

A Look Back Pre and Post COVID: Illinois Due Process Hearing Officer Decisions

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A Look Back Pre and Post COVID: Illinois Due Process Hearing Officer Decisions

Presented by: Zaria Udeh
IAASE Conference 2021

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AGENDA

- Overview and Trends of Hearing Officer Decisions Pre-COVID
- Overview and Trends of Hearing Officer Decisions Post-COVID
- Due Process Considerations: To Go or Not to Go?

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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.

ISBE Due Process Hearing Decisions and Data

Data Disclaimers:

- Currently only 11 decisions are posted for FY 2021
- 4 decisions posted for FY 2020
- 22 decisions posted for FY 2019
- 18 decisions posted for FY 2018
- 14 decisions for FY 2017
- Parent vs. District vs. Split decision data considerations

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Current Hearing Officers

- **Current ISBE Hearing Officers**
 - **Janet Maxwell-Wickett**
 - Became a hearing officer in July 2014.
 - **Mary Schwartz**
 - Became hearing officer in July 2005.
 - **Mary Jo Strusz**
 - Became a hearing officer in May of 2016.
 - **Leah Trinkala**
 - Became a hearing officer in May of 2016.

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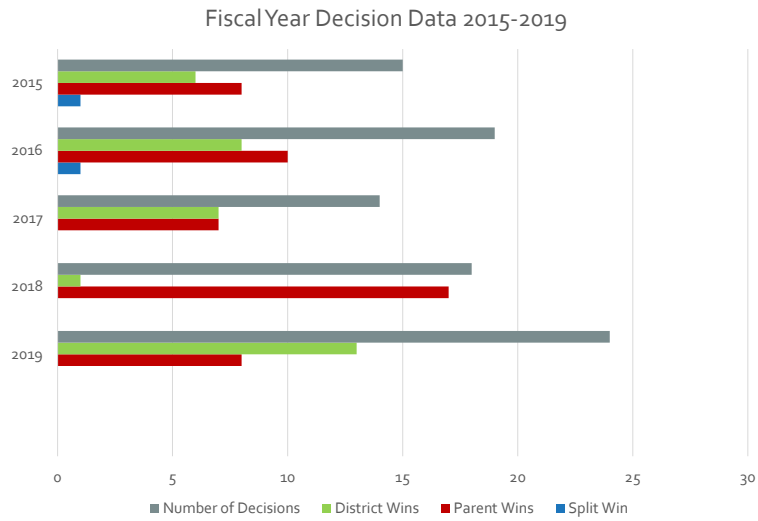
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Overview and Trends of Hearing Officer Decisions Pre-COVID



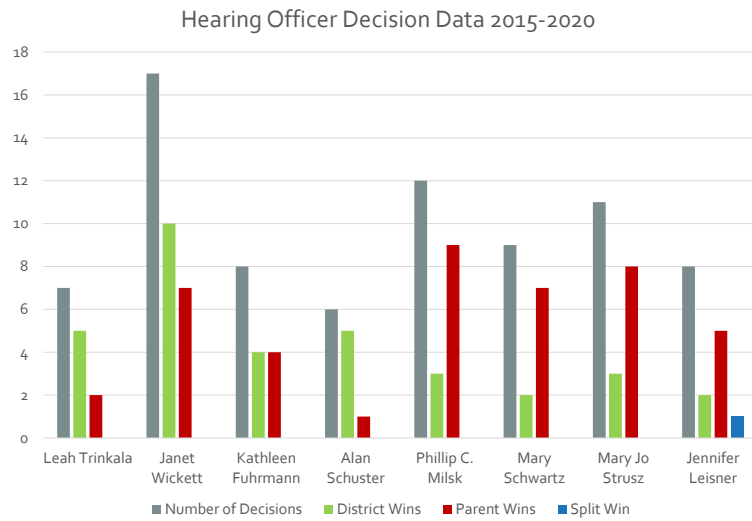
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District vs. Parent Wins in Fiscal Years 2015-2019



