resolution meeting must also include a representative of the school district who has decision-making authority.
- A school district's attorney may not participate in the resolution meeting unless the parent is accompanied by an attorney.

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TECHNICAL ASSISTANCE SUPPORTS

1. Speak to your child's teacher and/or related service providers
2. Contact school administrators or the Committee on Preschool Special Education (CPSE) or Committee on Special Education (CSE) to discuss your concerns about your child's education
3. Connect with the [Special Education Quality Assurance \(SEQA\) Regional Associate](#) from the New York State Education Department (www.nysed.gov/special-education/special-education-quality-assurance-regional-offices)
4. Contact [OSE Educational Partnership's Family and Community Engagement Centers \(FACE\)](#) who can assist parents with special education concerns (osepartnership.org)

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The second learning objective of this presentation is to provide information on technical assistance supports available to families of a student with a disability.

If a parent has a concern with their child's special education program and/or services, we recommend that the parent:

1. Speak to their child's teacher and/or related service providers;
2. Contact the school administrators or the Committee on Preschool Special Education (CPSE) or Committee on Special Education (CSE) to discuss your concerns about your child's education; or
3. Connect with the Special Education Quality Assurance (SEQA) Regional Associate from the State Education Department.
4. The parent could also contact the Office of Special Education Partnership's Family and Community Engagement Centers (FACE) who can assist parents with special education concerns.

LET'S LOOK AT THE DATA...



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Let's look at the data on the next five slides regarding due process complaints.

TREND DATA OF DUE PROCESS COMPLAINTS FILED

School Year:	15-16	16-17	17-18	18-19	19-20	20-21
All NY State # Requests	5,464	6,282	7,635	10,189	11,267	14,624
# Requests NYCDOE	5,026	5,779	7,144	9,694	10,797	14,264
% requests NYCDOE	92%	92%	94%	95%	96%	98%
# Requests Rest of State	438	503	491	495	470	358
% requests Rest of State	8%	8%	6%	5%	4%	2%

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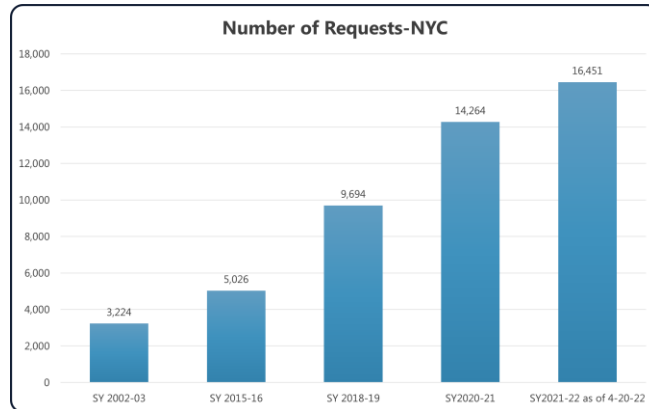
This chart shows trend data of Due Process Complaints filed in New York City compared to the rest of the state.

The top row of this chart shows the total number of due process complaints filed in New York State since the 2015-16 school year. In the 2020-21 school year, for example, 14,624 complaints were filed.

In the pink highlighted rows, you can see that the vast majority of due process complaints involved the New York City Department of Education (NYCDOE). In comparison, in the blue rows, you can see that the number of due process complaints in the rest of New York State combined, stayed fairly steady over the years and accounted for only a few percent of all due process complaints over multiple school years.

During the 2020-21 school year, 98 percent of all due process complaints filed in the State involved the New York City Department of Education (NYCDOE).

NUMBER OF DUE PROCESS COMPLAINT REQUESTS IN NYC: YEAR-TO-DATE

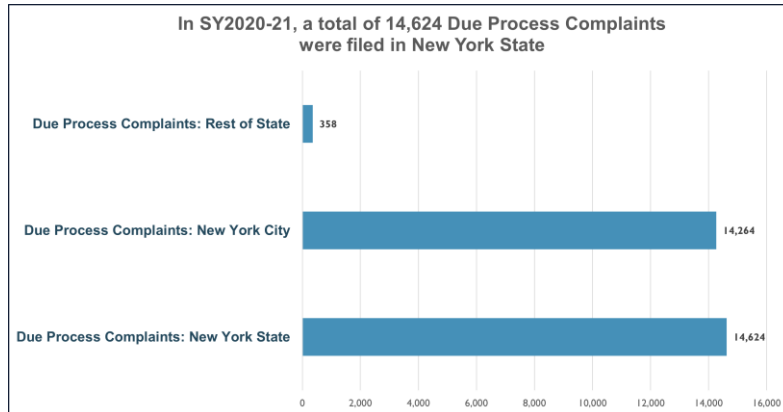


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This chart shows trend data for the number of due process complaints filed each school year in New York City. As you can see, the number of due process complaints filed annually continues to significantly increase each year.

