

***Evaluation of the Illinois' Due Process Procedures
Public Act 89-652
105ILCS 5/14-8.02a***

January 1, 2002 – June 30, 2004

***Submitted by: Special Education
Services – Springfield
June 16, 2004***

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Executive Summary

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 Illinois State Advisory Council on the Education of Children with Disabilities, the Due Process Screening Committee, and the public.

This report will provide a brief history of the due process system, will summarize a review of the system of the U.S. Department of Education including the Screening Committee and hearing officers, will summarize recommendations regarding the due

process system made by the Illinois State Advisory Council on the Education of Children with Disabilities and will discuss the status of hearing officers. Improvements to the system in relation to previous recommendations will also be discussed. Finally, the due process system will be evaluated through an examination of performance data in the following areas:

- 1) Number of cases filed in comparison to last two years;
- 2) Number of requests for expedited hearings in comparison to last two years;
- 3) Due Process Decisions Issued;
- 4) Number of due process hearing decisions appealed;
- 5) Number of cases withdrawn in comparison to the last two years;
- 6) Number of days of hearings in comparison to last two years;
- 7) Number of hearings by Illinois County in comparison to County population; and
- 8) Five most frequent reasons for filing for due process;

History of Special Education Due Process in Illinois

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 (FAPE) may be resolved. Parents and districts are given the opportunity to settle such disagreements through a 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. The Illinois State Board of Education administered both tiers; Level I was administrated through the Department of Special Education while Level II was administrated through the Legal Department Level II decisions could be appealed to the judicial system.

In 1996, the Illinois State Advisory Council on the Education of Children with Disabilities (ISAC) with the assistance of stakeholders from throughout the state began the process that 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 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.

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, and the Illinois State Advisory Council on the Education of Children with Disabilities, the Due Process Screening Committee,

and the public. This evaluation marks the fifth annual evaluation conducted since Illinois moved to the one-tier system.

U.S. Department of Education's Office of Special Education Programs Review

The U.S. Department of Education's Office of Special Education Programs (OSEP) conducted a monitoring review in Illinois during the week of August 18, 2003. The purpose of the monitoring review was to understand how the special education system works in Illinois; determine the extent to which OSEP can rely on the Illinois' data to make focused monitoring decisions; and to determine the extent to which the Illinois' systems are effective in ensuring compliance and improving performance.

During the verification review, OSEP randomly selected fourteen due process files to review. In reviewing the files, OSEP indicated there were issues that required immediate attention and correction. Of primary concern was the adherence to the requirements of 34 CFR Section 300.511(a) and (c), that ISBE ensure that not later 45 calendar days after the receipt of a request for a hearing a final decision is reached at each due process hearing and a copy of the decision be mailed to each of the parties, unless the hearing officer grants a specific extension of time beyond the 45-day timeline. When a hearing officer exceeds the 45-day timeline for issuing a decision there must be documentation the hearing officer extended the timeline for issuing a decision for specific period at the request of a party. Thus, a hearing officer has the discretion to extend the timeline for issuing a hearing decision, but only at the request of a party and only for a specific period. The examination of several cases demonstrated this procedure has not been properly documented.

In response, Christopher Koch, Director of Special Education at the Illinois State Board of Education prepared a September 10, 2003 memo to all Due Process Hearing Officers clarifying the procedure for granting and documenting continuances. (Attachment A) Additionally, ISBE provided documentation to OSEP immediately following the verification review, that ISBE began a comprehensive review of all hearing files to determine the extent of the noncompliance with the timeline requirements and which hearing officers had not complied with requirements.

Additionally, Dr. Koch provided a response to OSEP's October 23, 2003 letter documenting the Division's activities initiated to ensure compliance with IDEA (Attachment B)

Recruitment of Hearing Officers

Due to concerns regarding an adequate number of hearing officers required to serve the number of students, parents, cooperatives, and local school districts in the state of Illinois, the Due Process Screening Committee and the Illinois State Board of Education Special Education Department authorized the implementation of the process of securing

new hearing officers in November 2003. This was the first time since 1997 employment of new hearing officers had been considered. Since 1997, individuals who previously were placed in the reserve pool of training officers filled hearing officer vacancies.

