 **ILLINOIS COUNCIL OF SCHOOL ATTORNEYS** 33rd ANNUAL
Seminar on School Law
A workshop exclusively for school attorneys

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Special Education Update Due Process: To Go or Not to Go?

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Due Process: Relevant Federal Regulations

§ 300.507 Filing a due process complaint.

(a) General.

(1) A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint...

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Due Process Complaint: Relevant Federal Regulations

§ 300.508 Due process complaint.

(b) *Content of complaint.* The due process complaint required in paragraph (a)(1) of this section must include -

- (1) The name and address of the child;
- (2) The address of the residence of the child;
- (3) The name of the school the child is attending;
- (4) In the case of a homeless child or youth, available contact for the child, and the name of the school the child is attending;
- (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- (6) A proposed resolution of the problem to the extent known and available to the party at the time.

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Resolution Process: Relevant Federal Regulations

§ 300.510 Resolution process.

(a) *Resolution meeting.*

(1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under § 300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that -

- (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
- (ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

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Resolution Process: Relevant Federal Regulations

§ 300.510 Resolution process.

(a) Resolution meeting.

(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if –

- (i) The parent and the LEA agree in writing to waive the meeting; or
- (ii) The parent and the LEA agree to use the mediation process described in § 300.506.

(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

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Resolution Process: Relevant Federal Regulations

§ 300.510 Resolution process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is -

- (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
- (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States...

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within 3 business days of the agreement's execution.

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Mediation: Relevant Federal Regulations

§ 300.506 Mediation.

(a) **General.** Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) **Requirements.** The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process -

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

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Mediation: Relevant Federal Regulations

§ 300.506 Mediation.

(b) **Requirements.** The procedures must meet the following requirements:

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that -

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

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Due Process Hearing: Relevant Federal Regulations

§ 300.511 Impartial due process hearing.

(c) Impartial hearing officer.

(1) At a minimum, a hearing officer -

(i) Must not be -

- (A) An employee of the SEA or the LEA that is involved in the education or care of the child; or
- (B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

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Hearing Officer: Relevant School Code Provision

105 ILCS 5/14-8.02a Impartial Due Process Hearing.

(f-5) A party to a due process hearing shall be permitted one substitution of hearing officer as a matter of right...The State Board of Education shall randomly select and appoint another hearing officer within 3 days after receiving notice that the appointed hearing officer is ineligible to serve or upon receiving a proper request for substitution of hearing officer. If a party withdraws its request for a due process hearing after a hearing officer has been appointed, that hearing officer shall retain jurisdiction over a subsequent hearing that involves the same parties and is requested within one year from the date of withdrawal of the previous request, unless that hearing officer is unavailable.

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Considerations: Whether to Go or Not to Go...

- Precedent Setting
- Likelihood of Resolving at Resolution Session or Mediation
- Reasonableness of Parents, District, and Involved Attorneys
- Timing of Hearing in Light of Hearing Officer Schedules
- Hearing Officer Appointed
- Overall Cost of Hearing
- Costs of Compensatory and Future Educational Services if District does not Prevail
- Cost of Parent Attorney Fees if District does not Prevail
- School Staff Time and Stress of Preparing and Testifying at Hearing
- Further Damage to Already Difficult Relationship between Parents and District
- Future Dealings between Parents and District after Hearing (i.e. until student is 22 in some cases)

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Mediation Statistics

Mediations	2017-2018	2018-2019*
Total requests	325	371
Mediations held	269	287
Mediations held related to DP	165	111
Mediation agreements reached	84	75
Mediations held NOT related to DP	104	176
Mediation agreements reached	75	104
Mediations not held, including pending and cancelled	59	83
Percentage of mediation agreements	59%	62%

Illinois State Board of Education, "Themes and Trends in Conflict Resolution", Directors Conference, August 2019

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Due Process Statistics

Due Process	2017-2018	2018-2019
Total Requests	300	252
Hearings Held	18	24

Illinois State Board of Education, "Themes and Trends in Conflict Resolution", Directors Conference, August 2019
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ISBE Due Process Hearing Decisions and Data