In the 2002-03 school year, there were 3,224 requests compared to 14,264 requests in the 2020-21 school year. This represents a 342 percent increase in requests for impartial hearings in New York City. As of April 20, 2022, there have been 16,451 requests for impartial hearings in New York City during the 2021-22 school year, a 410 percent or fourfold increase compared to 2002-03.

DUE PROCESS COMPLAINTS IN NYC

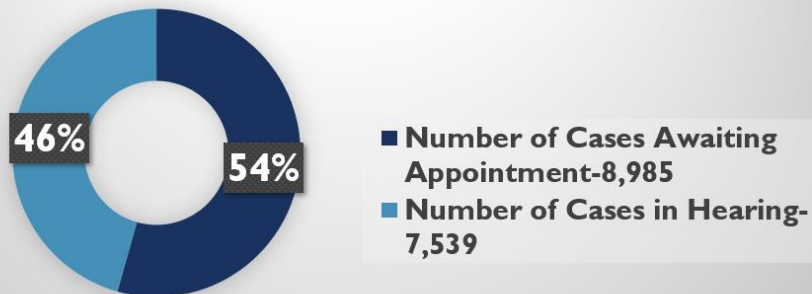


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Here you can see the same information presented graphically for the last complete school year.

During the 2020-21 school year, the vast majority of due process complaints – 98 percent - were filed in New York City. Only 358 due process complaints, or 2 percent, were filed in other school districts in the rest of the State.

CASES AWAITING APPOINTMENT IN NYC –DECEMBER 1, 2021

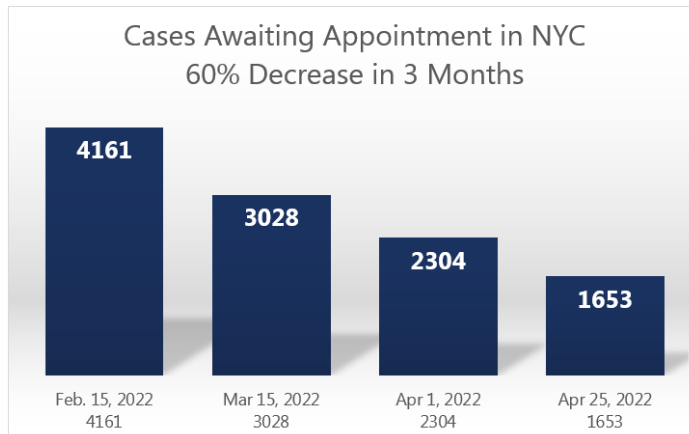
Appointment Delays in NYC
as of December 1, 2021

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The significant increase in due process complaints filed in NYC has led to delays in the appointment of impartial hearing officers.

On December 1, 2021, there were 16,524 open cases in New York City. Of those, more than half (54 percent) – 8,985 – were still awaiting appointment of an impartial hearing officer.

CASES AWAITING APPOINTMENT IN NYC – TREND DATA



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This last chart shows the number of New York City due process complaints awaiting appointment of an impartial hearing officer for each month since February 2022. Over the past three months, the number of due process complaints awaiting an appointment of an impartial hearing officer has decreased 60 percent. Please note this decrease is from a high of nearly 9,400 cases awaiting appointment in New York City in October 2021.

TRANSITION TO OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)

- Memorandum of Agreement (MOA) - December 1, 2021
 - Entered into by New York City Department of Education, Office of Administrative Trials and Hearings of the City of New York, New York State Education Department
- Transition to OATH - currently still 2 systems operating (OATH and NYCDOE IHOs)
- OATH Hearing officers are full-time impartial hearing officers (IHOs); part-time IHOs to be hired as needed
- NYSED trains and certifies all OATH hearing officers

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The third learning objective of this presentation is to provide information on the transition, over time, of the New York City Department of Education's due process impartial hearing system to the New York City Office of Administrative Trials and Hearings (referred to as OATH).

On December 1, 2021, the New York State Education Department, the New York City Department of Education, and the OATH Office entered into a Memorandum of Agreement (referred to as an MOA). This MOA will eventually transfer the hearing of New York City due process complaint cases to hearing officers employed by OATH. The [MOA regarding the transition to OATH](#) can be found on the Office of Special Education website (www.nysed.gov/sites/default/files/office-of-administrative-trials-and-hearings-memorandum-of-agreement.pdf).

OATH is New York City's central, independent administrative law court. OATH established a separate special education unit to address special education impartial hearings.