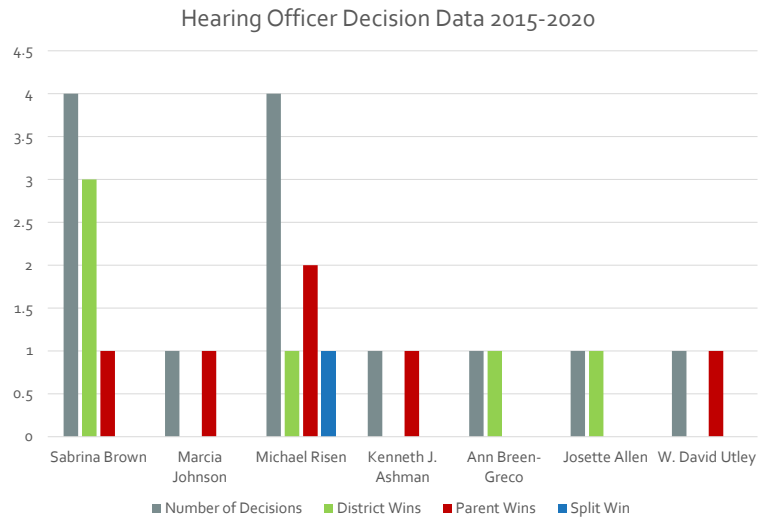
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Decisions per Hearing Officer



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Decisions per Hearing Officer



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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	9	2	7 (3 were CPS)

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Due Process
Statistics - FY
2015 through
2020

Hearing Officer	Total Decision No.	For District	For Parent	Split
Mary Jo Strusz	11	3	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	

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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

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Overview and Trends of Hearing Officer Decisions Post-COVID



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2021 Hearing Officer Decisions

Year	Case	Hearing Officer	District Win	Parent Win
2021	<u>2021-0008</u>	Janet Maxwell-Wickett		X
2021	<u>2021-0031</u>	Janet Maxwell-Wickett	X	
2021	<u>2021-0053</u>	Janet Maxwell-Wickett	X	
2021	<u>2021-0063</u>	Janet Maxwell-Wickett	X	

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2021 Hearing Officer Decisions

Year	Case	Hearing Officer	District Win	Parent Win
2021	<u>2020-0107</u>	Kathleen Fuhrmann		X
2021	<u>2020-0176</u>	Kathleen Fuhrmann	X	
2021	<u>2020-0202</u>	Kathleen Fuhrmann		X

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2021 Hearing Officer Decisions

Year	Case	Hearing Officer	District Win	Parent Win
2021	<u>2020-0080</u>	Mary Schwartz		X
2021	<u>2020-0171</u>	Mary Schwartz	X	

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2021 Hearing Officer Decisions

Year	Case	Hearing Officer	District Win	Parent Win
2021	<u>2020-0207</u>	Mary Jo Strusz		X
2021	<u>2021-0022</u>	Mary Jo Strusz	X	

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2020 Hearing Officer Decisions

Year	Case	Hearing Officer	District Win	Parent Win
2020	<u>2019-0212</u>	Janet Maxwell-Wickett	X	
2020	<u>2020-0069</u>	Janet Maxwell-Wickett	X	
2020	<u>2019-0146</u>	Janet Maxwell-Wickett	X	
2020	<u>2020-0028</u>	Kathleen Fuhrmann	X	

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CASES DEALING WITH COVID-19

FYYear	Case	Hearing Officer	District Win	Parent Win	Issues
2021 Decision: 10/30/20	<u>2021-0008</u>	Janet Maxwell-Wickett		X	IEP Remote Learning Placement
2021 Decision: 4/30/21	<u>2021-0053</u>	Janet Maxwell-Wickett	X		IEP Remote Learning Placement

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CASES DEALING WITH COVID-19

Year	Case	Hearing Officer	District Win	Parent Win	Issue
2021 Decision: 10/2/20	<u>2020-0207</u>	Mary Jo Strusz		X	IEP Remote Learning Placement
2021 Decision: 10/16/20	<u>2020-0202</u>	Kathleen Fuhrmann		X	IEP Remote Learning Placement

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Due Process Considerations: To Go or Not to Go?



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Due Process: Relevant Federal Regulations

§ 300.507 Filing a due process complaint.

- **General.**
 1. A parent or a public agency may file a due process complaint on any of the matters 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: Relevant Federal Regulations

§ 300.508 Due process complaint.

- **Content of complaint.**
 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 relating to the proposed or refused initiation or change, including facts relating to the problem; and
 6. A proposed resolution of the problem.

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Due Process: Relevant Federal Regulations

§ 300.510 Resolution process.

- ***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, 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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Due Process: Relevant Federal Regulations

§ 300.510 Resolution process.

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 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.
4. When a resolution meeting is held, the parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

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Due Process: Relevant Federal Regulations

§ 300.506 Mediation.

• *General & Procedures.*

1. Parties to disputes involving any relevant matter, including matters arising prior to the filing of a due process complaint, may utilize mediation to resolve disputes.
2. The procedures must meet the following requirements:
 - i. 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 under IDEA; and
 - iii. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

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Due Process: Relevant Federal Regulations

§ 300.506 Mediation.

• *Requirements.*

1. 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: Relevant Federal Regulations

§ 300.511 Impartial due process hearing.

