

NYS Special Education Impartial Hearing Outcomes

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Introduction

When parents and school districts cannot resolve issues relating to providing a Free Appropriate Public Education (FAPE) to a student using the standard administrative procedures, one of the final recourses is to initiate a complaint for a Due Process Impartial Hearing.

Many parents, advocates, school districts and attorneys are involved in the process and yet most do not have an effective understanding of the outcomes of impartial hearings, which can lead to misconceptions about their chances of success. The McMahon Advocacy Group has decided it is time to present some empirical data showing the outcomes to inform the community and suggest possible improvements in the system.

Methodology

All data for this study was obtained through a Freedom of Information Law (FOIL) request of the NYS Impartial Hearing Reporting System (IHRS)¹, which covers from the 2002-3 school year to the 2009-10 school year.² The conditions of the FOIL require that any school district that does not have more than 5 cases in a given year have all of its cases redacted to protect any individual student from identification. The results are that we have information on 41,780 of the 56,622 cases filed during the eight year period, 73.8%, a statistically significant number of cases.

Results

Who Initiates Complaints

¹ The Impartial Hearing Reporting System (IHRS) is required under Section 200.5(i)(3)(xiv) of the Regulations of the Commissioner of Education. These regulations require that each Board of Education report information relating to an impartial hearing in a format and interval prescribed by the Commissioner. The IHRS is a web-based data collection system designed to record information about the impartial hearing process at critical points, beginning with the initial written request for a hearing and ending with the implementation of decisions rendered in the hearing. The IHRS is a "real time" system and is used to monitor New York State's due process system to ensure that impartial hearings are completed within the time periods required by federal and State law and regulation. [NYSED.GOV]

² The 2009-10 school year final outcomes may be somewhat incomplete as some cases initiated in the later part of the year were not resolved by the end of the 2009-10 school year end.

The substantial majority of Due Process complaints requesting impartial hearings are requested by parents (98.6%), the system was established as a protection of the rights of students and parents so that is expected. School districts only initiate a hearing in a limited number of reasons, and are only required to do so in cases where they disagree with a parent’s request for in Independent Educational Evaluation (IEE). Emancipated minor may file a claim on their own volition however as shown in Exhibit 1 below there are very few of those cases. There are only 1.4% of cases that are filed for CPSE, which is the transition phase between Early Intervention and kindergarten (3-5).

	MINOR	PARENT	DIST	Total
CPSE		539	4	543
CSE	9	40667	561	41237
Total	9	41206	565	41780
		98.6%	1.4%	

Exhibit 1

New York City has the vast majority of Complaints every year, accounting for 94.8% of the entire population. The chart below (Exhibit 2) shows the distribution of the remaining 5.2% that are brought outside of New York City. The average number of cases per year reported³ is relatively low in the counties outside NYS, i.e. Westchester the largest at 78.6, Rockland at 9.88 and Putnam at 6.

