

Study done in 1999.	Compiled by Julie Underwood General Counsel National School Boards Association (703) 838 6710 junderwood@nsba.org <a href="http://www.nsba.org/cosa">www.nsba.org/cosa</a>	<b>Question: Does your state delegate its special education hearings to non-education agencies?</b>
<b>State</b>	<b>Response</b>	<b>Contact person</b>
Alabama		
Alaska		
Arizona	Arizona retains a 2-tier system, in which the initial hearing is conducted by an Arizona Department of Education-appointed hearing officer (a private practitioner selected by the parties by rotation from a Department-provided list of 3 and an "each side strike one" procedure), and a hearing officer does the appellate review from the state office of administrative hearings.	Dean Pickett [Albert.Pickett@NAU.EDU]
California	California contracts with the University of the Pacific, McGeorge School of Law, to conduct IDEA hearings.	<u>Ron Wenkart@ocde.k12.ca.us</u> John Bukey [jbukey@csba.org]
Colorado	Colorado, the initial due process hearing is within the educational agencies, but the administrative appeals go to the administrative law judges (ALJs) who are housed in the Administrative Law Division, a separate department of government from education. However, in recognition of the issue you raise, it is my understanding that the ALJs operate under an interagency agreement with the Colorado Department of Education (CDE) and are thereby "under" CDE when they are deciding due process appeals  Colorado response: If a party appeals a decision of an impartial hearing officer in a first level hearing to the Colorado Department of Education, CDE contracts with the state level Division of Administrative Hearings, General Support Services. I think you could call them a non-educational independent agency.	Darryl Farrington Semple, Miller & Mooney, P.C. Darryl Farrington [dfarrington@smpc.com]  Lauren Kingsbery [lkingsbery@casb.org]
Connecticut	Connecticut, we maintain responsibility for conducting special education hearings and have not transferred that authority.	Stapleton Mark [Mark.Stapleton@po.state.ct.us]
Florida	Hearings in Florida are done by Administrative Law Judges who are not part of the sea or lea	Woodring, Daniel [Daniel.Woodring@fldoe.org]
Georgia	In Georgia, all special education hearings are conducted by a state agency called Office of State Hearings and Appeals. This agency is an independent agency made of administrative law judges who hear a variety of administrative hearings for various state agencies, including the Georgia Department of Education's special education due process cases.  Georgia (and everywhere else that we work), the hearings ARE held "by the SEA or LEA" (as REQUIRED under IDEA -- no other body can "hold" them) but, in the case of the SEA, the SEA has "delegated" the hearing function to the Office of State Administrative Hearings (or whatever it may be called in a particular state). Until 1994, OSAH Judges did not handle IDEA cases (rather, they did state custody issues; zoning; etc). Georgia's SEA, however, is still ultimately responsible for timelines, etc. I don't think there's any room under IDEA to not have the SEA or LEA somehow in a "supervisory" and ultimately responsible position for the hearing, regardless of the agency that actually convenes and holds it. "Delegation" must be clear in terms of the SEA still "holding" the hearing.	Sam Harben [SSH@harben-hartley.com]  Julie J. Weatherly 3414 Peachtree Rd, NE Suite 1550 Atlanta, GA 30326 (404) 262-9500
Idaho		

