Study of the Illinois Due Process Procedures: 
Improvement Strategies

After receiving external input from the field regarding the high cost of due process, the Illinois State Board of Education directed the Center for Special Education to review the existing statutory requirements and related rules pertaining to the impartial hearing process. In February 2001, A Study of the Illinois Due Process Procedures was presented to the Illinois State Board of Education. The Study affirmed that the current system, while capable of improvement, is working well. As documented in the Study, 82% of all hearings during the eighteen-month period between June 1999 and November 2000 were resolved within two days of hearing or less, and 96% of the hearings were resolved in five days or less. For that period, cases were disposed of with an average hearing length of 1.6 days. One hearing took nineteen days. This case is clearly an aberration. No other single hearing came close to this length. The two longest hearings other than the aberration took just seven days each.

The Study identified seven strategies for improving Illinois’ dispute resolution procedures. These strategies include:

(1) Placing more emphasis on other dispute resolution processes, such as mediation and complaint investigation;

(2) Establishing parent liaisons at the local level to resolve disputes before they escalate;

(3) Continuing to emphasize hearing officer training on case management strategies;

(4) Holding hearing officers accountable for effective case management

(5) Monitoring more closely the caseload of each hearing officer and possibly amending the statute to allow hearing officers more flexibility in accepting cases;

(6) Providing technical assistance to districts and parents; and

(7) Empowering hearing officers to deny joint requests for continuances.
The State Board requested a progress report on the implementation of the improvement strategies be provided at its May 2001 meeting. This report highlights the activities both completed and in progress.

**Increased Emphasis on Mediation and Complaint Investigation (1)**

Upon reviewing our internal human resources it is apparent that several trained and active mediators have indicated their intent to retire within the next eighteen months and professional vacancies continue to exist for other required special education activities. This loss of trained mediators will require that the current cadre of available mediators be supplemented with newly identified and trained mediators to supplement the current group of mediators. Nowhere is this need greater than in the greater Chicago area. This plan will include the possibility of contracting with external mediators or an external mediation group in the Chicago area to augment the group of trained mediators working for this agency.

Additionally, the *Parent’s Guide: The Educational Rights of Students with Disabilities* emphasizes the availability of mediation as a viable alternative prior to initiating a due process hearing, as well as when a due process hearing is pending. ISBE will redouble its efforts to encourage parties to utilize state-sponsored mediation services as a voluntary step prior to the request for a due process hearing.

Annually the Illinois State Board of Education receives and investigates between 160-180 written complaints alleging that a local school district has failed to comply with the state and federal requirements governing educational services for students with disabilities. The procedures for filing a written complaint is emphasized in the revised *Parent’s Guide: The Educational Rights of Students with Disabilities* that is scheduled for statewide dissemination this summer. The statewide parent training and technical assistance activities described below shall also emphasize the complaint investigation process as an alternative method of resolving differences.

The Center for Special Education recognizes the need to provide training to parents and district personnel on effective dispute resolution procedures. This training is being developed and will be available for presentation at the August 2001, Special Education Directors’ Conference and available throughout the year upon request. This training is described in more detail under the subcategory “Technical Assistance to Districts and Parents.”

The Center for Special Education recently completed a Self-Assessment that was required as part of the OSEP continuous improvement monitoring process review for Illinois. Between October and December 2000, staff from the Illinois State Board of Education and the Illinois Department of Human services worked with a Steering Committee comprised of over 50 stakeholders reviewing data and making determinations about the current compliance status of Part B and Part C
services in Illinois. One of the identified needs that arose out of the Self-Assessment was the need to collect customer satisfaction information from those individuals accessing due process, mediation and the complaint systems. Another recommendation was that the findings of all complaint investigations be summarized and made available. A plan for implementing these recommendations is currently being developed.

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**Establishment of Parent Liaisons (2)**

On January 29, 2001, a new position funded through Project CHOICES was created to provide for the coordination of statewide parent training and technical assistance activities sponsored and/or funded by the State Board of Education. Ms. Deb Kunz accepted this position and will play an important role in facilitating collaboration between families of students with disabilities and the public school community, providing linkages between advocacy groups and public schools in addressing issues pertaining to students with disabilities, and working with the State Board to coordinate parent involvement activities within several of its special education training and technical assistance initiatives. In particular, Ms. Kunz will assist with oversight of Illinois' newly established Parent Training and Partnerships Project, through which Illinois' four Parent Training and Information Centers receive grant funds to conduct professional development and collaborative activities involving parents and school personnel. She will also provide technical assistance and professional development related to parent/school collaboration.