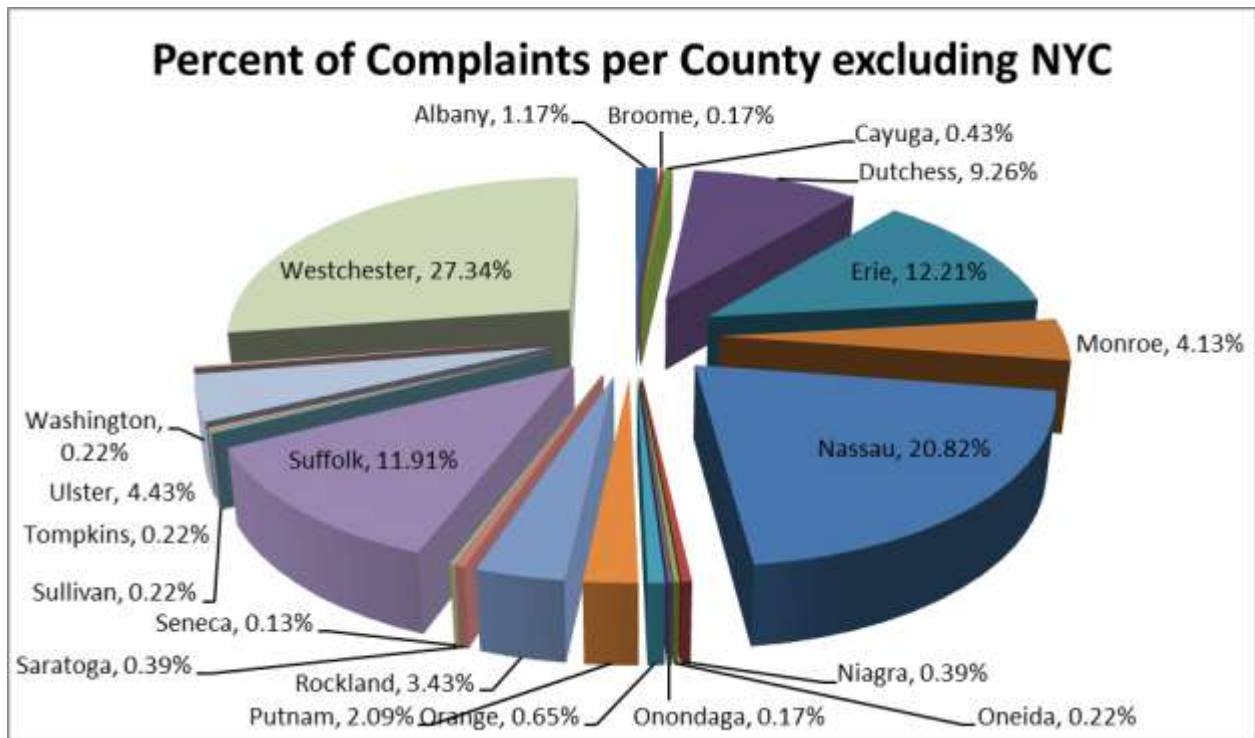


Exhibit 2

³ Although there is no data to confirm it, intuitively the majority of redacted cases are most likely in the counties outside of NYC, as the large number of cases in each NYC school district would bode against redaction.

To look at the data as it relates to individual school districts, the NYC districts, having the majority of cases have all the school districts with the most cases. Obviously the population of areas affects the number of cases that are filed.

That trend is also prevalent in the school districts outside of NYC that have the most cases, featuring large cities as Buffalo, Rochester and Yonkers.

The fewest cases shown below are limited by the requirements that the information could not be released for a school district with less than 5 cases.

MOST CASES IN STATE

NYC GEOG DIST # 2 - MANHATTAN	6185
NYC GEOG DIST # 3 - MANHATTAN	5527
NYC GEOG DIST #20 - STATEN ISLAND	3451
NYC GEOG DIST #21 - STATEN ISLAND	2622
NYC GEOG DIST #15 - BROOKLYN	2577

MOST CASES OUT OF NYC

BUFFALO CITY SD	169
LAWRENCE UFSD	169
ROCHESTER CITY SD	129
YONKERS CITY SD	120
WAPPINGERS CSD	84

FEWEST CASES IN STATE

ARDSLEY UFSD	5
EVANS-BRANT CSD (LAKE SHORE)	5
HEMPSTEAD UFSD	5
LONGWOOD CSD	5
MATTITUCK-CUTCHOQUE UFSD	5
NIAGARA FALLS CITY SD	5
ROCKVILLE CENTRE UFSD	5
WASHINGTONVILLE CSD	5

Exhibit 3

Why Do They Initiate Complaints⁴

⁴ There are a number of cases without a designated issue in the database and there are a number with multiple issues.

Complaints are filed under the issue types shown below (Exhibit 4). As one would expect the largest number of complaints deals with tuition reimbursement and other reimbursement (52.39%).

School districts only file for a hearing in a limited number of reasons; 44% Placement/Program, 43.1% Evaluations/IEE and 4.3% Classification. The number of cases involving an Independent Educational Evaluation is 228 or .62%

All of the complaints filed under discipline amount to 212 or .57%, reflecting a small percentage of the total.

ISSUE TYPE	CASES	%
APPEAL OF IAES	4	0.01%
BILINGUAL/MONOLINGUAL	42	0.11%
CLASSIFICATION	376	1.02%
DISCIPLINARY APPEAL	16	0.04%
DISCIPLINE - EXPEDITED	98	0.27%
DISCIPLINE - NON-EXPEDITED	52	0.14%
EVALUATION	1,027	2.78%
IEP/PROGRAM	5,086	13.78%
INDEPENDENT EVALUATION	228	0.62%
MANIFESTATION DETERMINATION	31	0.08%
NYC ONLY: PLACEMENT - NICKERSON	806	2.18%
OTHER REIMBURSEMENT	4,520	12.25%
OTHER/UNSPECIFIED	2,010	5.45%
PARENT TUITION REIMBURSEMENT	14,814	40.14%
PLACEMENT	5,732	15.53%
PLACEMENT IN IAES	11	0.03%
PROCEDURES	127	0.34%
TRANSPORTATION	1,923	5.21%
Grand Total⁵	36,903	100.00%

Exhibit 4

Who wins?