<b>Illinois</b>	<p>Ill. has not delegated its IDEA hearing functions to non-education agencies outside of the local or state education agency.</p> <p>In Illinois all hearings are conducted under the auspices of the Illinois State Board of Education.</p>	<p>Mary Kay Klimesh [mklimesh@seyfarth.com] Melinda L. Selbee IASB General Counsel <a href="mailto:mselbee@iasb.com">mselbee@iasb.com</a> 630/629-3776, ext. 1231</p> <p>Bennett Rodick [brodick@hlerk.com]</p>
<b>Indiana</b>	<p>Administrative due process proceedings required by the IDEA are conducted by the state education agency</p> <p>Indiana does not delegate this function to another non-educational agency.</p>	<p>Lisa F. Tanselle, Staff Attorney Indiana School Boards Association Phone: 317/639-0330 Ext. 110 Fax: 317/639-3591</p> <p>Kevin McDowell [kmcowel@doe.state.in.us]</p>
<b>Iowa</b>	<p>In Iowa, IDEA hearings are the responsibility of the Iowa Dept. of Education. The only time we would seek assistance from the Iowa Department of Inspections and Appeals (which has a cadre of general administrative law judges) would be if all of the ALJs we contract with had a conflict of interest in a particular case. I don't foresee that happening.</p> <p>In Iowa, it's all state.</p>	<p>Carol Greta, Legal Consultant Iowa Department of Education 515/281-8661 FAX: 515/281-4122</p> <p>Gannon, Mary [mgannon@ia-sb.org]</p>
<b>Kansas</b>		
<b>Kentucky</b>	<p>KY has delegated out to non-education agencies. We handle in-house with hearing officers on contract</p>	<p>Noland, Kevin - Deputy Commissioner [knoland@kde.state.ky.us]</p>
<b>Louisiana</b>	<p>In Louisiana, hearings are currently conducted by hearing officers appointed, trained, and paid by the State Department of Education. Representatives of the SDE are trying, however, to transfer this responsibility to administrative law judges and there is a constitutional amendment on the 10/4/03 ballot here to expand the authority of ALJs. If that amendment passes, I anticipate that a concerted effort will be made to move hearings to those ALJs</p> <p>As of July 1, 2003, Louisiana converted from a 2-tier system to a 1-tier system. See, Louisiana Bulletin 1706, Section 512.</p> <p>The SEA now conducts the hearings. We have contract hearing officers who are not state ALJs. The Louisiana Division of Administrative Law (DAL), the state agency that employs state ALJs, has been pressing the SEA to take over our IDEA hearings. The SEA has resisted DAL's pressure because of the steep learning curve on IDEA and the high turn-over of state ALJs. We are concerned that we will not have "knowledgable" hearing officers. The SEA's other concern is that the SEA can control the administrative costs of these hearings if the SEA directly supervises the process. If DAL takes over the hearings, the SEA will lose all administrative control of costs. The SEA has based its position on the provision of IDEA which requires that the hearing must be conducted by "SEA or the public agency directly responsible for the education of the child". 300.507(b). In other sections, IDEA addresses the responsibilities of "noneducational public agencies." See e.g., 300.121(b). DAL is a noneducational public agency - it is not an SEA or a public agency responsible for a child's education. I think a reasonable conclusion is that another state agency does not have IDEA authority to conduct these hearings unless it is by contract with the SEA.</p> <p>Conceivably, the ALJs could function in the same manner as</p>	<p>Bob Hammonds [rHammonds@hamsil.com]</p> <p>Barbara Ballard [Barbara.Ballard@LA.GOV]</p>

	our contract hearing officers, but Louisiana's DAL refuses to enter into such a contract, because it would limit DAL's control over the cases - and the administrative funding.	
