Special Education Due Process Hearings

Student Characteristics, Issues, and Decisions

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This article presents findings from an analysis of special education due process hearing decisions rendered in Iowa from July 1, 1989, through June 30, 2001. Detailed information regarding specific issues of dispute and prevailing party is presented, with an emphasis on differences in issues occurring at different grade levels and for gender. Results show that placement continues to be the most contentious issue overall; however, the most prevalent issues vary by grade level of the student. The most frequent issue named for students in elementary school was that of evaluation, for those in middle school it was suspension/expulsion, and for high school students it was placement. Boys were involved in hearings more frequently than were girls, except when the issue was methodology or related services. Districts prevailed most often overall, with 63% of decisions in their favor. Parents prevailed more frequently in issues of graduation and suspension/expulsion. Policy implications are discussed.

Individual states differ substantially in the number of due process hearings held. In those states in which a request for a due process hearing is first heard at the state level (one-tier process), the number of hearings held per 10,000 students under IDEA ranged from a low of 0.42 in Idaho to a high of 14.96 in Connecticut, with a mean rate of 2.62 hearings per 10,000 students in special education. In Iowa, the focus of the current analysis, the rate was .91 hearings per 10,000 students in special education (Zelin, 2000).

Beyond the number of hearings held, however, little information regarding specific details has been compiled nationally. Previous research at the state and national levels has provided some information. The issue of placement has consistently been shown to be the most commonly named dispute in due process hearings, appearing in 61% to 64.3% of cases (Newcomer & Zirkel, 1999; Newcomer, Zirkel, & Tarola, 1998; Sultana, 1997). This has been a stable finding since the enactment of Pub. L. 94-142, the 1975 precursor to IDEA. An analysis of hearings in Illinois as early as 1978 to 1980 indicated that 67% involved the issue of placement (Kammerlohr, Henderson, & Rock, 1983). Interestingly, the specific dispute may not always be the expected one. For example, in a review of decisions of appeals to federal court involving placement issues, Newcomer and Zirkel found that 76% involved parents seeking a more restrictive placement—rather than a less restrictive one—for their child with a disability.

Previous research has also consistently shown that the majority of cases involve boys, which is not surprising in light
of the fact that they make up the majority of the special education population (Newcomer & Zirkel, 1999; Newcomer et al., 1998). A more important question is whether boys make up a disproportionate number of hearings in any particular issue.

The number of hearings involving specific categories of disability does not reflect the representation of these disabilities in the special education population. Students with learning disabilities have been reported to be involved in the greatest percentage of disputes, ranging from 24% to 29% (Newcomer & Zirkel, 1999; Newcomer et al., 1998). Kammerlohr et al. (1983) reported a lower figure of only 13.7% of hearings involving this disability. Both figures are much lower than might be expected, given the fact that students with learning disabilities make up 50.8% of the special education population (U.S. Department of Education, 2000). Some sources have reported the percentage of hearings involving other disabilities to be much higher than might be expected based on the representation of that disability in the population. For instance, Newcomer and Zirkel (1999) reported that students with multiple disabilities were involved in 17% of hearings, a surprising proportion given these students only make up 1.9% of the special education population nationally. It is possible that the relatively large number of hearings for such a low-incidence population results from the complexity of this particular disability category, although this theory has not been analyzed. Similarly, students with emotional or behavior disorders were reported to be involved in 21% of hearings in Illinois, although these disorders are only 8.4% of all disabilities nationally (Kammerlohr et al., 1983). To assess the implementation of IDEA, two important questions need to be asked: Why do parents of students with particular disabilities express dissatisfaction through due process hearings more often than might be expected? Why are some parents requesting hearings less frequently than might be expected?

Available information regarding the prevailing party in disputes has not been consistent. Reporting differences probably can be explained, in part, by whether the dispute was decided at the administrative, district court, or appellate court level. Newcomer and Zirkel (1999) reported that school districts predominantly or completely prevailed in 60% of hearings that were appealed to a federal court, and in 77.8% of hearings when considering both administrative hearings and appeals to court. By contrast, a review of hearing decisions in Kentucky found that parents prevailed in a majority of issues (Sultana, 1997). Similarly, McKinney and Schultz (1996) reported a parent victory on 58% of issues in hearings. An important question that has yet to be addressed in detail is the extent to which the prevailing party is dependent on the particular issue in dispute.