As shown in the chart below (Exhibit 5), only 7887 or 19% of cases reach a decision and 78% are withdrawn or settled.⁶ From personal experience and discussion with practitioners in the community, the system is inaccurate in the differentiation of “Withdrawal” and “Settled”. Many cases are settled

⁵ The total reflects the number of issues reported in the system. Some cases had multiple issues listed and some had no issue listed.

⁶ In the 2004-05 school year the database was amended to break out the Settlement/Withdrawn” category into the separate categories of “Withdrawn” and “Settled”. Extrapolating the combined category at the percentages of the individual categories going forward results in 5142 cases Settled or 12.3% and 27,593 cases Withdrawn or 66%.

and are improperly classified as “Withdrawn”. In the IHRS “help files” Closing a Case⁷ Step 6 defines withdrawal as “The party who initiated the hearing has withdrawn the request. There is written documentation of the withdrawal. The IHO will not render a written decision. If the withdrawal of a request is an action due to a settlement agreement the case is considered settled and not withdrawn”. This directive is not being followed and distorts the data information in favor of withdrawals. The State must install safeguards to ensure the proper adherence to the directive.

Very few cases are dismissed for insufficiency (262, 1%), which given the number of parents who enter the process pro se, is a testament to the availability of the system and the flexibility of the Hearing Officers.

The “N/A” category denotes those cases that are still pending that have not been closed. The majority of those cases are recent cases that have yet to run the course of the process.

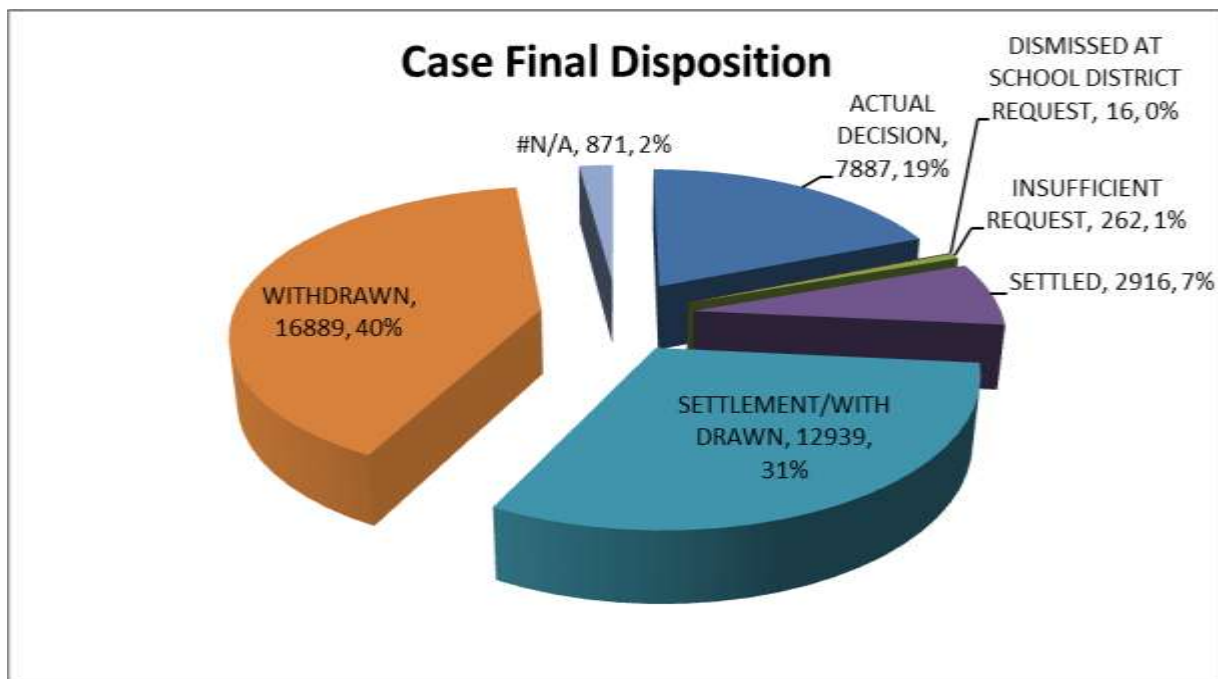


Exhibit 5

Parents win 72% of the cases decided by actual decisions and 81.1% of the decisions that are designated as for parents or the school district.

This is the question most asked by parents and maybe administrators, and possibly the most misestimated. Parents win 81% of the cases decided between the parties, as compared to 19% for the school district. They win 72% of the decisions outright and partial decisions in 11% for all decisions.