<b>Maine</b>	Maine is single tier, hearings done by hearing officers under contract with Maine Department of Education	Forster, Sarah [Sarah.Forster@maine.gov]
<b>Maryland</b>	<p>In Maryland, the Maryland State Department of Education (MSDE) has designated the State's Office of Administrative Hearings (OAH) to hear IDEA cases. OAH is an independent body which not only hears IDEA cases but the full range of administrative agency disputes such as traffic. Once OAH decisions are rendered, the file and transcripts of the administrative hearing are sent to MSDE for archiving. If parties file an appeal in U.S. District Court, then MSDE is in charge of transmitting the record to the Court.</p> <p>Maryland has delegated responsibility for special ed hearings to the independent non - educational agency, the Maryland Office of Administrative Hearings, by statute: Education Article, section 8-413, Annotated Code of Maryland. The process works well. For more information, please contact who is our legal expert on special education in Maryland: Elliott Schoen</p> <p>Maryland, the hearings are conducted by the state Office of Administrative Hearings, which is a non-education entity.</p>	<p>Manisha S. Kavadi Reese &amp; Carney, LLP 170 Jennifer Road Suite 245 Annapolis, MD 21401 (410) 573-2001 fax (410) 573-1171</p> <p>Valerie Cloutier [vcloutier@oag.state.md.us]</p> <p>Elliott Schoen <a href="mailto:eschoen@oag.state.md.us">eschoen@oag.state.md.us</a> .</p> <p>Stephen Bounds [sbounds@mabe.org]</p>
<b>Massachusetts</b>	In Massachusetts, special education hearings and mediations are conducted by the Bureau of Special Education Appeals, which is within the Mass. Department of Education although the hearing officers' decisions are not subject to review by the Commissioner or the Department. None of the special education hearing functions are delegated to a non-educational agency. If you need additional information about the Mass. Bureau of Special Education Appeals, I suggest that you contact Jackie Belf-Becker, the administrator of the Bureau.	<p>Rhoda E. Schneider General Counsel Massachusetts Department of Education 350 Main Street Malden, MA 02148 Phone: (781) 338-3400</p> <p>Belf-Becker, Jackie -- JBelf-Becker@doe.mass.edu</p>
<b>Minnesota</b>	<p>In MN we just made some revisions to the due process hearing procedures. We moved from a two tier state to a one tier state where the state department is in charge of the hearing.</p> <p>Minnesota also converted to a single-tier system this summer. Under the two-tier system, ALJs from our OAH were among those trained by the state Department of Education and available to conduct level one hearings. The state trained others - lawyers and professors - to conduct the hearings as well. The new list has not been developed, but there is nothing in the law that would prevent OAH judges from being included on the list. I think the Department had similar concerns about cost and control when OAH conducted the hearings</p>	<p>Kirk Schneidawind Asst. Director of Government Relations Minnesota School Boards Association 1900 W. Jefferson St Peter, MN 56082 1-800-324-4459 <a href="mailto:kschneidawind@mnmsba.org">kschneidawind@mnmsba.org</a></p> <p>Steven Liss Assistant Attorney General 651-296-3304</p>
<b>Mississippi</b>	Mississippi has not delegated this role	Jim Keith [James.Keith@arlaw.com]
<b>Missouri</b>	In our state, the hearing system is a state educational agency hearing system. However, there are many states who use their state administrative hearing process from what I understand.	Atkins Lieberman, Heidi [hatkinsl@mail.dese.state.mo.us]
<b>Montana</b>	<p>Montana, the hearings are presided over by hearing officers under contract with the Office of Public Instruction.</p> <p>Our Office of Public Instruction handles due process hearings.</p> <p>Montana does not delegate its due process hearing function to another state agency.</p>	<p>Kradolfer, Kimberly [kkradolfer@state.mt.us]</p> <p>Elizabeth Kaleva Director of Policy Services Montana School Boards Association 1 South Montana Ave. Helena, MT 59601 406.829.9009 <a href="mailto:ekaleva@mtsba.org">ekaleva@mtsba.org</a></p>

		Warhank, Cathy [cwarhank@state.mt.us]
