ISBE HEARING OFFICER TRAINING AGENDA
May 11, 2012
Chicago Bar Association Building, 321 S. Plymouth Court, Chicago

Note: The topics for this training are all from the list made at the March 1, 2012 meeting with IHOs regarding the development of draft ASPs.

Also, since Perry Zirkel could not be with us, Deusdedi Merced will be joining us. He is the current Chief Hearing Officer in D.C., works with us in training the NY hearing officers, has done a host of HO trainings around the country and been in several hundred hearings, first as parent counsel, then as NYC counsel and last as a HO in D.C.

8:30 – 9:00 Continental Breakfast

9:00 – 9:45 The 45 day deadline – Confusion re: when it starts and ends Lyn Beekman

Lyn will address when the 45 days starts if the parties want to pursue mediation or settlement or ask the IHO to “extend” the RM period per Illinois law. Andy will speak to questions regarding the ISBE practices including its tracking and mediation forms’ references to the RM period.

Lyn will then address how to handle requests for clarification given OSEP’s view on finality of a decision.

9:45 – 10:30 Sanctions Deusdedi Merced

Deusdedi will review the authority of IHOs to sanction under both Illinois law and IDEA. He will then discuss the various types of sanctions and factors to consider in deciding which, if any, might be appropriate and how to fairly impose it.

10:30 – 10:45 Break

10:45 – 11:30 Sanctions - continued

11:30 – 12:15 Potporri – Consolidation; Security; and Non-attorneys Lyn Beekman

Lyn (with Andy re: ISBE/SEDS procedures) will discuss how consolidations will be handled; how to deal with security concerns; and, setting guidelines for advocates/individuals with special knowledge/LEA employees reps participation

12:15 – 12:45 Lunch and Your Turn IHOs and Lyn Beekman

Rather than having a designated topic we will have an open session so IHOs may raise any issue/topic/concern and have other IHOs respond how they have or might address the point raised. Lyn will merely facilitate the discussion.
12:45 – 1:15 Responses and Default Judgments Deusdedi Merced

Deusdedi will discuss possible IHO options when a party fails to file a response, or files a response which is not compliant with IDEA requirements under 34 CFR 300.508(e) and (f), including entering a default.

1:15 – 3:00 Expedited Hearings Lyn Beekman

Lyn will quickly review the basic requirements and then address a host of interesting questions which came up during the development of the ASPs or otherwise from IHOs e.g., are threshold questions re: eligibility in a discipline context expedited?

3:15 – 3:30 Break

3:30 – 5:00 News and Notes Andy Eulass

Andy will provide some updates on various matters including the status of the training and evaluation entity’s contracts and some important changes in Illinois law.
THE 45-DAY DEADLINE
CONFUSION RE: WHEN IT STARTS AND ENDS

Lyn Beekman
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I. INTRODUCTION.

A. ISBE considers the resolution meeting (RM) period to start from the date the LEA receives the due process complaint – not the date the ISBE receives it.

B. IDEA and its regulations require that a final decision be issued not later than 45 days after the expiration of the 30 day resolution meeting (RM) period, or the period as adjusted for specified reasons.1

C. Under the Illinois School Code a party has the right to request the IHO “extend” the 30 day RM period.2

D. Pursuant to the Illinois School Code a party has the right to a request for clarification of a decision within 5 days after receipt of the decision. The IHO must rule on the request within 10 days of its receipt, but such decision must be within the 45 day deadline.3

E. Monitors from the Office of Special Education Programs (OSEP) have been critical of ISBE and IH0s for not adhering to the above requirements regarding the 45-day deadline, as well as the timelines regarding expedited hearings, and documenting such adherence.

II. SOME CONFUSING SITUATIONS

A. If the parties choose to use mediation rather than a RM the 30 day RM period still

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1 34 C.F.R. § 300.515(a). Under 34 C.F.R. § 300.510(c), the 45-day timeline for the due process hearing starts the day after one of the following events: (1) both parties agree in writing that no agreement is possible; (2) after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or (3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

2 105 ILSC 5/14-8.02a(g-20)

3 105 ILSC 5/14-8.02a(h)
applies. So, the 45 day deadline will start running unless the parties agree in writing to continue the mediation at the end of the RM period. If the agreement is entered into after the 30 day RM has expired, to be save an extension should be requested and granted.

