

## ILLINOIS STATE BOARD OF EDUCATION MEETINGS

August 21-22, 2002

**TO:** Illinois State Board of Education

**FROM:** Robert E. Schiller, Superintendent \_\_\_\_\_ (initial)  
Christopher A. Koch, Director \_\_\_\_\_ (initial)

**Agenda Topic:** Annual Evaluation of Illinois' Due Process Procedure

**Materials:** *Evaluation of the Illinois Due Process Procedures*  
January 1, 2001 through December 31, 2001

**Staff Contact(s):** Anthony E. Sims, Manager  
Jack E. Shook, Division Administrator  
Bobbie Reguly, Special Education Consultant

### **Purpose of Agenda Item**

14-8.02a of the School Code requires that Illinois' Due Process Procedures be evaluated annually and the findings of the evaluation be reported to the Illinois State Board of Education, the State Superintendent of Education, the State Advisory Council on the Education of Children with Disabilities, the Due Process Screening Committee, and the public. The purpose of this agenda item is to inform the Board of the status of due process in Illinois.

### **Expected Outcome(s) of Agenda Item**

The State Board of Education will be knowledgeable of Illinois' Due Process system and receive information on the implementation of improvement strategies.

### **Background Information**

This evaluation marks the fourth annual evaluation conducted since Illinois moved to the one-tier system in 1997.

### **Analysis and Implications for Policy, Budget, Legislative Action and Communications**

Policy Implication: During FY03, more emphasis will be placed on other dispute processes, such as mediation and complaint investigations. Beginning July 1, 2002 the

Illinois State Board of Education expanded the pool of trained mediators by contracting with 11 external mediators.

Budget Implication: During FY02, \$630,300 was expended and \$612,300 has been budgeted for FY03.

Legislative Action: Not Applicable.

Communications: The information contained in the annual report will be posted on ISBE's website: <http://www.isbe.net/spec-ed/>.

### **Pros and Cons of Various Actions**

Increased use of mediation will result in fewer cases going to hearing.

### **Superintendent's Recommendation**

The Superintendent recommends accepting this annual report.

### **Next Steps**

Ongoing implementation of Illinois' Due Process System.

## ***Evaluation of the Illinois Due Process Procedures***

*Public Act 89-652*

*105 ILCS 5/14-8.02a*

*January 1, 2001 – December 31, 2001*

### **Introduction**

The Individuals with Disabilities Education Act (IDEA), requires each State to provide a mechanism by which disagreements over the identification, evaluation, or educational placement or provision of a free appropriate public education may be resolved. Parents and districts are given the opportunity to settle such disagreements through an impartial due process hearing conducted by an impartial hearing officer. The framework for due process hearings are left to the states to determine. Typically, states either operate a one-tier or two-tier system. Prior to 1997, Illinois operated a two-tier system that included an initial hearing with a "Level I" Hearing Officer issuing a decision that could be appealed to a Level II Review Officer. Both tiers, Level I and Level II, were administered by the Illinois State Board of Education, but out of different divisions, the Department of Special Education and the Legal Department. Level II decisions could be appealed to the judicial system.

In 1996, the Illinois State Advisory Council with the assistance of stakeholders from throughout the state began the process which ultimately resulted in the passage of Public Act 89-652 that moved Illinois from a two-tier system to a single-tier system. In a single-tier system, the initial hearing is administered at the state level, with the parties involved having the right to appeal the hearing officer's decision directly to a court of competent jurisdiction. Proponents of this change argued that the two-tier structure was cumbersome and costly. There were also concerns regarding the quality of hearing officer decisions, timeliness of resolving disputes, and the overall impartiality of the system. Currently there are 32 states that operate a one-tier system.

The same legislation that changed Illinois' due process structure also required the system to be evaluated annually and the findings of the evaluation reported to the State Board of Education, the State Superintendent of Education, the State Advisory Council on the Education of Children with Disabilities, the Due Process Screening Committee, and the public. This evaluation marks the fourth annual evaluation conducted since Illinois moved to the one-tier system.

On November 16, 2000 the Illinois State Board of Education, after receiving concerns voiced at a State Board of Education meeting concerning the high cost of impartial due process hearings, requested a review of the existing statutory requirements and related rules pertaining to the impartial hearing process and a report of the findings for the February 2001 Board meeting. 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. The study identified seven strategies for improving Illinois' dispute resolution procedures. These improvements included:

- (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.

In May 2001 a progress report on the implementation of the improvement strategies was presented to the State Board of Education. The report stated that the only strategy not moving forward was the recommendation that the 23 IAC 226.640c)1) be changed to provide hearing officers the authority to deny requests for delays (or continuances) jointly requested by the parties. This proposal is being opposed by the Attorney General's Disabilities Rights Committee and needs further study before a legislative proposal can be developed.