<b>Nebraska</b>	The Nebraska Dept. of Education (NDE) has a one-tier system. The NDE currently contracts with two attorneys in private practice to act as hearing officers in special education due process cases. The NDE assigns the cases to the hearing officers and the hearing officers' decisions are final.	Margaret Worth General Counsel Nebraska Department of Education mworth@nde.state.ne.us
<b>Nevada</b>	In Nevada, a two tiered state, the hearing officers and administrative review officers are appointed and trained by the Nevada department of education. They are not employees of the department or of the state.	MELANIE CROSSLEY [MMCROSSLe@ag.state.nv.us]
<b>New Hampshire</b>	New Hampshire DOE has not delegated the hearing function - the Dept. contracts with independent attorneys who function as hearing officers - the Dept. administers the hearing process	Larney, Ann [ann.larney@doj.nh.gov]
<b>New Jersey</b>	New Jersey, hearings are conducted by Administrative Law Judges employed by the Office of Administrative Law, which is an independent State agency. The ALJ's decision is a final decision and appeal is to state or federal court.	Novack, Roslynn [roslynn.novack@doe.state.nj.us]
<b>New York</b>	in NY State, we have made no such delegation in any district. However, the City of New York has floated a plan precisely like the one you describe in D.C. It hasn't made any progress yet, due to political hurdles in the city.	Kathy Ahearn [KAHEARN@mail.nysed.gov]
<b>N. Car.</b>	In North Carolina the special ed hearings are held by our OAH judges.  Back in the late 80's we were forced by the feds to "relocate" the IDEA hearings out of the State agency (hearing officers were appointed by the State - - not employees) and put in in an outside agency - -in our case the OAH. We managed finally to get them to approve a system in which the OAH goes first and then it goes from there to a State-appointed hearing officer (independent of the agency but appointed by it) and only after the two-tier system does it get appealed in to the courts.	Allison Schafer Legal Counsel/Director of Policy North Carolina School Boards Association  Laura Crumpler [lcrump@ncdoj.com]
<b>N. Dakota</b>		
<b>Ohio</b>		
<b>Oklahoma</b>	We have not delegated out that function in Oklahoma, but our State Department of Education is looking into that option. OKLAHOMA HAS JUST ENTERED INTO A CONTRACT WITH THE UNIVERSITY OF OKLAHOMA LAW SCHOOL TO OPERATE THE DUE PROCESS SYSTEM OF HEARINGS. THE PROCESS HAS NOT STARTED YET BUT WILL IN THE VERY NEAR FUTURE.	Andrea R. Kunkel Rosenstein, Fist & Ringold 525 S. Main Ste 700 Tulsa, OK 74103 (918) 585-9211 Kay Harley General Counsel Oklahoma State Department of Education
<b>Oregon</b>	Oregon Department of Education has contracted with the Office of Administrative Hearings (OAH), a separate state agency that provides independent hearing officers for state administrative hearings. The OAH is a non-educational agency The hearing officers have authority to issue final orders; it is a one-tier system.	Joe McKeever Assistant Attorney General Oregon Department of Justice Tel. 503 378-6003 joe.mckeever@state.or.us
<b>Pennsylvania</b>	Under IDEA, Pennsylvania remains one of the few states with a two-tiered review system. Pennsylvania provides for the first tier (LEA) review by delegating, under contract, coordination and administration of the first-tier hearing function to a regional educational agency, known as an Intermediate Unit. The regulation under which this delegation occurred is, however, broad enough to have permitted the Department of Education to have contracted with any outside vendor that could have provided the service. Thus, my answer in Pennsylvania would be that the authority in the first instance comes from the State Board of Education regulation, which I include below for your convenience. You should also note that the local education	Ernest N. Helling Assistant Chief Counsel Office of Chief Counsel Pennsylvania Department of Education 333 Market Street, Harrisburg, PA 17126-0333 Phone - (717) 787-5500 Fax - (717) 783-0347 e-mail - <a href="mailto:ehelling@state.pa.us">ehelling@state.pa.us</a> < <a href="mailto:ehelling@state.pa.us">mailto:ehelling@state.pa.us</a> >