⁷ <http://pd.ny.sed.gov/specedhelp/ihrs/5closingacase.html>

While this is a sizeable majority it fails as a victory for parents because to get to decision has resulted in great expense to both the school district and the parent. And while the Impartial Hearing process is much less expensive than a full Court case, and the process does provide interim settlement options, mediation and resolution, parents and school districts when right must bemoan the time, expense and aggravation in a system with a common goal, the Free Appropriate Education of their children.

It is chilling to think that when parents do embark on the process and can afford it, they are right 81% of the time. How many parents with equally viable cases are precluded from a positive decision because of lack of funds, ignorance or disheartenment?

The above results must be tempered with the knowledge that only 19% of all cases are resolved in a decision (Exhibit 5).⁸

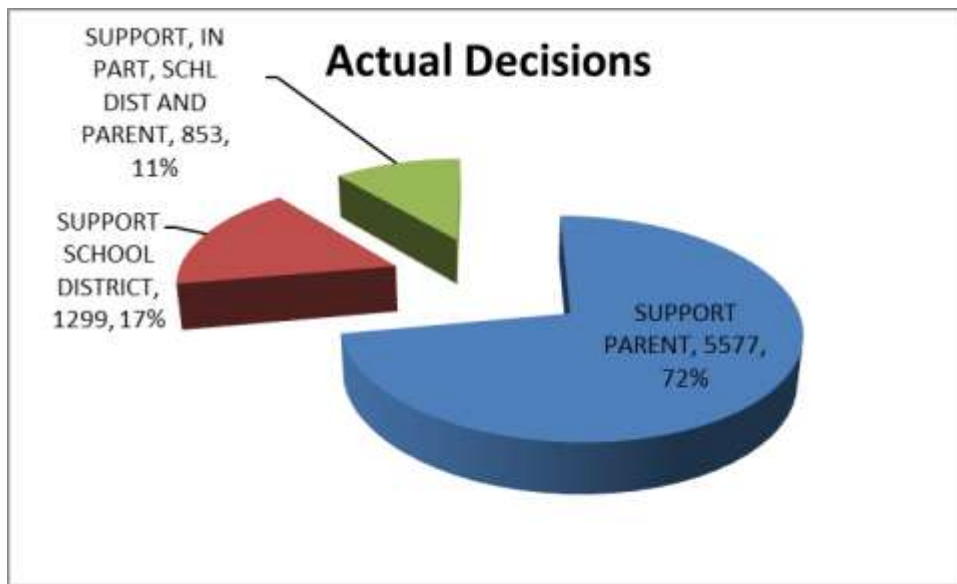


Exhibit 6

The Process

How Long Does It Take?

Actual decisions average more than three months and there have been several cases included in that that have taken over three years.

Average Time to Complete	2002	2003	2004	2005	2006	2007	2008	2009	2010	Average
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⁸ Additional work must be done to determine the cases in a parent’s or school district’s favor. If one makes assumptions about the winner in “Settled” cases being for the benefit of the requestor, the percentage for the parents is increased several percentage points. However no such assumptions are evident in the “Withdrawal” cases, because although one might intuitively assert that when a requestor withdraws the case they are doing so as an admission of the unviability of their case, the pollution of the “Withdrawal” category destroys the assertion.

Complaint by Disposition										
ACTUAL DECISION	69.01	74.36	72.43	92.72	139.45	154.00	167.72	133.91	76.65	109.92
DISMISSED AT SCHOOL DISTRICT REQUEST						86.20	74.25	82.33	42.00	79.00
INSUFFICIENT REQUEST					12.55	10.33	24.56	16.36	14.50	14.77
SETTLED				242.59	36.96	30.55	29.82	26.53	22.40	31.86
SETTLEMENT/WITHDRAWN	70.48	72.62	53.55	56.11	28.06					61.17
WITHDRAWN				218.20	74.58	64.69	74.98	77.18	55.66	72.43
Grand Total	70.11	73.05	58.40	68.89	77.59	74.48	85.24	76.82	50.00	72.84

Exhibit 7⁹

Resolution

Every Due Process Complainant is required¹⁰ to participate in a Resolution Session. Since the inception of the requirement for Resolution Meetings on all Due Process Complaints (2005-6 school year) the results have been (Exhibit 8):

- 10% result in the Due Process request being withdrawn
- 9.8% of the time the parties are able to enter into a written settlement agreement thereby avoiding the Due Process Hearing.
- 42.4% of the Resolution Meetings are waived by the parties.
- 35.6% are moved to the Due Process hearing due to the elapsing of the statutory timeframe for the meeting.