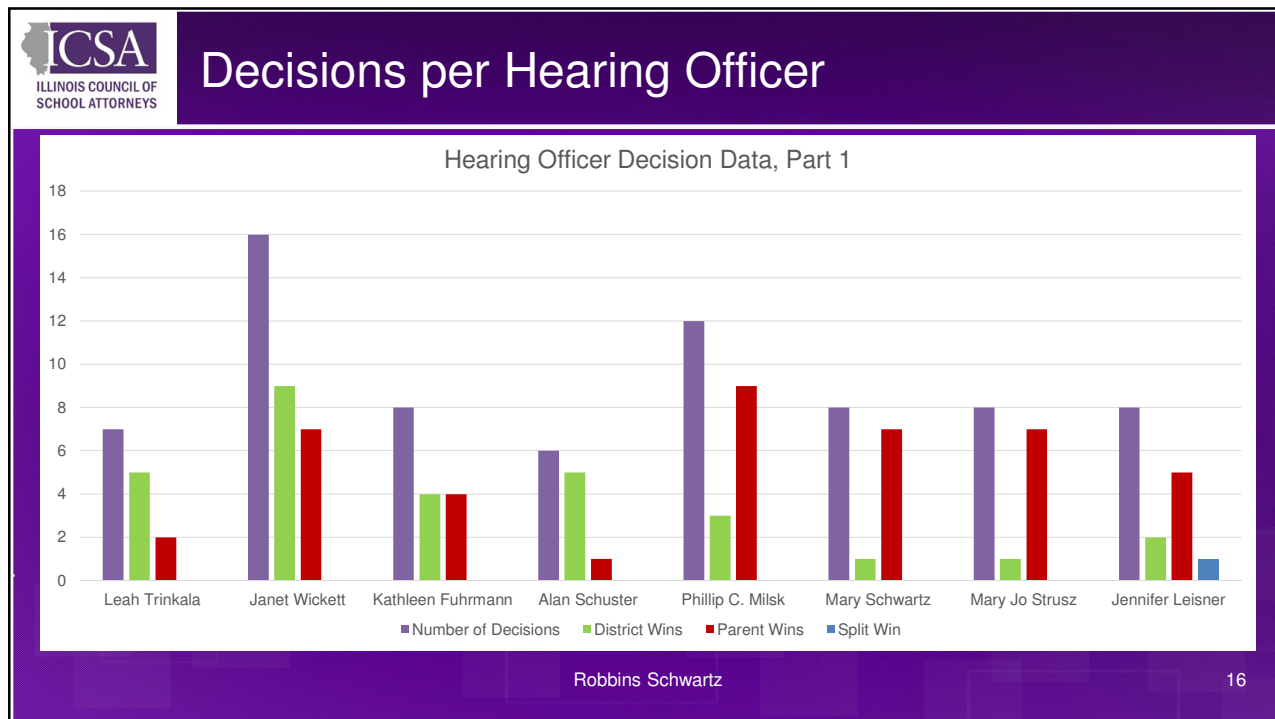
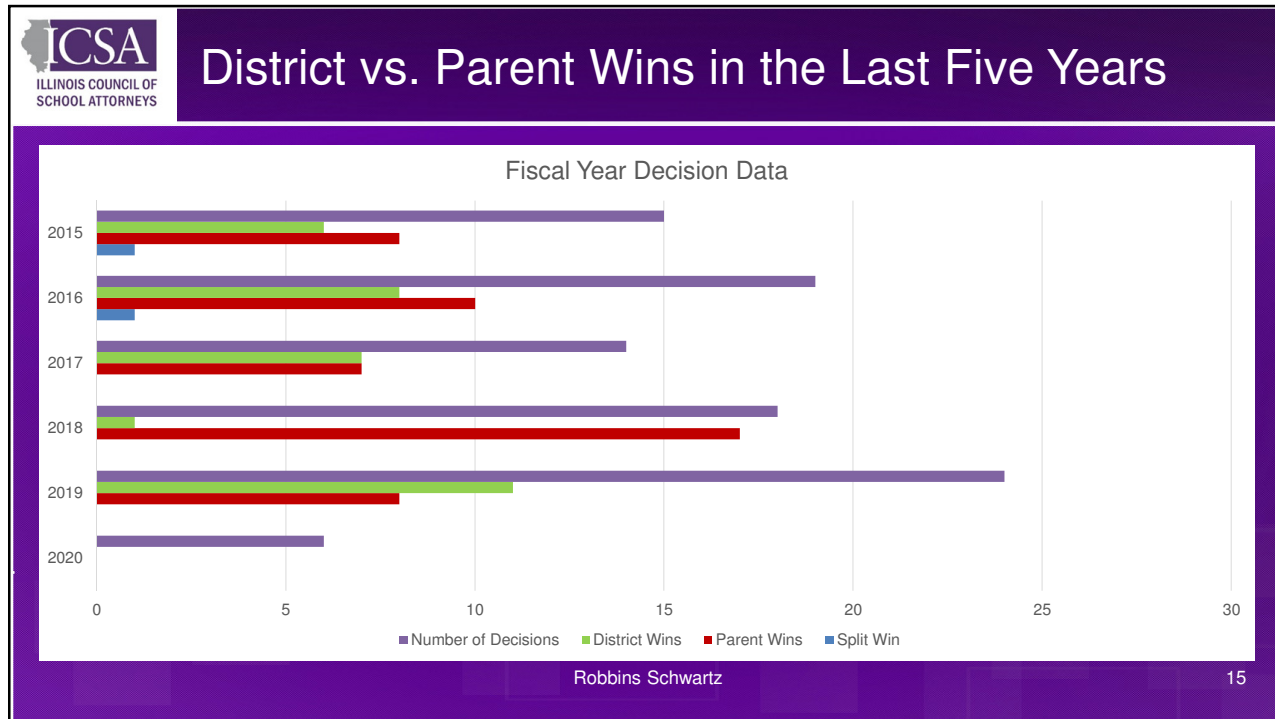
<https://sec1.isbe.net/sedsinquiry/dueprocessdecisions.aspx>