B. If the parties agree to continue settlement discussions beyond the 30 day RM period, the IDEA regs do not address this situation so the 45 day timeline will start running unless the parties request and obtain an extension. But, the settlement negotiations should be monitored by mandating status reports from the parties at a set time, setting up a conference call to obtain the status or setting hearing dates.

C. If a party requests the IHO to “extend” the 30 day RM period, absent where the parties have already agreed in writing before the RM period expired to continue the mediation process, the IHO should advise the parties as follows. Since under IDEA the RM period cannot be extended, the request cannot be considered. However, the parties do have the option to request an extension of the 45 day deadline.

D. Unless prior scheduling has built in time after the rendering of a decision for a possible request for clarification, any request for clarification received should be acknowledged by the IHO. But, given the IHO’s jurisdiction ended with the rendering of the decision the parties should be advised the IHO cannot consider and rule on it.

Whether an IHO at the time of the PHC, or possibly at the end of the hearing, wants to raise building in time for such a request seems a bit awkward, implying the possibility of an unclear decision. But, if a party requests such be built in the schedule the IHO might consider it. Query, whether such would be good cause. And, even more fundamentally, even if the time to consider a request for clarification were built in, does an IHO have jurisdiction to consider it once having rendered a decision? Or, does the decision technically need to be a “draft” to avoid the loss of jurisdiction given OSEP’s view of a decision’s finality otherwise. Maybe the best option if such is built in to the schedule is to identify the initial decision as “interim pending lapse of the 5 day time period for the filing of a request for clarification and the IHO’s immediate declaration of its finality for purposes of appeal or the IHO’s ruling on such a filed request.”

Aside from requests for clarification, an IHO like a court, may receive, consider and respond to requests to make clerical/typographical corrections (not substantive or clarifying). If made the IHO should note the appeal period will not be effected by the correction.

E. The ISBE tracking and mediation forms and certain of its procedures have given rise to some questions which will be entertained and addressed by Andy.

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4 Q and A on Procedural Safeguards and Due Process Procedures, 52 IDELR 266 at Q D-6 (OSEP 2009)
Reason commands us far more imperiously than a master. When we disobey the latter we are punished, when we disobey the former we are fools.

- Blaise Pascal

I. INTRODUCTION

A. In 2004, Congress amended the Individuals with Disabilities Education Act as the Individuals with Disabilities Education Improvement Act.¹

B. IDEA hearing officers do, and must, wisely exercise broad authority to do all things that are reasonably necessary for the proper administration of the due process hearing. Unquestionably, hearing officers have inherent authority to control the hearing room to prevent disruption and to control the course of the hearing to ensure an effective, efficient and timely hearing.

C. Less apparent is the hearing officer's authority to discipline parties and/or their lawyers when a party or the lawyer has engaged in misconduct. A court’s inherent authority to discipline parties and/or their lawyers is well recognized. But does the hearing officer’s authority to do all things that are reasonably necessary for the proper administration of the due process hearing extend to sanctioning authority? The answer to this question is generally a matter of state law.²


² Letter to Amstrong, 28 IDELR 303 (OSEP 1997).
D. This outline provides a review of hearing officer authority to impose disciplinary sanctions against a party or an attorney for actual misconduct during the hearing process, and identifies various factors to weigh when considering whether to sanction a party or an attorney.

II. HEARING OFFICER AUTHORITY – GENERALLY

A. The IDEA and its implementing regulations delineate the specific rights accorded to any party to a due process hearing. The hearing officer is charged with the specific responsibility “to accord each party a meaningful opportunity to exercise these rights during the course of the hearing.” It is further expected that the hearing officer “ensure that the due process hearing serves as an effective mechanism for resolving disputes between parents” and the school district. In this regard, apart from the hearing rights set forth in the IDEA and the regulations, “decisions regarding the conduct of [IDEA] due process hearings are left to the discretion of the hearing officer,” subject to appellate review.