Resolution Outcomes	2005	2006	2007	2008	2009	2010	Grand Total	
AMENDED					119	56	175	0.7%
CONTINUE MEDIATION - HEARING TIMELINE ON HOLD				1	1		2	0.0%
PARTIAL AGREEMENT - PROCEED TO HEARING		14	61	101	93	61	330	1.3%
PROCEED TO EXPEDITED HEARING - 15 DAYS ELAPSED			3	10	4	6	23	0.1%
PROCEED TO IMPARTIAL HEARING - 30 DAYS ELAPSED	171	2534	2037	1466	1676	763	8647	34.6%
PROCEED TO IMPARTIAL HEARING AT PARENT REQUEST			38	76	87	50	251	1.0%
REQUEST WITHDRAWN		322	648	728	508	291	2497	10.0%
WAIVED BY BOTH PARTIES - ENTIRE PERIOD		58	113	38	17	7	233	0.9%
WAIVED BY BOTH PARTIES - REMAINDER OF PERIOD	74	1467	1990	2768	3141	913	10353	41.5%
WRITTEN SETTLEMENT AGREEMENT		429	500	653	635	231	2448	9.8%
Grand Total	245	4824	5390	5841	6281	2378	24959	

Exhibit 8

The concept behind the mandatory Resolution Meeting is to hopefully resolve the matter before both parties have to incur the expense of full blown Due Process hearings. The Resolution Meeting is

⁹⁹ The large numbers in 2005 “Settled” and “Withdrawn” are a very small number of cases that fell into that category in the short year of introduction. When averaged, they do little to raise the overall time.

¹⁰ Commissioner Regulation 200.5(j)(2)

designed to have the parties sit down face to face and, unless the parent wants to bring an attorney, without attorneys in an attempt to have the parties “talk it out”, knowing that if they cannot, the Due Process hearing will commence relatively soon thereafter.

By saving 19.8% of the complaints from going to the full Due Process Hearing the requirement has saved a significant amount of time and money and because of its relatively short timeframe it would seem to not have the consequence of forcing one side to settle for less than they reasonably feel they deserve.

IDEA and local State regulations require that when a party commences a Due Process Complaint a resolution meeting may be held to see if the issues can be resolved between the parties before the parties enter into the Due Process Hearing.

If the School District (LEA) fails to hold the resolution meeting within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to proceed with the Due Process Hearing.

If the parent refuses or fails to participate in the Resolution Meeting, the School District may request the hearing officer delay or dismiss the complaint.

If the School District has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

Hearings

Only 33 % of all hearings that have a known disposition are held, the remaining 67% are not held. (Exhibit 10) There is no disposition on 11% of the hearings that are listed. (Exhibit 9) Range of hearings held over the past 8 years goes from a low of 24% to a high of 36%, with no trend established. Pendency hearings held have risen consistently from 1 in 05-06 to 154 in 09-10. Pendency hearings have a significantly greater percentage of hearings being held 67% vs. 33% for regular hearings. Pre-hearings have risen slowly from 54 held in 04-05 to 68 in 09-10. Pre-hearings have a significantly greater percentage of hearings being held, 67% vs. 33% for regular hearings. (Exhibit 11)

Hearings Summary					
SCH YR	NOT HELD	HELD	NO INFO	TOTAL	%HELD
02-03	2886	2232	1046	6164	36.21%
03-04	2677	1937	1849	6463	29.97%
04-05	4108	2250	1665	8023	28.04%
05-06	4097	2285	1716	8098	28.22%
06-07	6220	2304	90	8614	26.75%
07-08	5706	2755	89	8550	32.22%
08-09	6384	2802	122	9308	30.10%
09-10	5993	2024	519	8536	23.71%
Total	38071	18589	7096	63756	
	<u>59.71%</u>	<u>29.16%</u>	<u>11.13%</u>		

Exhibit 9

AS PERCENT OF KNOWN HEARINGS

NOT HELD 67.19%

HELD 32.81%

Exhibit 10

	HEARINGS		PREHEARINGS		PENDENCY	
NOT HELD	37738	59.19%	159	0.25%	174	0.27%
HELD	17897	28.07%	334	0.52%	358	0.56%
NO INFO	6988	10.96%	61	0.10%	47	0.07%

Exhibit 11

Current Placements of Complainants

As shown in the chart below (Exhibit 12) the majority of placements, of children that are the subject of a Due Process Impartial Hearing Complaint, are in a non-approved private school, which corresponds to the prevalence of tuition and other reimbursement complaints. The second largest group is public schools which would be expected.

