

Due Process Screening Committee Meeting
April 20, 2005
ISBE – Springfield Office

Members in attendance:

Kathy Lyons, Chairperson
Jason Speaks
Amy Abele
Dr. Joe Vaal
Dr. Margie Jobe
Terri Devine
Dr. Christopher Koch

Others in attendance:

Andy Eulass, ISBE Due Process Coordinator
Gail Friedman, Hearing Officer
Carolyn Ann Smaron, Hearing Officer

The meeting was convened at 4:09 p.m. After a review of the draft minutes for the Screening Committee Meeting of April 12, 2005, four modifications to the minutes were identified. Amy Abele motioned and Dr. Margie Jobe seconded to accept the minutes from the April 12th Meeting as amended. The motion passed unanimously.

The meeting then turned to a discussion of the letter that the Screening Committee would draft to solicit an advisory opinion from the Attorney General's Office on the Open Meetings Act. Dr. Chris Koch suggested that ISBE Legal should take the lead in crafting the request letter. The Committee discussed the contents of the letter. It was determined that the letter should cover the Attorney General's views on three distinct activities of the Committee:

- 1) The Committee's review of Hearing Officer Performance Evaluations;
- 2) The Committee's interview of prospective Hearing Officer candidates; and
- 3) The Committee's discussion and review of Hearing Officer Complaints.

There was further discussion about whether separate request letters should be issued by the Committee and by ISBE. It was determined that the letter should be joint effort of the Committee and ISBE. It was suggested that Andy Eulass (in concert with ISBE Legal) work on a draft of the request letter on behalf of the Committee, at which time the draft could be presented to the Committee for its review prior to its issuance. Amy Abele made a motion to authorize the drafting of a request letter for an Advisory Opinion from the Attorney General's Office on the Open Meetings Act, covering the Committee's activities involving Hearing Officer performance reviews, interviews of Hearing Officer candidates and reviews of Hearing Officer Complaints. Dr. Joe Vaal seconded the motion. The motion was carried unanimously.

The Committee then discussed the process for reviewing the current performance evaluations of the Hearing Officers. Two options for reviewing the performance evaluations were discussed:

- 1) Review and discussion of the evaluations in open session, and
- 2) Review and discussion of the evaluations outside the meeting process by subgroups of the Committee constituting less than a majority of the quorum.

It was noted that, at the present time, ISBE believed that the second option could be pursued in good faith and would offer an exception to the requirements of both the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA). However, it was also noted that there was no certainty that communications and other materials generated in the course of discussion under the second option would not be subject to court challenge under FOIA. It was generally noted that both options created issues for the Committee to address, but that the consensus view was to proceed with the evaluations in open session. Further, the Committee decided to issue a communiqué to the Hearing Officers, informing them of the decision to proceed with the evaluations in open session, but also offering the Hearing Officers the opportunity to have their evaluations withdrawn from consideration by the Committee. It was noted that in the event a Hearing Officer opted to withdraw his or her evaluation, it would result in the expiration of that Hearing Officer's appointment as of June 30, 2005. Because of the decision to proceed with the evaluations in open session, it was noted that no further vote of the Committee was required and that the Committee could proceed with the evaluations in the normal course of business at its next meeting.

The timelines for completing the review of the evaluations and making recommendations to the Illinois State Advisory Council (ISAC) were discussed. It was noted that all recommendation on existing Hearing Officers, as well as recommendations on Hearing Officer candidates, would need to be completed in time for the ISAC meeting scheduled for June 1. The Committee therefore set two meeting dates: one meeting on May 3rd at 4:00 p.m. to take action on the evaluations of existing Hearing Officers, and one meeting on May 25th at 10:30 a.m. to make recommendations on Hearing Officer candidates.

Finally, in New Business, Dr. Chris Koch informed the Committee that a Hearing Officer complaint had recently been received by ISBE. Andy Eulass outlined the details of the complaint which concerned a dismissal of hearing request. Andy Eulass informed the Committee that the hearing officer appeared to have applied the correct law and that the hearing officer had informed the parties of their rights to appeal. It was indicated that the ISBE would send a written reply to the complaining party saying that the party needed to appeal the decision.

The meeting adjourned at 5:59 p.m.