B. It is well established that a hearing officer has the authority to grant whatever relief he deems necessary, under the particular facts and circumstances of each case, to ensure that a child receives the free and appropriate public education to which the child is entitled. Ultimately, the due process hearing system established by a state should provide for such authority.
C. The IDEA and its regulations do not comprehensively specify what particular procedural rules, penalties and sanctions are available to IDEA hearing officers to enable the hearing officers to effectively and efficiently manage the hearing process. However, a hearing officer has broad powers and discretion to manage the hearing process under the IDEA. This authority extends to various procedural and evidentiary matters, provided that any decision made by the hearing officer is consistent with basic elements of due process hearings and the rights of the parties set out in the statute and the regulations. Generally, decisions on procedural and evidentiary matters are given due deference and often the stricter standard of an “abuse of discretion” will need to be met for the

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9 See Letter to Armstrong, 28 IDELR 303 (OSEP 1997).
11 See, e.g., Davis v. Kanawha Cty. Bd. of Educ., 53 IDELR 225, 2009 WL 4730804 (S.D.W.V. Dec. 4, 2009) (finding that the hearing officer did not abuse his discretion in denying the parent’s requests for a continuance); O’Neil v. Shamokin Area Sch. Dist., 41 IDELR 154 (Pa. Comwlth. 2004) (unpublished decision) (finding that the hearing officer did not abuse his discretion by denying the parent’s motion to continue the due process hearing due to her child’s illness made two hours into the hearing because the parent was aware of the need at the beginning of the hearing); In re Student with Disability, 109 LRP 56222 (SEA NY 2009) (finding that the hearing officer properly dismissed the due process complaint with prejudice for the parent’s failure to prosecute and comply with reasonable directives issued during the proceeding). See also Letter to Steinke, 18 IDELR 739 (OSEP 1992) (regarding the applicability of the five-day rule and the discretion of the hearing officer to grant continuances); Letter to Stadler, 24 IDELR 973 (OSEP 1996) (advising that IDEA does not prohibit or require the use of discovery proceedings and that the nature and extent of discovery methods used are matters left to discretion of the hearing officer, subject to state or local rules and procedures).
ruling to be reversed. Thus, the test for reversal is not whether the reviewing judge would rule the same way as the hearing officer.

D. Ultimately, the state educational agencies have the responsibility to ensure that hearing officers are given the authority required to effectively and efficiently manage the hearing process and resolve due process complaints. Equally important, the state educational agencies are also tasked with the responsibility to ensure that a hearing officer's orders are implemented, and that whatever actions are necessary to enforce those orders are taken.

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12 See, e.g., Bougades v. Pine Plains Central Sch. Dist., 376 Fed. Appx. 95, 54 IDELR 181 (2d Cir. 2010) (unpublished) (cautioning that “independent review of the evidence is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities [that] they review”); Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 44 IDELR 89 (2d Cir. 2005) citing Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 27 IDELR 1135 (2d Cir. 1998) (“[D]eference is particularly appropriate when, as here, the state hearing officer’s review has been thorough and careful.”); County Sch. Bd. v. Z.P., 399 F.3d 298, 42 IDELR 229 (4th Cir. 2005) (faulting the district court for not giving the hearing officer’s thorough and supported findings of fact due weight); Kerkam v. District of Columbia, 931 F.2d 84, 17 IDELR 808 (D.C Cir. 1991) (observing that a hearing officer decision without “reasoned and specific findings” deserves “little deference”); Carlisle Area Sch. Dist. v. Scott P., 62 F.3d 520, 23 IDELR 293 (3d Cir. 1995) (observing that an administrative review is not a hearing de novo, and due deference must be given to the decision of the hearing officer below); Lewis v. School Bd., 808 F. Supp. 523, 19 IDELR 712 (E.D. Va. 1992) (stating that the rulings of the hearing officers are entitled to more than the customary “due weight” and must be accorded review on a more deferential “abuse of discretion” standard).