With retirements, resignations, and requests for long-term leaves-of-absence, the actual number of active hearing officers as of June 30, 2004 was 13 (Black, Bracki, Breen-Greco, Cook, Dempsey, Friedman, Gordon, Hablutzel, Ladenson, McElroy, Smaron, Stutzman, Wolter). The numbers of active hearing officers have been reduced due to two resignations effective June 30, 2004 (Brimer and Nowik), one retirement effective December 31, 2003 (Aschenbrenner), and one taking extended leave of over six months (Dillon-Narko). Recognizing the combination of caseload, districts, or cooperatives that are excluded by hearing officers, there is a need for twenty hearing officers to be employed by the Illinois State Board of Education.

In recognizing the need for additional hearing officers, the Due Process Screening Committee met to discuss contractual employment of additional hearing officers on November 24, 2003. On that date authorization was given to advertise for additional due process hearing officer candidates. On February 24, 2004, a review of applicants by the Due Process Screening Committee determined fourteen individuals would be interviewed. After the interviews were held on March 10, 11, and 15, a meeting was held on April 6, 2004 to recommend nine candidates to be sent to the Hearing Officers Educational Network (HOEN) for training the week of May 24-28, 2004. After training, the candidates were reviewed by the Due Process Screening Committee with a final recommendation for active contractual employment and placement in the reserve pool as due process hearing officers. The final recommendation was submitted to the Illinois State Advisory Council for their review, which in turn was forwarded to the Illinois State Board of Education for action at the June, 2004, Illinois State Board of Education Board meeting.

The currently employed hearing officers have undergone training on June 10 and 11, 2004, by HOEN with additional training to occur in October 2004.

Evaluation and Training of Hearing Officers

The evaluation of hearing officers is based on the following:

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 any cases appealed to court.

6. A review of all written complaints received from users of the system.

During the 2002 and 2003 calendar years, there were seventeen Hearing Officers contracted by ISBE to serve due process cases. The Hearing Officers were required to attend triennial training sessions conducted by the Hearing Officer Education Network (HOEN) to be updated on special education law, current practice, and discuss areas of common concern.

Due Process Screening Committee

Several representatives were appointed to the Due Process Screening Committee in 2003. The new members were Jason Speaks, an appointee from the Office of Attorney General, Kathy Lyons, appointed by the Office of Attorney General, Amy Abele, State Superintendent appointee, Dr. Margie Jobe, State Superintendent appointee, John Eckert, State Superintendent appointee, and Dr. Christopher Koch representing the Illinois State Board of Education. Previous retained members were Dr. Joe Vaal, appointed by the Office of Attorney General and Terri Devine, serving as a member of State Advisory Council Documents as an Ex-officio non-voting member. Dr. Joe Vaal was selected to serve as the chair of the Due Process Screening Committee. Most of the new members became active effective July 1, 2003.

The Due Process Screening Committee met at four times during 2003 and six times in 2004 to discuss a variety of issues including recommendation of current and additional hearing officers, the complaint procedure involving hearing officers, contractual terms of the hearing officers, complaints filed against hearing officers, indemnification of hearing officers, and additional training of hearing officers.

Illinois State Advisory Council

In response to a review of an outside study of due process in Illinois, ISAC made three recommendations related to due process, which passed motion at the June 2003 meeting. It was moved that 1) ISBE develop an RFP for a researcher to review the 2000-2001 mediation outcomes, as well as the resolutions of due process cases that did not go to hearing, and to provide an analysis of that data; 2) Pursuant to the Continuous Improvement Plan, ISBE compile detailed data about all cases that are part of the compliance system (complaints, mediation, all due process cases, not just those that go to hearing and decision); and 3) ISAC recommend to the Senate that IDEA should not be changed in any way to diminish rights of parental participation, parental access to attorney representation and attorney fee recovery. A final addition to the motion was to include a database as a source for data collection for parents and districts to self-report for on-going review.

ISBE special education department staff received a federal grant to review the quality of all special education data over the past year and a final report with recommendations for

improvements to this data was completed in December. A review of the current computerized database system indicated additional data should be provided to ISBE that cannot be done with the program currently in place. A Request for Proposals is being developed to address these data enhancements during 2004. A new system is being proposed which will encompass data for due process, mediation, complaint procedures, and monitoring. It is desirable the new system could notify hearing officers electronically of their assignment and allow correspondence between hearing officers and ISBE be conducted over a secure site via the Internet. ISBE has compiled and shared existing compliance data with ISAC and continues to do so on a regular basis.