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**Hearing Officer Training Emphasizes Case Management Strategies (3)**

On June 4-5, 2001, the due process training entity will host a two-day training for hearing officers. A focus of the training will be “Making Due Process Hearings More Efficient and Effective.” The following issues will be addressed: Extent of Hearing Officer Authority; Hearing Officer Responsibilities, Necessity and Authority of Hearing Officer During Pre-hearing Conferences and Hearings; Evidentiary Matters, Limiting and Scheduling Witnesses, Burden of Proof, Rules of Evidence, Setting Hearing Date(s), Ex-parte Communication and Controlling the Parties.

Case management strategies will be an ongoing agenda item at all future trainings and will be an important consideration in the evaluation of hearing officer performance. Hearing officers who fail to effectively manage assigned cases will have their contracts terminated.
Hearing officers must be empowered to manage cases. This empowerment will require some changes in the statute and implementing regulations. Following is a summary of the possible statutory and regulatory changes currently under investigation:

23 IAC 226 should authorize hearing officers to grant summary judgments in cases based upon written submissions of the parties.

23 IAC should authorize hearing officers to grant directed decisions after presentation of evidence by one party.

23 IAC should authorize hearing officers to deny extensions of time (or continuances) to either party or both parties acting jointly if delays could have adverse impact on the student. (This change would be consistent with 34 CFR 300.511 that reads, “A hearing officer may grant specific extensions of time.” The IDEA does not require hearing officers to grant joint requests for continuance – this requirement is only found in 226.640 c) 1). This requirement exceeds federal regulations/law.

23 IAC 226 should authorize hearing officers to dismiss requests for due process for failure, after a reasonable time not exceeding 45 days, to prosecute a request.

23 IAC 226 should authorize hearing officers to grant sanctions against any party to a hearing for unnecessary or intentional delays.

The Illinois State Board of Education must hold hearing officers accountable. The reasons for termination listed in 105 ILCS 5/14-8.02a (e) should be expanded to include failure to manage cases in an efficient manner and failure to attend mandatory training sessions. In addition 105 ILCS 5/14-8.02a (d) should be revised limiting all hearing officers to a one-year contract.

In January 2001 the Illinois State Board of Education began issuing monthly reports to all hearing officers identifying the status of all assigned cases. In addition, warning letters are sent to those hearing officers who have cases out of compliance with the required timelines, such as, failure to set a date for pre-hearing conference, failure to set a date for the hearing, notice that continuance
has expired and no further action has been scheduled, the written decision is past due, etc.

On a weekly basis, the Illinois State Board of Education reviews the caseload of each hearing officer. This review confirms that those hearing officers available to hear Chicago 299 disputes have a disproportionate number of assigned cases. 105 ILCS 5/14-8.02a (e) prohibits a former employee or current resident of the school district, special education cooperative, or other public entity involved in the due process hearing from serving as a hearing officer. This particular requirement exceeds federal law that only limits a hearing officer from hearing cases where he/she is “an employee or has personal or professional interest that would conflict with his or her objectivity in the hearing” (34 CFR 300.508 (a)). Five of Illinois’ eighteen hearing officers reside in Chicago and are thereby excluded from taking Chicago 299 cases. Several of the hearing officers are excluded from taking cases in districts/counties where they were employed over 30 years ago. It is being proposed that the residency requirement be maintained except in school districts with 500,000 inhabitants or more. It is also being proposed that the phrase “special education cooperative” be stricken and that the phrase “former employee” be changed to “employed or administratively connected to the district during the past 10 years.” By making these adjustments, the hearing officer caseload will be balanced and Chicago 299 cases, representing 65% of all requests, will be resolved expediently. In addition, allowing hearing officers to accept cases closer to their residence will reduce scheduling and traveling conflicts and ultimately result in cases coming to closure more quickly.

As previously noted, the statute prohibits hearing officers from being assigned cases involving any district services by their resident special education cooperative. This particular limitation should be removed. Special education cooperatives differ in structure, size and service delivery. A cooperative highly decentralized serving 30 districts is certainly a different structure than a highly centralized joint agreement serving a limited number of districts. Because of the differences in operating structure, hearing officers and the parties involved should have the flexibility to determine if there is a conflict of interest on a case-by-case basis.