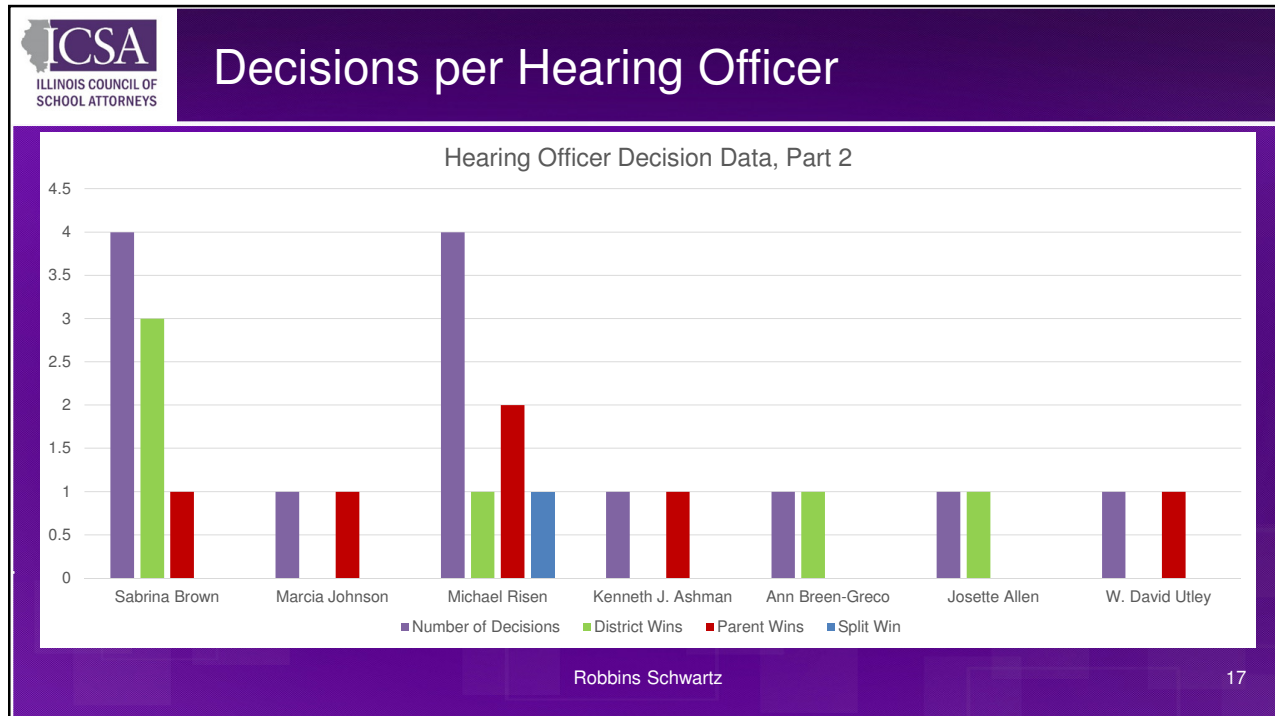
Data Disclaimers:

- Currently only 19 of the 24 decisions for FY 2019 are posted
- None of the FY 2020 decisions are posted yet. There have been 8 hearings with 6 decisions as of November 5, 2019.
- Parent vs. District vs. Split decision data considerations

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Due Process Statistics - FY 2015 through 2020*

Hearing Officer	Total Decision No.	For District	For Parent
Leah Trinkala*	7	5	2 (1 was CPS)
Janet Maxwell Wickett*	16	9 (1 was CPS)	7 (3 were CPS)
Kathleen Fuhrmann*	8	4	4 (3 were CPS)
Alan Schuster	6	5 (1 was CPS)	1 (1 was CPS)
Phil Milsk*	12	3 (1 was CPS)	9 (4 were CPS)
Mary Schwartz*	8	1	7 (3 were CPS)

*Hearing Officers on ISBE's Current List

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Due Process Statistics - FY 2015 through 2020*

Hearing Officer	Total Decision No.	For District	For Parent	Split
Mary Jo Strusz*	10	2	8 (2 were CPS)	
Jennifer Leisner*	8	2	5 (3 were CPS)	1
Sabrina Wilkins Brown	4	3	1	
Marcia Johnson	1	0	1 (1 was CPS)	
Michael Risen	4	1	2	1
Kenneth Ashman	1	0	1	