On June 3, 2004, the ISAC considered the recommendations from the Due Process Screening Committee regarding the employment of new and continuing hearing officers.

Illinois Due Process System Enhancements

On November 16, 2000 the Illinois State Board of Education, requested a review of the existing statutory requirements and related rules pertaining to the impartial hearing process and requested a report of the findings to be presented during 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 that affirmed the current system, while capable of improvement, is working well. The study identified seven strategies for improving Illinois' dispute resolution procedures.

- (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.

Each of strategies above has been addressed as follows:

Mediation:

Mediation contracts were modified in 2003 to allow for reimbursement to mediator for cases in which one or both of the parties cancelled after scheduling mediation.

Hearing Officer Training:

Since January 1, 2002, through June 30, 2004, there will have been six hearing officer-training sessions. Additionally, a two-volume hearing officer procedural manual and

resource guide was developed by HOEN with input from the Due Process Screening Committee. The manual includes sections on the following areas:

- IDEA
- Due Process Issues
- IEP's
- Special Education law
- Basic Administrative law
- Hearing Overview
- Powers of the Hearing Officer
- Preparation of Decision Writing
- Legal Research
- Closure of Case
- Preparation of the Administrative Record

The manual will improve consistent knowledge and practice among hearing officers.

Hearing Officer Accountability:

Prior to this year, summative evaluations for hearing officers were conducted every other year. This year all hearing officers received a summative evaluation.

Hearing officers have received extensive guidance regarding the documentation of continuances – an issue identified as problematic by the U.S. Department of Education in August of 2003. An additional sample of hearing officer cases will be audited to ensure that proper documentation is taking place.

Monitoring of Caseload:

The Due Process coordinator has consistently monitored assignment and management of cases assigned to hearing officers to insure appropriate timelines are followed.

Additional hearing officers were recruited to ensure that reasonable hearing officer caseloads might be maintained.

Technical assistance to Districts and Parents and Parent Liaisons:

School districts are required to provide information to parents who desire to file for a due process hearing that includes but is not limited to their rights and information on free or low cost assistance to advocates or attorneys. An internet link to the video entitled “Due Process: Resolving Special Education Disputes”, a visual presentation of a mock due process hearing has been placed on the Special Education page at the ISBE homepage with the following link: <http://www.isbe.net/spec-ed/default.htm>.

A VHS tape with the same title is available upon written request to Mr. Jimmy Gunnell, Division Administrator, Department of Special Education, Illinois State Board of Education, 100 North First Street, Springfield, IL 62777.

In conformance with the State Improvement Plan for Special Education, two requests for proposals were released in June of 2004 – one to establish a system of parent mentors and the other to establish a state technical assistance center for parents. Implementation of these two initiatives will allow for the hiring of a cadre of trained parent mentors working in partnership with school districts and will enhance communication with parents across the state.

Denying Joint Requests for Continuances:

Under current Section 226.640(a)(1) *Scheduling the Hearing and Pre-Hearing Conference* of the Illinois Administrative Rules a hearing officer is required to grant a continuance if it is jointly requested. There is no flexibility permitted to the hearing officer. A change in the Administrative Rules to deny a joint request when in the judgment of the hearing officer such a request would not be in the best interest of the student would be permitted.

Data for the calendar years 2001 - 2003

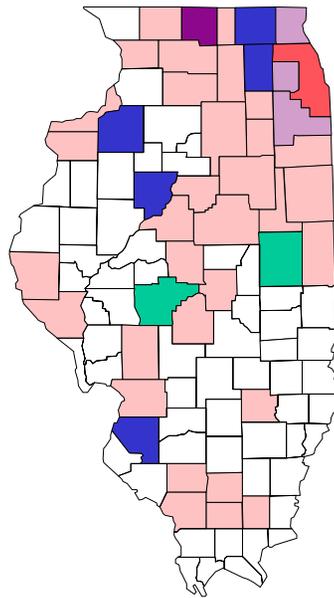
| | Number of requests for a Due Process Hearing | Number of requests for an Expedited Due Process Hearing * | Request for a substitution of a Hearing Officer | Cases withdrawn/ settled # | Due Process Decisions Issued # | Cases Appealed to Court # |
|-------------|--|---|---|----------------------------|--------------------------------|---------------------------|
| | | | Parent/District | | | |
| 2001 | 492 | 13 | 31/46 | 325 | 62 | 8 |
| 2002 | 475 | 6 | 37/34 | 360 | 77 | 5 |
| 2003 | 449 | 6 | 42/37 | 323 | 54 | 7 |

An Expedited Due Process Hearing has strict limitation as to the reason for the request and must be concluded within ten school days after the request for a hearing.