13 When ruling on a matter of any significance, it is important that the hearing officer include in the record the factors considered, and how said factors were balanced, to give the reviewing court a better basis to defer.

14 Letter to Armstrong, 28 IDELR 303 (OSEP 1997).

15 Id.
III. INHERENT AUTHORITY TO SANCTION

A. An IDEA hearing officer’s authority to issue disciplinary sanctions against a party and/or an attorney for hearing misconduct generally will be set forth in state law or regulation. Few states expressly grant IDEA hearing officers sanctioning authority.\(^{16}\)

\(^{16}\) See, e.g., CAL. GOV. CODE § 11455.30(a) (1997) ("The presiding officer may order a party, the party’s attorney or other authorized representative, or both, to pay reasonable expenses, including attorney’s fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in Section 128.5 of the Code of Civil Procedure."); 5 CCR § 3088 (1997) (California) ("The presiding hearing officer may, with approval from the General Counsel of the California Department of Education, order a party, the party’s attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel, to the California Special Education Hearing Office...."); 801 CMR 1.01(8)(i) (2012) (Massachusetts) ("A Party may file with the Presiding Officer, subject to 801 CMR 1.01(7)(a), a motion to compel discovery if a discovery request is not honored, or only partially honored, or interrogatories or questions at deposition are not fully answered. If the motion is granted and the other Party fails without good cause to obey an order to provide or permit discovery, the Presiding Officer before whom the action is pending may make orders in regard to the failure as are just, including one or more of the following ... [a]n order that designated facts shall be established adversely to the Party failing to comply with the order] or [a]n order refusing to allow the disobedient Party to support or oppose designated claims or defenses, or prohibiting him or her from introducing evidence on designated matters."); 19 TEX. ADMIN. CODE § 89.1170(b) (2001) ("The hearing officer has the authority to ... make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process."); MINN. RULES 3525.4110, Subp. 3 (2007) ("The hearing officer has the authority to take any actions necessary to ensure the compliance with all requirements of law and may dismiss the matter, with or without prejudice, if the party requesting the hearing fails to provide information required or ordered by the hearing officer.").

See also Nicholas W. v. Northwest Indep. Sch. Dist., 2009 WL 2744150, 53 IDELR 43 (E.D. Tex. Aug. 25, 2009) (upholding the sanction of a dismissal without prejudice because an alternative to dismissal, i.e., fines, costs or damages, against the plaintiffs was not available because plaintiffs proceeded in forma pauperis); K.S. v. Fremont Unified Sch. Dist., 545 F. Supp. 2d 995 (N.D. Cal. 2008) (upholding an award of sanctions of $300 by the hearing officer against the parents’ attorney for filing a motion that lacked merit and "had been filed in subjective bad faith and for the sole purpose of harassing" the school district); Poway Unified Sch. Dist., 2007 WL 1620766 (Cal. Ct. App. June 6, 2007) (unpublished) (affirming an award of sanctions issued by a hearing officer in the amount of $3091.25 for untimely notice of withdrawal on the morning of

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B. Many states, however, do not have laws that expressly provide for sanctioning authority. In these states, hearing officers who have exercised sanctioning authority have done so under the assumption that their authority is coextensive with that of the court and it is a power not derived from any express authority but arising from necessity.\textsuperscript{17} Said authority is, therefore, implied.\textsuperscript{18}

C. In Illinois, though hearing officers do not enjoy express authority to issue sanctions, hearing officers are not limited to the powers listed