Row Labels	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	Grand Total
CPSE - EARLY CHILDHOOD SETTING	32	14	23	57	72	40	66	41	345
CPSE – HOME	8	11	6	5	4	3	4		41
CPSE - OTHER CHILD CARE LOCATION	20	3	2	1					26
CPSE - PRESCHOOL SPECIAL ED SETTING - NOT INTEGRATED	14	20	11	7	4	1	3	2	62
CPSE - PRESCHOOL SPECIAL ED SETTING - INTEGRATED	25	10	13	5	2		2	2	59
CPSE - WORK SITE OF PROVIDER				1					1
CSE - 4201 SCHOOLS FOR DEAF AND BLIND								1	1
CSE - APPROVED PRIVATE SCHOOL (SPECIAL ED.)	221	136	144	136	130	211	225	160	1363
CSE - ARTICLE 81 (CHILD CARE INSTITUTION)				13					13
CSE – BOCES	35	14	16	116	14	16	11	14	236
CSE - CHARTER SCHOOL	4	2		48	5	15	34	29	137
CSE – HOME	62	29	17	71	13	71	100	45	408
CSE - HOME SCHOOLED	29	7	3	18	18	28	38	21	162
CSE – HOSPITAL	3		2	8		2	11	4	30
CSE - INTERIM ALTERNATIVE EDUCATION SETTING (IAES)	2		5		2		2		11
CSE - NONAPPROVED PRIVATE SCHOOL (SPECIAL ED.)	1500	2109	2114	2611	3545	3893	3646	3604	23022
CSE - PRIVATE/PAROCHIAL SCHOOL (GENERAL ED.)	150	45	58	37	26	60	464	394	1234
CSE - PUBLIC SCHOOL	2156	1944	2652	1863	1790	1471	1155	1474	14505
CSE - STATE AGENCY	1			72	1	2	2	3	81
CSE - STATE SCHOOL FOR THE BLIND			1	8					9
CSE - STATE SCHOOL FOR THE DEAF	1	1	1	24	1	2	3	1	34
Grand Total	4263	4345	5068	5101	5627	5815	5766	5795	41780

Exhibit 12

Impartial Hearing Officers

When you go to an Impartial Hearing the hearing is conducted by an Impartial Hearing Officer (IHO). There are 193 people authorized to hold these hearings in the State of New York. Attorneys comprise 133 of the 193 approved. (Exhibit 15)

The decisions for the parent have remained fairly consistent over the past 8 years ranging from a low of approximately 75% in 02-03 to an approximate high of 83% in 03-04. (Exhibit 14)

One question that the community deals with is whether there is a difference between IHOs. Based on the chart below (Exhibit 13) most of the IHOs are in the average range of decisions in the parent's favor. However 22 have never ruled in the parent's favor and 3 who have never ruled against a parent. Histories on individual IHOs can be developed.