Similar to the previous evaluations, the approach and design of the 2001 Annual Evaluation contained the following elements and procedures:

1. A review of the cases assigned to each of the hearing officers. This review focused on compliance with timelines, correspondence, pre-hearing reports, final decisions, and responses to requests for clarifications.
2. A thorough and careful reading of all written decisions.
3. A review of evaluation reports returned by users of the system.
4. Observations of and interactions with the hearing officers during training sessions.
5. A review of the administrative record from 3 cases that were appealed to court during 2001.
6. A review of all written complaints received from users of the system.

### **Frequency of Due Process Proceedings (2001)**

Between January 1, 2001 and December 31, 2001 the Illinois State Board of Education received the following:

- 492 requests for due process. (During FY00 -- 516 requests, FY99 -- 428 requests were received, and over 500 requests were received annually for a 5-year period beginning in 1990.)
- 78 requests to substitute (strike) a hearing officer (47 by districts and 31 by parents).

13 requests for expedited hearings.

In addition:

532 pre-hearing conferences were held.

63 decisions were issued. (During FY00 65 decisions were issued, FY99 there were 56 decisions issued as compared to 100-120 issued annually for a 5-year period beginning in 1990).

2 expedited hearings were conducted and decisions issued (3 decisions issued in 2000).

397 cases were withdrawn compared to 328 in 2000.

5 cases were appealed to court compared to 9 in 2000.

### **Concerns of Users of the System: Access and Time Delays**

Because of the lack of low-cost, no-cost legal assistance and the increasing costs associated with going to a hearing, due process in Illinois is not an accessible system for most families. Frequently, parents withdraw their request for due process not because a settlement is reached, but because they cannot afford to proceed with a 4- or 5-day hearing.

One unanticipated outcome of the single-tier system is the increasing number of days it is taking to conduct a due process hearing and the increased legal formality of the pre-hearing and hearing. Many factors have contributed to this increase but the leading cause clearly is the need to prepare a thorough and convincing record in the event of an appeal. Other factors contributing to the length of time it is taking to conduct due process hearings are:

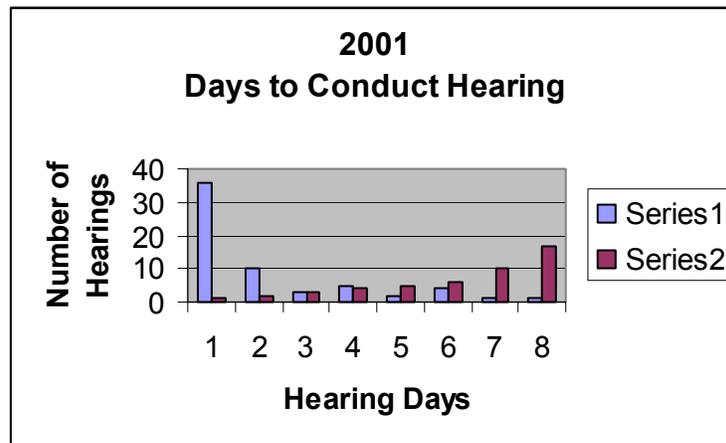
- The complexity of the cases being heard.
- The increased use of witnesses/experts.
- Inefficient use of the pre-hearing conference.
- Cumulative testimony and redundant cross examination.
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### **Days to Conduct Hearing**

During 2000, most hearings (56 out of 65) took only 1 to 2 days. Six (6) hearings took 3-5 days, one (1) hearing took 5-10 days, and one (1) took over 11 days. One (1) hearing lasted 19 days and took 35 months from the date of request to the date of the written decision.

During 2001, thirty-seven (37) cases took 1 day of hearing, ten (10) cases took 2 days, three (3) cases took 3 days, five (5) cases took 4 days, two (2) cases took 5 days, four (4) cases took 6 days, one (1) case took 10 days (case #001877), and one (1) case took 17 days (case #001693). (See Table 1)

Table 1



Series 1 = number of hearings held

Series 2 = number of days it took to conduct hearings

### Timelines for Conducting Hearings

Section 14-8.02a of the School Code and the Individuals with Disabilities Education Act Amendments of 1997 require that due process hearings be conducted and decisions issued within 45 days from the date of the request, unless the hearing officer grants a specific extension of time at the request of a party.

During 2001, fifty-five (55) cases that went to hearing exceeded the 45-day timeline required in federal and state law. In those cases exceeding the 45-day timeline, the hearing decision included the procedural history of the case and provided documentation of compliance with the timelines and other procedural requirements of 105 ILCS 5/14-8.02a including: identification of the party requesting the hearing; when the request was made; date of pre-hearing conference; date, time and location of the hearing(s); and whether the decision was issued within 10 days of the hearing and within 45 days of when the hearing was requested. If not in compliance with the required timelines, an explanation was provided.