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\textsuperscript{17} See, e.g., Bd. of Educ. of the Hillsdale Cnty. Sch., 32 IDELR 162 (SEA Mich. 1999) (relying on the state’s administrative code providing hearing officers the authority “to control the conduct of the parties or participants in the hearing for the purpose of ensuring an orderly procedure” when awarding costs of $308.86 to the school district’s lawyer based on the parents’ attorney’s “unexcusable failure to communicate with the District’s counsel in a timely fashion”); Okemos Pub. Sch., 29 IDELR 677 (SEA Mich. 1998) (relying on the state’s administrative code also relied on in Hillsdale, supra, when dismissing the due process complaint with prejudice because of the parent’s failure to cooperate and to comply with pre-hearing orders); Dist. City 1 & Dist. City 2 Pub. Sch., 24 IDELR 1081 (SEA Minn. 1996) (relying on the notion that hearing officers have the “implied authority to control the conduct of the hearing and persons appearing there” when ordering the student’s attorney to pay the school districts $2000 for pursuing a summary judgment motion “made without factual basis, upon unsupported and distorted facts, and upon illogical arguments”). Cf. Las Cruces Pub. Sch., 44 IDELR 205 (SEA N.M. 2005) (overturning a hearing officer’s recommendation to a court that the parents’ be held responsible for the district’s attorneys’ fees).

\textsuperscript{18} Courts, too, have provided support for the inherent, sanctioning authority of IDEA hearing officers. See, e.g., Stancourt v. Worthington City Sch. Dist., 841 N.E. 2d 812, 44 IDELR 166 (Ohio Ct. App. 2005) (concluding that IDEA hearing officers are “vested with implied powers similar to those of a court” and have the discretionary power to dismiss due process complaints as a sanction for disregarding orders or failing to prosecute); Moubry v. Indep. Sch. Dist. No. 696, 32 IDELR 90 (D. Minn. 2000) (interpreting a Minnesota Rule of Civil Procedure, since repealed, which granted the hearing officer authority to “do additional things necessary to comply” with the special education rules, to include “the authority to assess sanctions against a party who files a frivolous request for a hearing”).
in the pertinent regulation. 19

IV. FACTORS TO CONSIDER

A. When determining what type of sanction is appropriate to address offensive conduct, the hearing officer must balance his interest in managing the hearing process with each party's interest in receiving a fair chance to be heard.

B. Factors to consider in determining whether an individual committed a sanctionable offense and what type of sanction would be appropriate to address offensive conduct include:

1. **Is the misconduct willful or committed in bad faith?** A distinction should be made between willful misconduct and inadvertent mistakes. Mere incompetence or inexperience resulting in inadvertent mistakes may be construed as willful misconduct only after multiple warnings.

   A finding of bad faith "[does not require that the legal and factual basis for the action prove totally frivolous; where a litigant is substantially motivated by vindictiveness, obduracy, or *mala fides*...]." 20

2. **Was the offending individual put on notice of the possibility of sanctions being imposed?** When a party or attorney is acting inappropriately, the hearing officer should issue a stern warning that the behavior is not acceptable. In most instances, sanctions should only be imposed when the party or attorney continues with the offending conduct after being warned of the possibility of being sanctioned. 21

3. **Has the individual continually engaged in the same offending behavior despite repeated warnings to stop?**

4. **Has a record been made of the intermediate steps taken, or the warnings issued, by the hearing officer prior to the imposition of sanctions?** Steps taken by the hearing officer to avoid the imposition of sanctions should be reflected on

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21 See, e.g., D.H. v. Bd. of Educ. of Toledo City Sch. Dist., 51 IDELR 102 (N.D. Ohio 2008) (requiring the parents to pay the sum of $1000 as and for attorneys' fees as a sanction for filing an insufficient motion for consideration).
the record. Similarly, any warnings issued prior to the actual imposition of sanctions should be included on the record.

5. *Is it just?* A permissible sanction should be no more severe than required to satisfy a legitimate purpose.22 When lesser sanctions may address the misconduct, the hearing officer should first test the effectiveness of the lesser sanctions.23

6. *Is there a direct relationship between the offensive conduct and the sanction?* The sanction should have a direct relationship to the misconduct and should be carefully devised.24

7. *Is the parent appearing pro se?* More leeway should be provided to the parent who is unrepresented.25 Absent willful misconduct or bad faith, sanctions should not be imposed for inadvertent mistakes committed by an unrepresented parent.