During the transition period to OATH, both current NYC impartial hearing officers and OATH impartial hearing officers will hear cases. All due process complaints against the NYCDOE continue to be sent to the NYCDOE. Parents can use the [NYSED's due process complaint form](#) (www.nysed.gov/special-education/due-process-hearing) or the [NYCDOE's due process complaint form](#) (<https://www.schools.nyc.gov/docs/default-source/default-document-library/impartial-hearing-request-English>).

The transition of the New York City impartial hearing system to OATH does not have any impact on the NYSED's responsibilities for supervision and monitoring. NYSED continues to train, certify and decertify Impartial Hearing Officers and address IHO complaints.

OFFICE OF ADMINISTRATIVE TRIALS AND HEARING (OATH) FREQUENTLY ASKED QUESTIONS (FAQ)

- Are all Due Process Complaints against NYCDOE still sent to NYCDOE?
- How are Due Process Complaints being assigned?
- Do all Due Process Complaints have a case manager?
- Who is overseeing the scheduling of all hearings?



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Since beginning the transition to OATH, there have been numerous questions submitted regarding the assignment of a hearing officer and adjudication of a due process complaint assigned to an OATH hearing officer.

Many people have asked if due process complaints against NYCDOE are still sent to NYCDOE. The answer is yes, complaints against NYCDOE are still filed with NYCDOE.

We have had questions on how due process complaints are being assigned to an impartial hearing officer (IHO). Complaints are still being assigned on a rotational basis to hearing officers who are available to take cases.

We have had multiple questions regarding the assignment of a case manager and if due process complaints assigned to OATH hearing officers will still have a case manager. The answer is yes, cases assigned to OATH have a case manager.

There have been additional questions regarding the scheduling of hearings for cases assigned to an OATH hearing officer. At this time, the OATH hearing officers are scheduling all their own hearings and prehearing conferences.

OATH FAQ (continued)

- What virtual platform is being used by OATH?
- What is done with adjournments, amendments and withdrawals?
- Who are the court reporting vendors?
- Who do we inform if we need a translator for our witnesses?



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Additionally, we have been asked what virtual platform is being used by OATH to conduct hearings. Currently OATH is using WebEx.

We have had questions on what is being done with adjournments, amendments, and withdrawals. Currently, this is all being handled by the individual OATH hearing officers.

We have also had questions on the court reporting vendors. The OATH office has court reporters as well as translation services.

Finally, we have been asked who families should inform if they need a translator for their witnesses. If a translator is needed, the request should be made to the OATH hearing officer.

ACCELERATED REVIEW AND ORDER OF RELIEF LEGISLATION: BROAD OVERVIEW

- Legislation Signed December 29, 2021
 - Effective March 29, 2022
 - Amends Section 4404 of Education Law
- Option for Parents to Have Impartial Hearing Officer (IHO) Appointed:
 - If Not Appointed 196 Days From Filing of Complaint
 - May Issue Order Based on Proposed Order of Relief Submitted By Parent
- Districts are required to report annually on the number of due process complaints resolved through accelerated review



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The fourth and final learning objective of this presentation is to provide an overview of the Accelerated Order of Relief legislation and subsequent regulations.

To address the high number of due process complaints awaiting appointment of an impartial hearing officer (IHO), on December 29, 2021, the New York State Legislature passed accelerated review legislation (Chapter 812 of the Laws of 2021), with an effective date of March 29, 2022.

The accelerated review law mandates the immediate appointment of an IHO to due process complaints that have been on a list awaiting appointment of an impartial hearing officer for 196 days from the date of filing.

The parent has the option to use this accelerated review process. Should the parent be interested in this option, the parent must request an accelerated review from the district. The district appoints a hearing officer. The parent then submits to the IHO a proposed Order of Relief identifying appropriate and individualized programs and services for the student. Districts must follow specific timelines for any complaints exceeding 196 days without an IHO appointed, and the IHO must issue a final determination within 21 business days.

The law also imposes an annual reporting requirement on school districts. Districts are required to report to the New York State Education Department on the number of complaints that seek this relief, the relief sought, and the resolution of the complaints.