	<p>agencies in Pennsylvania - our school districts - have the option of using the Intermediate Unit's hearing services or of conducting the hearings themselves. During the approximately 15 years in which our system has operated in this manner, no school district has been approved to operate its own hearing system and, to the best of my knowledge, only one school district - Philadelphia - has even applied, albeit unsuccessfully. I hope this helps and if you have any follow-up questions, please call or e-mail. The second tier (SEA) review remains under the supervision of the Department and is conducted by appellate panels, the members of which are appointed by the Secretary.</p> <p>22 Pa. Code section 14.162:</p> <p>The Office of Dispute Resolution in Pennsylvania is currently the only entity conducting special education due process hearings and it is funded by the Pennsylvania Department of Education but is supposed to operate independently. People have certainly discussed seeking other alternatives, but it hasn't happened yet.</p>	<p>Emily J. Leader Deputy Chief Counsel Pennsylvania School Boards Association (717)774-2331 x 3378 OR (800)932-0588 x 3378 Fax: (717)774-0718 <a href="mailto:Emily.Leader@psba.org">Emily.Leader@psba.org</a></p>
<b>S. Car.</b>	No delegation in South Carolina.	<p>George C. Leventis, Sr., Esquire Senior General Counsel South Carolina Department of Education Columbia, South Carolina 29201 Phone; 803-734-8783 <a href="mailto:gleventi@sde.state.sc.us">gleventi@sde.state.sc.us</a> Fax: 803-734-4384</p>
<b>S. Dak.</b>	<p>In South Dakota the special ed hearings are conducted by the Office of Hearing Examiners – SDCL Ch 1-26D, a non-education agency. I have always opposed this but the fed DOE has approved the state's plan which contains this provision.</p> <p>Our special education hearings have ALWAYS been conducted by persons or entities entirely separate from the SEA and the LEA, although the LEA or SEA does have to pay the bill of the independent person or agency. This may well have to do with the fact that we are a one-tier state, although I don't see how that would affect it.</p> <p>The group seems to be talking about management versus who conducts the hearing. In South Dakota, the SEA contracts with Office of Hearing Examiners, or with private attorneys, to hear and decide the cases. The decisions of these individuals are final, and can be appealed directly to state or federal court. I suppose one could say that the SEA "manages" the hearings, since the appointment, in each individual case, is made by the SEA. After this initial appointment, however, the case is entirely in the hands of the appointed entity or person. The SEA has nothing further to do with the case once the hearing examiner/attorney is appointed.</p>	<p>Thomas Harmon [<a href="mailto:TieszenLaw@usa.net">TieszenLaw@usa.net</a>]</p> <p>Craig Eichstadt Counsel to South Dakota Dept. of Education</p>
<b>Tennessee</b>	In Tennessee, the SEA conducts special education due process hearings. The Tennessee Department of Education contracts with private attorneys to serve as hearing officers.	<p>Christy Ballard General Counsel Tennessee Department of Education Christy Ballard [<a href="mailto:Christy.Ballard@state.tn.us">Christy.Ballard@state.tn.us</a>]</p>
<b>Texas</b>	in Texas special education hearings are currently held before hearing examiners appointed by the commissioner of education. However, in its most recent regular session, the Legislature passed House Bill 3459, which added Education Code section 29.0161 to require the Texas Education Agency and the State	<p>Kathleen Wells Director, Legal Services Division Texas Association of School Boards P.O. Box 400 Austin TX 78767-0400</p>

	<p>Office of Administrative Hearings to jointly determine, by December 1, 2003, whether it would be cost-effective for SOAH to conduct all or part of the special education due process hearings.</p> <p>I would like to stay up with this debate in D.C. so we can help influence the debate down here on this delegation issue as it develops.</p>	<p>800-580-5345 512-467-3610 Fax 512-467-3522 <a href="mailto:kathleen.wells@tasb.org">kathleen.wells@tasb.org</a></p>