8. *Is the sanction directed to the individual(s) responsible for the offensive conduct?* The sanction should be directed to the individual(s) responsible for the misconduct (i.e., the attorney, the party, or both). Where the client is unaware of the attorney’s misconduct, the sanction must be directed to

23 See *B.R. v. Dist. of Columbia*, 262 F.R.D. 11, 53 IDELR 78 (D.D.C. 2009). (“While dismissal with prejudice may be an unduly severe sanction for a single instance of attorney misconduct, it may be appropriate ‘after unfruitful resort to lesser sanctions.’”); *Nicholas W. v. Northwest Indep. Sch. Dist.*, 2009 WL 2744150, 53 IDELR 43 (E.D. Tex. 2009) (“For a court to dismiss a case with prejudice for want of prosecution, there must be a clear record of delay or contumacious conduct by the Plaintiffs and lesser sanctions would not serve the best interests of justice.”). See also *Epsom Sch. Dist.*, 31 IDELR 120 (SEA N.H. 1999) (dismissing the case without prejudice but subject to the parents agreeing to sign all the releases previously ordered before filing a new hearing request on the matters raised in the dismissed hearing request).
24 See *Millay v. Surry Sch. Dep’t*, 2010 WL 1634311, 54 IDELR 191 (D. Me. Apr. 21, 2010) (commenting that the hearing officer’s decision to hold three days of due process hearings with only one side present, knowing that the parent claimed that a serious illness prevented her attendance, borders on an abuse of discretion and runs counter to fundamental concepts of due process).
25 See, e.g., *Snyder v. New York State Educ. Dep’t*, 348 F. App’x 601, 53 IDELR 37 (2d Cir. 2009) (unpublished) (holding that the district court erred in dismissing the pro se parents’ FAPE claim just four days after a missed filing deadline and despite the parents being on notice that further delays might result in dismissal).
the attorney and must be carefully devised so as not to severely prejudice the student and/or parent or the school district.

9. Will the student be penalized for the parent or attorney's conduct? The sins of the father should not be visited on the child. The right to a FAPE rests not with the parent or the attorney, but with the child, and in sanctioning the parent and/or attorney, the hearing officer should strive not to penalize the student.

10. Is the compliant party likely to be prejudiced should the hearing officer not sanction the misconduct? Any continued risk of prejudice (e.g., potential of having to defend and incur costs associated with multiple filings and dismissals) to the compliant party should be considered when weighing whether to impose sanctions against the non-compliant party.

C. In some cases, there may be a need to hold a limited hearing to determine the facts as a basis for whether a sanction is appropriate and, if so, against who.

V. SANCTIONS – RANGE OF OPTIONS

A. Because few states expressly grant IDEA hearing officers sanctioning authority, and because the few that do have no regulatory guidance as to the nature or scope of permissible sanctions, the range of options is largely dependent on the creativity of the hearing officer or reliance on analogous federal and state rules.

B. Below are illustrations of the range of options that hearing officers can consider but the reader is cautioned that the particulars of each situation should inform whether a sanction is appropriate and the form it should take. As Uncle Ben said to Peter Parker in Spider-Man, “With great power, comes great responsibility.” Just because you can (or believe you can) sanction, it does not mean that you should wield such power indiscriminately.

1. Warnings, verbal/written reprimands, including directing counsel to instruct/control their client;

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26 See Exodus 20:5.

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2. Removing a disruptive individual from the hearing;
3. Requiring a party and/or their counsel to acknowledge and agree on the record to follow the hearing officer's directive;
4. Assessment of actual costs (paid to the party that incurred them);
5. Shifting the burden of production;
6. Shifting the order of presentation;
7. Exclusion of certain exhibits or testimony;
8. Limiting testimony;
9. Issuing an adverse inference;
10. Precluding affirmative defenses;
11. Advising the court in the decision whether a party or attorney's conduct should be considered when awarding attorneys' fees;
12. Dismissal of an issue or the case with or without prejudice, noting misconduct when the dismissal is predicated on the misconduct; and
13. Filing a grievance with the state bar when the attorney's conduct does not conform to the rules of professional conduct and responsibility.