The data referenced will reflect information crossing one or more years.

| Cases by Length of Hearing Days | 1- 2 Days | 3 - 5 Days | 6 - 10 Days | 10 Plus Days |
|--|------------------|-------------------|--------------------|---------------------|
| 2001 | 77 | 28 | 2 | 0 |
| 2002 | 85 | 25 | 11 | 3 |
| 2003 | 69 | 20 | 4 | 2 |

Number of Due Process Cases filed by County 2001



Key:

0 No Color

1-5 Pink

6-10 Green

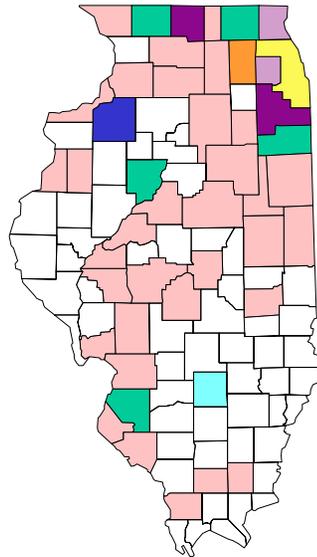
11-15 Blue

20-25 Purple

31-40 Lavender

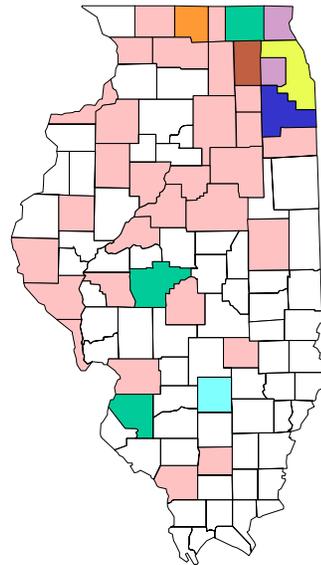
235-240 Red

Number of Cases filed by County 2002



Key:
0 No Color
1-5 Pink
6-10 Green
11-15 Blue
20-25 Purple
31-40 Lavender
235-240 Red

Number of Cases filed by County 2003



Key:
0 No Color
1-5 Pink
6-10 Green
11-15 Blue
20-25 Purple
31-40
Lavender
235-240 Red

In 2003, the five most frequent reasons for filing for due process as determined by the Due Process Coordinator were:

1. Placement
2. Conduct of Case Study Evaluation
3. Independent Evaluation
4. Payment of Services
5. Other Items

Conclusion and Recommendations

The number of due process hearings in Illinois continues to decrease as mediations increase. Additionally, mediations provide an important cost savings to districts and parents. The U.S. Department of Education reviewed the due process system in Illinois in 2003 and specific improvements have been made in response to findings identified in that review. Additional improvements to the Illinois due process system over the past year have included annual summative evaluations of all hearing officers, development of a two volume training manual, recruitment of additional hearing officers to fill vacancies and a review of all special education data with specific recommendations for an enhanced database. Additionally, appointments to the both the Illinois State Advisory Council for the Education of Students with Disabilities and the Due Process Screening Committee, will ensure that the due process system will be properly administered in the future.

Recommendations for the next year include:

- 1) Consideration of changes in the Illinois School Code would assist the hearing officers in completion of their duties in a timely fashion. A review of current statutory rules in relation to their likely impediment to compliance with the federally mandated 45-day timeline under which hearings must be conducted over the next year. Recommendations should encompass any changes forthcoming from the reauthorization of the Individuals with Disabilities Education Act.
- 2) Enhancement of all special education compliance data collection which would allow for better disaggregation of due process data, longitudinal comparisons, enhanced communications with hearing officers and comparisons with other compliance data.
- 3) Specific training with newly hired parent mentors to ensure consistent and accurate information about due process is available statewide.
- 4) Consider initiation of an additional recruitment and hiring process for hearing officers to supplement the active and reserve pool of hearing officers.