<b>Utah</b>	Utah, nope - single tier, managed by SEA	<p>martin bates [<a href="mailto:martin.bates@granite.k12.ut.us">martin.bates@granite.k12.ut.us</a>]</p>
<b>Vermont</b>	In Vermont the hearings are conducted by the "state" but not by state officials. Rather, the State Education Agency (the Vermont Department of Education) contracts with, mostly (one of our hearing officers is also a hearing officer with our Human Services Agency), private individuals who act as independent hearing officers.	<p>William Reedy [<a href="mailto:billreedy@education.state.vt.us">billreedy@education.state.vt.us</a>]</p>
<b>Virginia</b>	Virginia has a one-tier system and the hearing officers are appointed and currently trained by the Supreme Court of Virginia.	<p>Mehfoud, Kathleen S. [<a href="mailto:KMehfoud@ReedSmith">KMehfoud@ReedSmith</a> For additional information contact Pat Andean at the Va Dept of Ed 804 225 2234.com]</p>
<b>W. Va.</b>	West Virginia has not delegated its IDEA hearing functions to non- education agencies outside of the local or state education agency. State Department of Education contracts with lawyers to serve as Hearing Officers.	<p>Claudia Bentley [<a href="mailto:CBENTLEY@bowlesrice.com">CBENTLEY@bowlesrice.com</a>]</p>
<b>Washington</b>	<p>Washington State has a single tier system. The Superintendent of Public Instruction contracts with the State Office of Administrative Hearings to conduct the hearings and delegates to the assigned administrative law judge the authority to render the final decision by the Superintendent. WAC 392-101-010 Conduct of administrative hearings.</p> <p>In Washington State special education due process hearings are conducted by the Office of Administrative hearings a non-education agency.. The office is statutorily created and responsible for the impartial administration of administrative hearings. If you want more information on the agency, its website is <a href="http://www.oah.wa.gov">www.oah.wa.gov</a></p>	<p>Stolier, Dave (ATG) [<a href="mailto:DaveS@ATG.WA.GOV">DaveS@ATG.WA.GOV</a>]</p> <p>Marilee Scarbrough [<a href="mailto:M.Scarbrough@wssda.org">M.Scarbrough@wssda.org</a>]</p>
<b>Wisconsin</b>	<p>Wisconsin, the state SEA contracts with the state Dept of Administration, Office of Hearings and Appeals, to conduct all special ed hearings. The state SEA is responsible to ensure that the hearing officers are trained in special ed law. Under 34 CFR 300.508, no employee of the state SEA may conduct these hearings, but the SEA may pay a 'non-employee' to conduct the hearings. We pay a sister agency. Prior to this approach, we contracted with private individuals to conduct hearings</p> <p>In Wisconsin, the Department of Public Instruction a couple years ago terminated the two-tier administrative hearing procedure they conducted and now use the State Division of Hearing and Appeals administrative law judges to conduct hearings. By the way, in spite of suggestions by the 7th Circuit Court of Appeals to the contrary, they are generally not knowledgeable about education policy and law! Most of their caseloads deal with criminal matters.</p>	<p>Ellefson, Sheila DPI [<a href="mailto:Sheila.Ellefson@dpi.state.wi.us">Sheila.Ellefson@dpi.state.wi.us</a>]</p> <p>Joanne Harmon Curry [<a href="mailto:jhcurry@lathropclark.com">jhcurry@lathropclark.com</a>]</p>
<b>Wyoming</b>		

<p><b>Additional advice</b></p>	<p>NASDSE has a couple of different studies they can share with you showing each state and the process used. You may want to give them a call. Additionally, I recommend you contact Joleta Reynolds, of the US Department of Education - she is assistant to the OSEP director, Robert Pasternek. She is currently working out of her home, and her e-mail address is: <a href="mailto:JoLeta.Reynolds@ed.gov">JoLeta.Reynolds@ed.gov</a></p> <p>I think confirmation from OSEP, that IDEA hearings can be delegated by a state to a non-educational agency without violating IDEA, might be helpful to the DC Public Schools case (Perhaps in the form of an Affidavit).</p>	<p>Atkins Lieberman, Heidi [hatkinsl@mail.dese.state.mo.us]</p>
	<p>We successfully defended this practice for the State of Florida a couple of years ago.</p>	<p>Charlie Weatherly [clweatherly@weatherlylaw.com]</p>