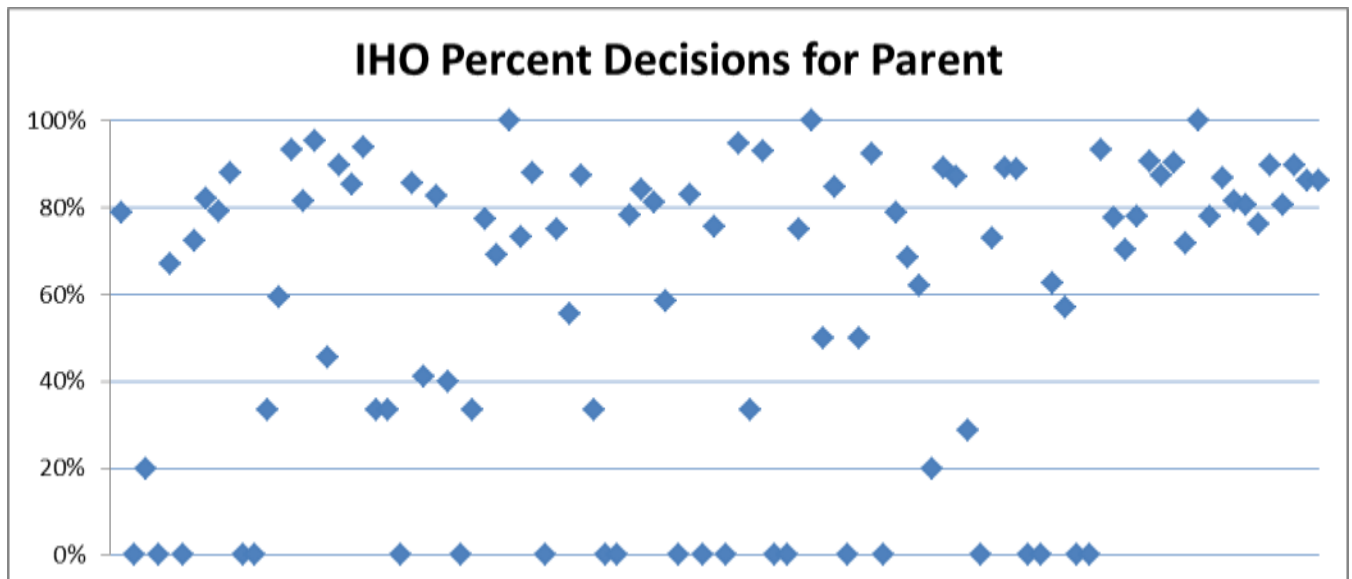


Exhibit 13

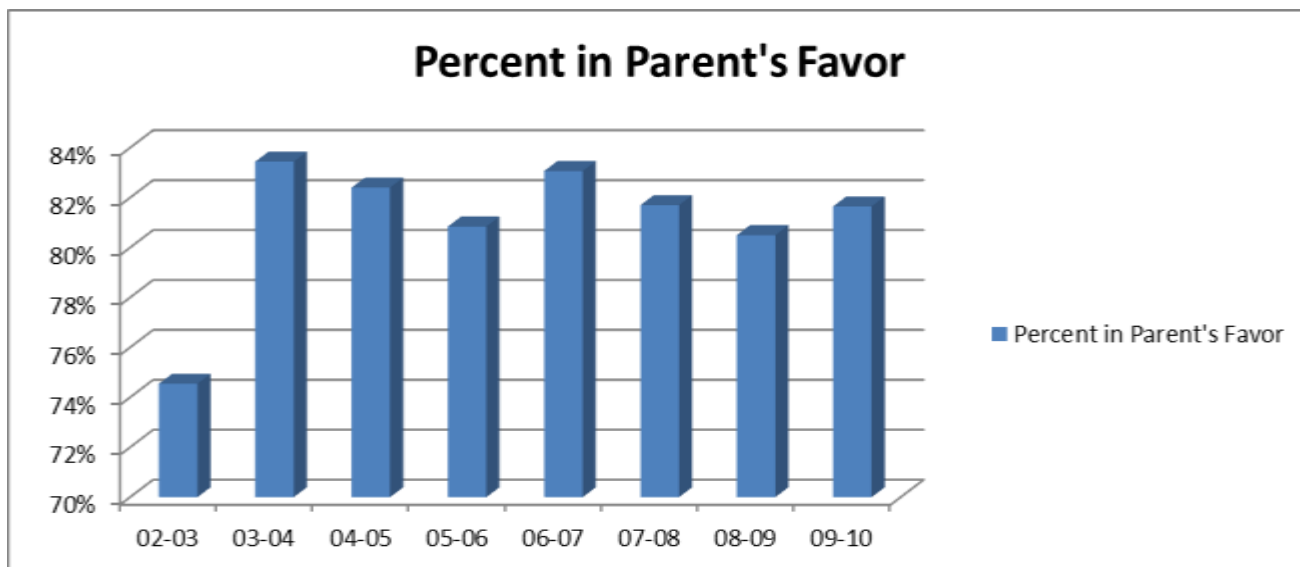


Exhibit 14

Breakdown of Impartial Hearing Officers as Attorneys

NON- ATTORNEY	60
ATTORNEY	133
Grand Total	193

Exhibit 15

Appeals to the State Review Officer

We present the chart below (Exhibit 16) as the only information contained in the IHIS database concerning cases that were appealed to the State Review Officer. New York is a two tiered state for review of Due Process Impartial Hearings, meaning that after the IHO has made a decision either party or both may appeal it, but only to the NYS SRO. If either or both parties disagree with the SRO decision the case is brought in Federal Court.

The chart shows the issues of the cases that are appealed to the SRO, however, the database contains only 48 cases annotated that they were appealed. In actuality there have been 1150 SRO decisions from 2002 to the present.¹¹ This is another area where the State must resolve to properly annotate the database. Our suggestion is that when an appeal is received in the SRO either they annotate the database or have a system for notification to the Department of Education.

It is important because the community in New York has generated a lot of discussion about the impartiality of the SRO and there is a perception in the parent community that is sometimes fostered by the school district community that the SRO rules in favor of the school district in an inappropriate percentage of cases. That can have a chilling effect on the parents' willingness to proceed to Due

¹¹ 2002-119;2003-110;2004;113;2005-131;2006-140;2007-140;2008-158;2009-145;2010-94 to the present.