*Hearing Officers on ISBE's Current List
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Due Process Statistics - FY 2015 through 2020*

Hearing Officer	Total Decision No.	For District	For Parent
Ann Breen-Greco	1	1	0
Josette Allen	1	1	0
David Utley	1	0	1

*Hearing Officers on ISBE's Current List

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Recent Hearing Officer Decision Examples

Case No. 2017-0471, Leah Trinkala, Impartial Hearing Officer

Issue 1: Whether the District allegedly failed to provide specially designed instruction to allow the Student to participate in the general education curriculum since the District allegedly refused to provide homebound tutoring outside the hours of 4 p.m. to 6 p.m. which allegedly resulted in denial of FAPE?

Issue 2: Whether the District allegedly failed to provide an IEP and services that are appropriate in light of the Student's circumstances and allegedly failed to offer instruction specifically designed to meet the Student's unique needs in order to transition from eighth grade to high school and enable the Student to progress from grade to grade in high school?

Issue 3: Whether the Student is owed compensatory educational services in the form of tutoring as the result of the alleged failure to provide an individualized education plan for the Student and if so how much compensatory education the Student is entitled to receive?

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Recent Hearing Officer Decision Examples

Case No. 2017-0471, Leah Trinkala, Impartial Hearing Officer

Finding: For Parents

The District must provide the Student with 330 hours of compensatory tutoring services to be provided in the Student's home or at an appropriate mutually agreed upon place and shall only be provided for one hour per day. These services shall be provided between the hours of 9 a.m. to 3 p.m. and must be provided by a certified Special Education Teacher.

The compensatory tutoring services shall be completed within two years from the date of this order. The Student's IEP is hereby amended to reflect two hours per day of homebound services to be provided for the remainder of the 2017-2018 school year and to be provided by a certified Special Education Teacher between the hours of 9 a.m. and 3 p.m. on regular school days.

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Recent Hearing Officer Decision Examples

Case No. 2019-0189, Alan Schuster, Impartial Hearing Officer

Issue 1: Whether the District predetermined the District's Response to Parents' request for transportation services to daycare located outside the school district boundary and if so, did this deny the student FAPE?

Issue 2: Whether the Student was denied FAPE as a result of the District's failure to provide student transportation services to and from the student's daycare located outside the school district boundary?

Issue 3: Is before school and after school daycare at a licensed daycare facility necessary for the student to benefit from his IEP?

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Recent Hearing Officer Decision Examples

Case No. 2019-0189, Alan Schuster, Impartial Hearing Officer

Issue 4: Whether the Student was denied a FAPE for the District's purported failure to implement the IEP by failing to provide a full time permanent aide?

Issue 5: Were Parents denied the opportunity to meaningfully participate in the IEP development when they did not receive the student's evaluations in advance of the IEP meeting?

Issue 6: Whether or not the District's speech and language evaluation is appropriate?

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Recent Hearing Officer Decision Examples

Case No. 2019-0189, Alan Schuster, Impartial Hearing Officer

Finding: For District

Parents failed to offer any evidence to show the day care program is needed as an integral part to meet the student's special education needs. The IEP had never been implemented at day care and the day care admitted they would not implement the IEP because staff is not trained or licensed to do so.

Parent's choice of the program was out of parental preference for a licensed daycare center and one which they could rely on to be available over time to care for the student when needed. Moreover, the evidence indicates daycare was being provided to the student for the Parent's convenience so that mom could return to work.

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Recent Hearing Officer Decision Examples

The student made appropriate progress toward meeting his goals during the time substitute part-time aides were employed and there was not loss of educational opportunity, therefore, the District's deviation from implementing the student's IEP as called for does not constitute a material failure to implement and accordingly Parent's related claims are denied.

The evaluation conducted of the student, which included the District's Speech-Language evaluation, was appropriate and the student's IEP, including the provision for 60 MPW of Speech-Language related services, provides the student a FAPE.

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Recent Hearing Officer Decision Examples

Case No. 2018-0391, Alan Schuster, Impartial Hearing Officer

Issue 1: Whether or not the student has been denied a Free Appropriate Public Education (FAPE) by the District's purported Failure to provide student accommodations to allow student to participate in the District's before and after School Care Program, including before school, early release and full days during summer break and school holidays?

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Recent Hearing Officer Decision Examples

Case No. 2018-0391, Alan Schuster, Impartial Hearing Officer

Finding: For District

The special education and related services provided in the IEP offered to the Student are adequate, appropriate, and available, and the IEP, as written, is reasonably calculated to enable the Student to make progress appropriate in light of his circumstances and therefore the IEP offered the Student does provide the Student a FAPE.

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Questions?



Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.
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