

## Special Education Due Process Hearings

### Current Procedure:

- 3 member panel
  - Department assigns an attorney to serve as the Chairperson
    - Department has a contract with 10 attorneys to conduct the hearings (they all are in private practice and this is a small part of there practice)
    - 5 have represented school districts in the past or currently
    - 2 have represented parents in the past or currently
    - 3 practice in other areas of the law
  - Parents choose a panel member from a list of individuals trained by the state
  - District choose a panel member from a list of individuals trained by the state
  - Each side has one opportunity to strike the chair or a panel member
- Prehearing matters handled by the Chairperson
- All 3 panel members attend and participate in the evidentiary hearing
- Final decision written by the Chair based on what the 3 members decide but signed by all 3 members (unless one chooses to dissent)

### Alternative Procedures:

1. Eliminate the panel and have the hearing conducted by an attorney (requires statutory change see Exhibit A for possible language change)
2. Eliminate the panel and have the hearing conducted by hearing officer who may or may not be an attorney (requires statutory change see Exhibit B for possible language change)
3. Have the hearings heard by a Commissioner from the state Administrative Hearing Commission (requires statutory change see Ex. C & D for possible language change)
  - All the Commissioners are attorneys
  - They currently hear a variety of cases- including State tax, professional licensing, Medicaid provider issues, Highways and Transportation Commission actions relating to railroads and motor carriers and disciplinary actions against State employees.
  - They would need to receive training on Special Education Law but there are resources that provide annual hearing officer training in special education.
4. Retain the panel and make changes to the contract for hearing chairpersons that prohibit any attorney who represents school districts or parents in education cases from serving as a chairperson

## **Data on Due Process hearings**

- Chairpersons are paid an hourly rate, which differs based on the proposal they submitted to the state, plus expenses
  - Hourly rates range from \$120 to \$195
- Panel members are paid \$350 per day of hearing and up to \$700 for pre and post hearing work, plus expenses
- In FY 2011 cost to pay chairs and panel members was \$419,984.10 (which includes time spent on due process cases plus travel and expenses)
  - \$43,206.96 was for panel members
  - \$376,777.14 for chairpersons
- In FY 2011 court reporting service cost \$78,285.05 (this may change if an alternative is implemented as fewer copies of the transcript may be needed- but currently not all panel members request a transcript so there is no way to estimate the change. The hearings must be recorded and a transcript provided to the parent at no cost)
- The state plan provides that hearings should not exceed 2 days without good cause shown
  - The average hearing in 2010-2011 was 4 days
    - Some hearing officers time the testimony and permit each side 8 hours which may take 3 to 4 days to complete because questions by the panel members do not count against a party's time
  - The Department was sued last year in an attempt to challenge the regulation on the 2 day limit. That case was dismissed without a decision on the time limit.
- Procedure in other states- see chart
  - 2 have hearing panels (Missouri and Delaware)
  - 17 use an entity similar to the Administrative Hearing Commission
  - 32 contract with hearing officers (almost all use attorneys)
- Since 2000 843 due process complaints have been filed and 206 decisions issued
  - Annual average is 84 complaints and 21 decisions