No hearing exceeded the 45-day timeline because of the State Board of Education's failure to appoint a hearing officer. Of the 492 hearing requests received in 324 cases the hearing officer was appointed the same day ISBE received the request. In all other cases the hearing officer was appointed within 2 days of receipt of the request.

### **Compliance with 45-day Timeline**

In 2000, 43 out of 65 cases that went to hearing exceeded the 45-day timeline required in federal and state law. Most cases, (451 out of 515), were settled prior to hearing.

In 2001, 55 out of 63 cases exceed the 45-day timeline. Most cases (397) were settled or withdrawn prior to hearing. Twenty-six (26) cases settled, were reopened and a hearing held.

Those cases that go to hearing are very complex and deal with multiple issues that impact eligibility, the severity and adverse impact of the child's disability on educational performance, specific programming issues, and placement disputes. It appears that the length of time it is taking to hear the evidence is directly related to the complexity of the issues being heard.

Following is a summary of the factors contributing to hearing delays:

- Parents not responding to telephone calls or certified letters.
- Scheduling conflicts (particularly problematic among attorneys).
- Accommodating the availability of witnesses.
- Delays in obtaining results from independent educational evaluations.
- Submission of post-hearing briefs.
- Settlement agreement in process.
- Interim placement being tried.
- Continued pending outcome of mediation.

One of the key factors to controlling hearing delays is the selection and training of hearing officers. Illinois currently maintains a pool of 17 hearing officers. Each hearing officer is paid \$10,000 per year per diem, plus \$200 per day for every day they work on an assigned case. During FY 01, \$646,665 was expended on hearing officer reimbursement including their annual per diem. During FY02, \$630,300 was expended. \$612,300 has been budgeted for FY03.

The State Board currently maintains a reserve pool of three prospective hearing officers who could be placed on contract should a vacancy occur. The current pool of 17 hearing officers is sufficient. However, with the resignation of one hearing officer effective June 30, 2002, and the anticipation that three other hearing officers may resign during the next 18 months, we anticipate accessing the reserve pool of prospective hearing officers this year and possibly training new hearing officers in 2005.

### **Training of the Hearing Officers**

Beginning in January 2002, Southern Illinois University at Carbondale began the third year of a three-year grant to serve as Due Process Training Entity. The training entity is statutorily required at 105 ILCS 5/14-8.02a and is responsible for planning and

conducting the initial training and evaluation of all hearing officers, conducting periodic in-service training sessions, and annually evaluating hearing officers' performance. The training entity receives \$100,000 annually. A new request for proposal will be issued in the summer of 2002.

In 2001, the Southern Illinois University training entity conducted three separate training sessions covering a four-day period. The winter training (conducted in Chicago) focused on the new federal regulations of IDEA. Two special education attorneys (a parent advocate and a school district attorney) presented a balanced review of the new regulations. A time for questions/answers was provided.

The summer training consisted of a two-day training held on June 4-5, 2001 in Springfield. On the first day, a representative from LRP (Special Education Law Service) made a presentation on how to use the on-line subscription service made available from the training entity to all hearing officers. Terry David, from the Illinois State Board of Education, reviewed the mediation services, and Dr. Hazel Loucks, Deputy Governor of Education, acknowledged the hard work of the hearing officers and provided a brief legislative update. That evening a reception was held for the hearing officers and members of the Due Process Screening Committee. The following day, Lynwood Beckman, a hearing officer trainer from Michigan provided training on the following topics: compensatory education, how to improve the efficiency and effectiveness of a due process hearing, and a review of new legal concerns and upcoming difficult issues.

The fall training session was conducted October 3<sup>rd</sup> in Chicago. During the morning session of this one-day meeting, Christopher Koch and Respicio Vazquez, from the Illinois State Board of Education, provided an overview of the Corey H. litigation and how it may impact hearing officers and the due process system. In the afternoon, hearing officers were provided a legal update on new cases and lengthy discussion ensued regarding a recent U.S. Supreme Court case concerning prevailing parties and the award of attorney fees.

### **Due Process Screening Committee**

105 ILCS 5/14-8.02a calls for the establishment of a Due Process Screening Committee composed of seven members. The primary role of the Screening Committee is to:

- 1) Screen hearing officer candidates, review applications, interview candidates and recommend applicants to the Advisory Council on the Education of Children with Disabilities.
- 2) Review, evaluate and rank-order proposals received in response to an RFSP issued by the Illinois State Board of Education for the establishment of a training entity responsible for conducting mandatory hearing officer trainings and evaluating hearing officer performance.

- 3) Recommend whether the hearing officers whose terms are expiring should be re-appointed and transmit those recommendations to the Illinois State Advisory Council. (These recommendations are based on objective selection criteria and the annual evaluation reports prepared by the training entity).