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I. CONSOLIDATION

A. The last draft of the ASPs provides:

"The first Hearing Officer appointed shall make the determination whether to consolidate. In ordering the consolidation of any cases, Hearing Officers shall expressly state the applicable timelines in the order and shall use Form 4."

B. Andy will discuss the answers to these questions:

1). Will ISBE automatically send to the first IHO any second due process complaint involving the same parties filed during the pendency of the first complaint? If not, will it be for the second IHO (who might learn of it at the PHC) or the parties to initiate a request that the first IHO consider consolidation?

2). Can the parties substitute out the first IHO after s/he grants a consolidation request?

3). How are the cases to be handled on SEDS in terms of case numbers and otherwise?

II. SECURITY

A. The last draft of the ASPs provides:

"A. Consider Procedures at Prehearing."
If counsel raise any security concerns at the time of the prehearing conference and Hearing Officers find there is reasonable cause to believe there is a security concern, Hearing Officers shall request the District to provide security services at the time of the hearing. On the day of the hearing, the Hearing Officer will confirm that the security services are present at the time of the hearing, will remain readily available throughout the hearing and the manner in which they shall be provided i.e., inside or outside the hearing room.

B. Hearing Procedures.

If the security concern arises for the first time during the course of a hearing, Hearing Officers shall take such steps as deemed reasonably necessary to maintain safety and order. Among other steps, Hearing Officers might warn the party to act appropriately and instruct the party’s counsel to confer with their party about appropriate conduct during a recess (possibly granting reasonable opportunities for counsel to confer with their client upon request) or request the presence of security services."

B. In terms of deciding and implementing security measures, the IHO has the broad discretionary authority to do so as part of her/his responsibility to conduct the hearing and manage the process to insure it is safe, effective and fair. Letter to Anonymous, 23 IDELR 1073 (OSEP 1995). Security measures determined appropriate by the IHO should be specifically set forth in the PHO (or placed on the record if determined during the course of the hearing).

Therefore, an IHO could, among other things: 1) require the district to provide a security person who shall be present at the building entrance/outside the hearing room/in the hearing room each day of hearing from X to Y; 2) set the hearing at a location that already has metal detectors (e.g., federal/state office, court or police building (and if necessary, require the District to pay any use charge); 3) direct that no security officer or any participant in the hearing may bring a gun or other weapon into the hearing room or on the hearing premises.

III. NON-ATTORNEYS

A. The last draft of the ASPs provides that only attorneys who are members of the Bar, or approved to appear pro hac vice, can represent a party in a hearing.

B. IDEA provides any party to a hearing has the right to be “accompanied and advised by counsel and by individuals with special
knowledge or training with respect to the problems of children with disabilities.” 34 CFR 300.512(b)(1)

C. While not conducting extensive research, it appears in Illinois no corporation may be represented by an officer or employee in court but only by an attorney. This position would be consistent with the generally held principle that since a corporation is a separate legal entity one officer or employee cannot represent it.

D. As noted above, given an IHO’s broad discretionary authority to conduct and manage the hearing process, she/he can establish ground rules appropriate to the situation. This would include how, and to what extent, any individual a parent had assisting him/her at either a PHC or hearing. The ASPs Hearing Process Guidelines (Form 4 – Appendix C) provides some help in this regard in setting certain expectations for unrepresented parents (copy attached). But, exactly what additional “rules” should be laid down will depend on the situation, including for example, the demeanor/knowledge/sophistication/attitude of the parent and individual and the attitude/tolerance of the opposing counsel.

To the extent an IHO finds some ground rules are appropriate, the following, among others, might be considered:

1) The individual must follow the Hearing Process Guideline’s expectations of parties 1 and 2 and not engage in either of the prohibited activities

2) The individual cannot speak nor correspond for the parent at PHCs or the hearing, or if so, only after asking the IHO for permission to do so

3) The individual may confer with the parent during a PHC or the hearing as long as it does not unreasonably disrupt or unduly delay the process

4) The parent may request breaks during the PHC or hearing to confer with the individual as long as they do not unreasonably disrupt or unduly delay the process