ACCELERATED REVIEW LEGISLATION: ADDITIONAL CONSIDERATIONS

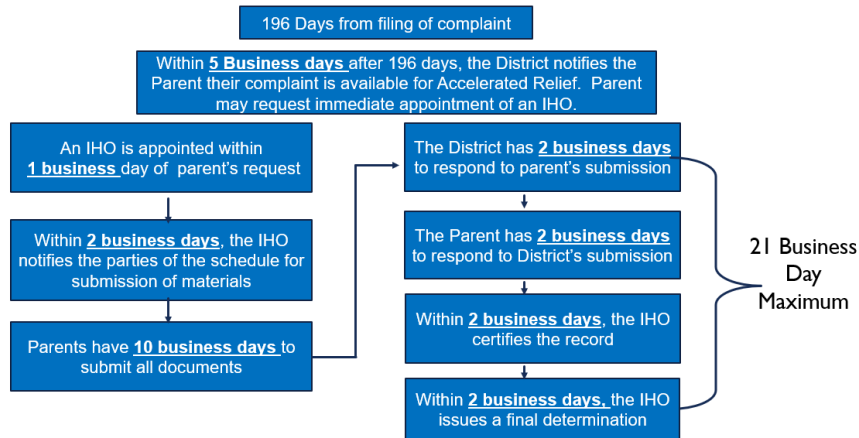
- The accelerated review will be conducted exclusively on the written record and via email. There are no in-person hearings.
- Accelerated review is NOT available when the due process complaint involves:
 - The initial identification of a student as a student with a disability
 - Manifestation Determination

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By requesting an accelerated review, the parent agrees the accelerated review shall be conducted in place of the hearing, and that the review will be conducted exclusively on the written record and via email.

Accelerated review is not available where the complaint involves the initial identification as a student with a disability or a manifestation determination.

ACCELERATED REVIEW TIMELINE



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Districts must follow specific timelines for any complaints exceeding 196 days without an IHO appointed, and the IHO must issue a final determination within 21 business days. The parent may request immediate appointment of an IHO upon expiration of the 196th day from the date they filed their due process complaint.

The accelerated review timeline requires:

- No later than five business days after 196 days from the filing date of the due process complaint, the district must let the parent know their complaint is available for accelerated review.
- Within one business day of receipt of the parents' request, an IHO is appointed.
- Within two business days of the IHO appointment, the IHO shall notify the parties by email of the schedule of the electronic submission by the parent of a proposed order of relief and supporting written documentation (i.e., affidavits, affirmations, and/or declarations and exhibits).
- The parents have up to ten business days to submit all documents by email to the IHO and the district representative.
- Within two business days after receipt of the parents' electronic submissions, the district may file objections or documentation in response to the parents' proposed order of relief via email to the parties.
- Within two business days, the parent can respond to the district's submission.
- Within two business days of the parent's response, if any, the IHO determines which documents will be reviewed and certifies the record.
- Within two business days after certification of the record, the IHO issues a final determination.
- Twenty-one days is the maximum timeline for the hearing officer to issue a determination.

ACCELERATED REVIEW AND ORDER OF RELIEF: FINAL DETERMINATION



The IHO issues a final determination in the form of either:

- The order of relief proposed by the parents; or
- The order of relief proposed by the parents as modified by the impartial hearing officer based upon the written record; or
- A finding that no relief is warranted based upon the written record.

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This slide provides a review of the three possible outcomes for an accelerated review.

The impartial hearing officer issues a final determination in the form of either:

- The order of relief proposed by the parents; or
- The order of relief proposed by the parents as modified by the impartial hearing officer based upon the written record; or
- A finding that no relief is warranted based upon the written record.

ACCELERATED REVIEW AND ORDER OF RELIEF: FINAL DETERMINATION (continued)



- If either party disagrees with the impartial hearing officer's order of relief or finding, they retain the right to appeal to a State Review Officer.
- Except that a parent cannot appeal a final determination in the form of the order of relief proposed by the parent.

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Continuing with the final determination requirements:

- If either party disagrees with the IHO's order of relief or finding, they have the right to appeal to a State Review Officer (SRO).
- Except a parent cannot appeal a final determination in the form of the order of relief that they proposed. This means a parent cannot appeal the Order of Relief that they requested.

NYSED SPECIAL EDUCATION RESOURCES

- [Special Education Quality Assurance \(SEQA\)](http://www.nysed.gov/special-education/special-education-quality-assurance-regional-offices)
(www.nysed.gov/special-education/special-education-quality-assurance-regional-offices)
- [Special Education Mediation](http://www.nysed.gov/special-education/mediation)
(www.nysed.gov/special-education/mediation)
- [OSE Educational Partnership](http://osepartnership.org)
(osepartnership.org)
- [Information Related to Special Education Impartial Hearings](http://www.nysed.gov/special-education/due-process-hearing)
(www.nysed.gov/special-education/due-process-hearing)

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This slide includes resources for parents and families, specifically on how to contact the Office of Special Education's Special Education Quality Assurance Office, Information on Special Education Mediation, and the OSE Educational Partnership. The link in the last bullet leads to a dedicated webpage with information related to special education impartial hearings and proposed due process amendments.



Thank you!

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Thank you for viewing this presentation. We hope you found it helpful. We appreciate your time, and thank you for your help in supporting students and families.