- ***Impartial Hearing Officer.***

1. Must possess knowledge of, and the ability to understand, the provisions of the IDEA, regulations, and legal interpretations by Federal and State courts;
2. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
3. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

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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

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

- 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, siblings)

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Due Process: Hearing & Post Hearing

- Pre-hearing Conference
- At the hearing, evidence will be presented in the form of documentary admissions and witness testimony.
- A hearing can span one day to multiple weeks in duration.
- The hearing is transcribed by a court reporter, and the impartial hearing officer renders a decision at the end of the hearing.
- After the hearing, within 120 days of a decision being rendered, either party may appeal the decision to federal court.

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Due Process: Settlement Negotiations

- Settlement Negotiations
 - At any point during a due process dispute, the parties may enter into a settlement agreement to resolve the issues.
 - When negotiating an agreement, parties should consider whether:
 - the school team can live with the terms,
 - the offer fully addresses the issues in dispute, and there is room for creativity in structuring the terms; as well as
 - what the likely outcome of the hearing is and the cost in staff resources, attorneys fees, and other costs leading up to and during the hearing.

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Practical Tips: Build Trust Through Communication & Collaboration

- Trust and meaningful communication with parents are the foundation of change in this due process cycle.
- Teachers and administrators can and should be the educational ambassadors who facilitate a healthy dialogue between school and home.

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Practical Tips: Consider Mediation

- No one wins in a special education due process hearing and the best way to “win” for children is to avoid disagreement, resolve differences and find solutions.
- Mediation is less contentious than due process and is a way to work through differences and arrive at a compromise with less expense in time and money.
- Every effort should be made, therefore, to consider mediation seriously as a step that could well avoid litigation.

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Practical Tips: Keep Calm and Carry On

- Teachers should make every effort to remain focused on the education of the student and work on maintaining a good working relationship with the parents.
- When teachers and administrators avoid contact with parents who have initiated due process, they only exacerbate negative feelings and mistrust.
- A strong line of communication must remain open with equal access for parents and teachers and with support from administrators.

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Practical Tips: Ongoing Educational Meetings

- Team members need to attend all meetings, be prepared and informed with updates on the student's status and be able to suggest possible changes.
- Team members must take the remarks and information from parents seriously without appearing defensive.
- When reviewing reports presented by parents, team members need to articulate their own expert opinion using specific information that will either support or dispute the parents' position.

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Practical Tips: Ongoing Educational Meetings

- It is important that teachers understand how their role relates to other professionals on the team.
- Preparation is Important
 - Any differences of opinion that may exist within the team should be discussed and resolved before the meeting so that all sides can feel comfortable with suggested recommendations.

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Practical Tips: Strategy

- The student's special education file needs to be updated, well organized, and accessible to the parents and staff upon request. This requires ongoing attention regarding professional notes, assessments, classroom tests and reports.
- Ongoing fact and data analysis is important in gauging the strength or weakness of the District's position.
- All relevant educators involved with the child need to understand the issues in dispute and be consistent among themselves in their approach and communication with parents.
- Direct involvement and support from administration makes a big difference.

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Zaria practices in the area of education law focusing in the areas of special education and students issues. Zaria counsels school districts with respect to IEP meetings, 504 accommodations, OCR, ISBE, and IDHR complaints, due process hearings, residency and homeless dispute hearings, student discipline matters, board policy and student handbook review, FOIA requests, student record compliance and contract review. Zaria also counsels community colleges on student related issues.

Prior to joining Robbins Schwartz, Zaria worked for the Chicago Public School District, where she represented the district as a special education attorney in due process matters and special education disputes.

RECENT PUBLICATIONS

"Medical Cannabis at School Wins Legislative OK," Chicago Daily Law Bulletin (2018)

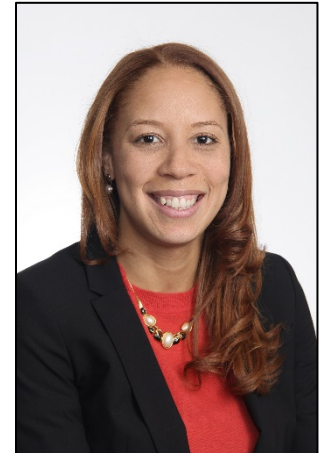
RECENT PRESENTATIONS

Use of Restraint & Seclusion: The Risks & Challenges Districts Face, IAASE (October 2018)

Legal Update in Special Education, Superintendent Leadership Conference (June 2018)

Current Trends Related to Placement and LRE: A Review of Recent Guidance from the Courts, IAASE (February 2018)

"Free Speech" Issues on Public College Campuses, ICCSSO (January 2018)



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