During 2001 the Due Process Screening Committee met on the following dates: March 20, 2001; May 15, 2001; June 5, 2001.

Members of the committee are:

- Howard Blackman, Chairman of the Committee (Director of Special Education Designee)
- Elaine Hoff (Attorney General's Designee)
- Teri Devine (State Advisory Council Designee)
- Joseph Vaal (Former Hearing Officer)
- Ann Ford (Representing Individuals with Disabilities)
- Barbara Miller (Parent Representative)
- Jack Shook/Christopher Koch (Illinois State Board of Education Designee)
- Carol Saines (Parent Representative)

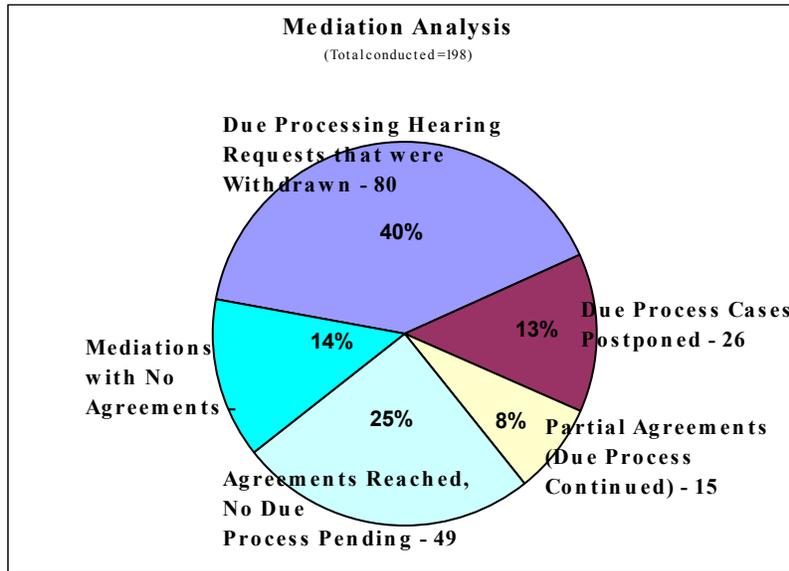
During 2002, the Screening Committee hopes to establish standardized operational procedures for conducting hearings that all hearing officers will be obligated to follow. In addition, the Screening Committee will continue to focus its attention on the training and evaluation of hearing officers.

In December 2001, Bill Kienzle who was recently appointed chairperson of the Illinois State Advisory Council resigned from the committee. Ms. Terri Devine who is a member of the Advisory Council was appointed to take his place. Mr. Kienzle had been an active and valuable member of the Due Process Screening Committee since its beginnings in 1998.

### **Mediation – An Effective Process for Resolving Differences**

Illinois' mediation system, which has been in place since 1982, is successful in resolving differences. During 2001, the Illinois State Board of Education conducted 198 mediations that resulted in 80 due process hearings being withdrawn. 49 agreements were reached with no due process pending. In the previous year, 71 hearing requests were withdrawn due to mediated agreements and 72 agreements were reached with no due process pending. The number of mediations conducted in 2001 (198) is slightly less than the number conducted in 2000 (223). (See Table 2).

Table 2



Total Number of Mediations Requests – 279  
 Total Number of Mediations Conducted – 198  
 Cases Cancelled - 81

Due Process Hearings Withdrawn due to Mediation Agreement – 80  
 Due Process Hearings Postponed due to Mediation Agreement -- 26  
 Partial Agreement Reached - Hearing Continued - 15  
 Mediated Agreements with No Due Process Request Pending – 49  
 Due Process Hearings Continued, No Mediation Agreement -- 27

**TOTAL MEDIATION AGREEMENTS (including partial agreements) – 170**

Beginning July 1, 2002, the Illinois State Board of Education will expand the pool of trained mediators by contracting with 11 external mediators. A state-wide solicitation of trained mediators was conducted in October 2001. Interested individuals were interviewed in January 2002 and screened to meet certain established criteria: mediation experience, education or special education knowledge, availability, and mobility were among the criteria utilized. Two-day special education mediation training was provided to the 11 external mediators in February 2002.

**Indexing and Communication of Decisions**

In accordance with Section 14-8.02a of the School Code, all hearing decisions issued through December 31, 2001 were indexed and can be retrieved by district name, issue, and hearing officer. Summaries of the decisions were sent to all directors of special education, members of the Illinois State Advisory Council, members of the Screening Committee, hearing officers and other individuals who have asked to be placed on the

mailing list to receive copies of the decisions and summaries. In addition, the decision summaries were placed on the Illinois State Board of Education homepage.

Over the past 4 years, the most frequent issues disputed were methodology, discipline, inclusion, regular education accommodations/LRE, private vs. public school placement, change of placement, independent educational evaluations at public expense, consent for initial and re-evaluation, compensatory services, and residential placement.