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Technical Assistance to Districts and Parents (6) (1)

The Center for Special Education, Division of Program Compliance, is developing a one-hour training session for school personnel and parents. The session will focus on both pre-hearing and hearing strategies. While the emphasis of the training will be on due process, other dispute resolution procedures will be discussed such as mediation and complaint resolution. The session will also focus on common IEP violations and what arguments win and why.
This session will be available for presentation at the August 2001, Special Education Directors’ Conference and available throughout the year upon request. If demand for the session warrants, the possibility of hosting a Teleconference or Internet Real video, will be investigated. The availability of the session will be posted on the Special Education Homepage.

A description of the videotape, “Due Process – Resolving Special Education Disputes,” and its availability has been posted on the Illinois State Board of Education -- Special Education Homepage. The video is available through each special education cooperative and multiple copies are available through the Parent Training and Information Centers and the Illinois State Board of Education, Information Center.

Other Changes to the Statute and Regulations

While not specifically addressed in the Study, the following statute and regulatory changes are being discussed and may be included in the legislative proposal to be submitted to the State Relations Office in the fall of 2001.

105 ILCS 5/14-8.02a(g) should be amended to state that “the impartial due process hearing officer shall not initiate or participate in any ex parte communication with the parties, including the Illinois State Board of Education and its staff, except to arrange for date, time and location of the prehearing conference and due process hearing and to receive confirmation of whether a party intends to participate in the prehearing conference…” While it is the practice of both the hearing officers and the State Board of Education staff, the current statute does not specifically exclude the State Board of Education and its staff from ex parte communication.

105 ILCS 5/14-8.02(h) should be removed from the statute. P.A. 89-652 that went into effect on July 1, 1997 repealed the two-tier due process system described in this section.

34 CFR 300.511(a) of the IDEA requires that a final decision be issued within 45 days after the receipt by the district of a due process hearing request. The timelines currently established in Illinois statute and implementing regulations exceed the 45-day timeline. Following is a summary of the minor adjustments under consideration:

a. Reduce the time for appointment of a hearing office by ISBE from five (5) days to three (3) days.

b. Reduce required time for notice of pre-hearing conference from “not less than ten days” to “not less than five days.”

c. Reduce required time between pre-hearing conference and hearing from not less than fourteen days to not less than 7 days.
d. Remove from the 45-day timeline the parties right to request a clarification and the hearing officer’s responsibility to respond.

e. Change the method of calculating timelines to “business day.” “Business day” is consistent with IDEA 97, is defined in 226.75 and is commonly used throughout both federal and state statute and regulations. In no other place are timelines calculated based on the Statute of Statutes. This method of calculating timelines is confusing to parents and educators. This would also require a change at 14-8.02a (e), last paragraph that reads “For purposes of this Section, “days” shall be computed in accordance with Section 1.11 of the Statute on Statutes (5 ILCS70/1.11).”

f. Reduce the number of days in which a party aggrieved by the hearing officer’s decision can bring court action. This is a matter currently under investigation by OSEP. 105 ILC S 5/14-8.02a (i) gives the parties 120 days to appeal a hearing officer’s decision. This timeline is often used to delay the implementation of the decision. The Illinois State Board of Education, while it attempts to implement the timelines set forth by the hearing officer in the decision, must limit enforcement proceedings until after the timeline for appeal has lapsed.

The statutory and regulatory changes identified throughout this report include recommendations received from the Due Process Evaluation and Training Entity (Southern Illinois University Law School), and preliminary discussions with the Due Process Screening Committee regarding needed amendments to the statute and implementing regulations. On June 5, 2001, a joint meeting will be convened with the Training Entity and the Due Process Screening Committee for the purpose of reviewing the statute and regulations and identifying proposed changes. Input from hearing officers, parents, school district representatives and attorneys will also be solicited in the development of a legislative proposal to be presented to the State Board of Education for its review and consideration in September 2001. Since the fall legislative session is an over-ride session, it is unlikely that any new legislative imitative will be introduced in the fall. There is also concern that the Spring/Summer session may be an emergency session only and the proposed due process changes may not be viewed as an “emergency.” Therefore, it is possible that any changes submitted to the State Relations Office in the fall of 2001 may not be introduced until the spring of 2003.