Process. Some discussion carries that impression to the point of parent Attorney's telling them that if they proceed they have to be willing to go all the way to Federal Court before it will be over. Maintaining the database correctly will give the public the statistics on what cases are appealed, who was the original requestor and who won at hearing, allowing them to properly understand the underpinnings of the SRO decisions.

As an aside, it appears that although the parents win a large majority of the decisions, they also appeal a large majority of their losses. The school district on the other hand only appeals a small percentage of their losses. The result of that would be, based on the standard of appeal review, that the majority of the SRO decisions would back the IHO decision and dismiss the appeal. That could lead to the misconception that the SRO is biased against parents, when all he is doing is following a standard appeals pattern.

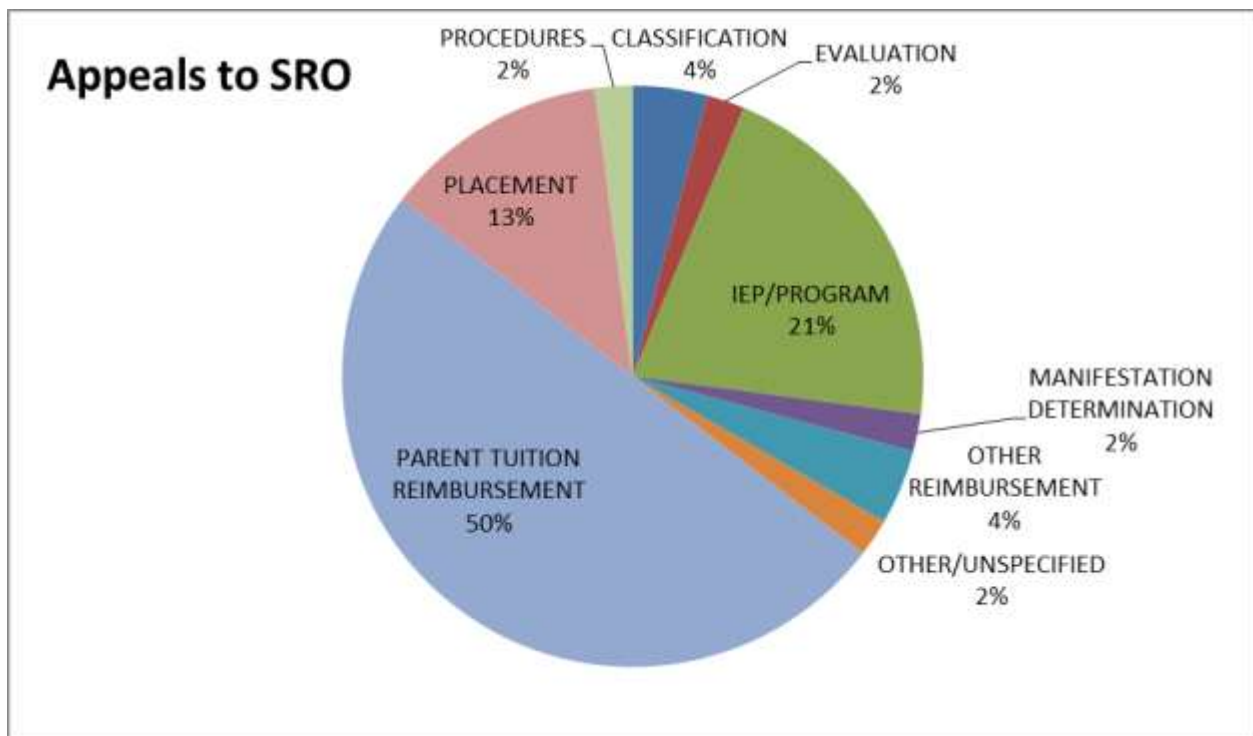


Exhibit 16

Conclusions and Recommendations:

1. Parents win 81% of cases decided.
2. It is costly to use the process; undoubtedly many cases by the parents are not brought because of the financial burden.

3. There are several IHO who rule decidedly in the school districts' favor. Participants should be aware of the record of their assigned IHO and also parents should be aware of the record of an IHO that the school district hires for hearings.
4. Resolution meetings work, avoiding hearings in 19.8% of the cases.
5. The State must strictly enforce the differentiation of "Withdrawn" and "Settlement" at every level. It should be emphasized in the Due Process notification to parents, part of the Complaint process, and should be required of the IHO and the Attorneys for both parties.
6. The State must properly track the cases appealed to the SRO in the IHRS.