In summary, a review of the literature suggests the need for additional analyses of due process hearings. In particular, an analysis of differences in the number and types of issues disputed at different grade levels and disability categories—and by gender—is a priority. Furthermore, information on the hearing decisions for specific individual issues is also lacking.

Method

Data Source

All hearing decisions rendered in Iowa for the period of July 1, 1989, through June 30, 2001, were obtained from the Iowa Department of Education. Fifty decisions were rendered during this time period; all were included in this analysis. In the few cases where particular pieces of information were missing from the written decision, every effort was made to locate this information through a records search at the Iowa Department of Education. In some instances, data were still unavailable and were listed as “missing” in charts and data summaries.

In a minority of cases, the issues listed in the original request for due process were clarified and sometimes altered during the proceedings of the hearing. When this occurred, the identification of issues for this report was based on the issues as identified in the decision.

Every request for a due process hearing that resulted in an actual hearing during this time period was included in the analysis. I relied on population data for due process hearing decisions in the state of Iowa, making inferential statistics unnecessary. Simple descriptive statistics, such as frequency and percentages, are provided. Due to the low incidence of due process hearings in Iowa during this time period, frequency counts were more easily interpreted than percentages, and therefore are provided most often.

Definitions

Disputes that may result in a request for a due process hearing are those that involve the issues of identification, evaluation, placement, or provision of a free, appropriate public education (FAPE; 34 C.F.R. § 300.507). For purposes of this analysis, I determined that specific individual issues provided important information that could not be ascertained under the more general issue of provision of FAPE. Thus, FAPE was further categorized into issues of related/support services, the contents of the Individualized Education Program (IEP), procedural safeguards, methodology, extended school year services, graduation, and suspension/expulsion.

Issues identified in the hearings were classified into one of the following categories:

1. Evaluation refers to an individual evaluation of the student’s educational needs.
2. Identification refers to the determination that a student is an individual with a disability and as a result requires special education and related services.
3. Placement/Least Restrictive Environment (LRE) refers to the policy that to the maximum extent appropriate to the needs of the eligible individual, special education and related services shall be designed and delivered so as to maintain the
individual in the general education environment (281 Iowa Admin. Code 41.37(2)).
4. **Related and support services** refers to transportation and such developmental, corrective, and other supportive services as are required to assist an eligible individual in benefitting from special education (281 Iowa Admin. Code 41.94).
5. **IEP** refers to the components of the Individualized Education Program of the student.
6. **Procedural safeguards** refers to the full range of procedural safeguards available to the parents of a child with a disability. Those safeguards most salient for the present analysis included prior written notice, parental consent, and access to educational records.
7. **Methodology** refers to the specific instructional techniques and materials utilized by instructional staff in an effort to achieve the goals and objectives outlined in the IEP.
8. **Extended school year services** refers to special education and related services that are provided to an eligible individual beyond the normal school year of the public agency (281 Iowa Admin. Code 41.80(1)).
9. **Graduation** refers to obtaining a high school diploma.
10. **Suspension/expulsion** refers to the removal of an eligible individual from the current educational placement for disciplinary reasons.

**Results**

Of the 50 hearings analyzed, 22 involved a single issue. The remainder involved multiple issues, ranging from 2 to 12 issues per hearing, resulting in an overall total of 126 disputed issues. Placement/LRE was the most common area of dispute, identified as an issue 25 times. The second most common issue was evaluation, which was identified 20 times. The issue of graduation was named least often in the hearings, occurring only 2 times.

A detailed analysis of placement disputes was conducted to ascertain the specific nature of the disagreement. There were 23 separate cases in which placement was identified as an issue. (In 2 of these hearings, the issue of placement was identified twice by the appellants). Of those 23 cases, 15 centered on whether the child would attend the neighborhood school or would receive services in a different school, either within the school district or outside of the school district in which the student resided. The most common reason for placement disputes therefore centered on the particular school the child would attend, rather than on the level of service he or she would receive. In 11 of these 15 cases, the parents sought to maintain the student at the neighborhood school. Of the 4 cases in which the parent was seeking a placement outside of the neighborhood school, 2 involved a request for payment of private school tuition, 1 involved request for a program at a community college, and 1 involved a parent request for the student to receive services in a residential setting. The parents prevailed in 6 of these cases, and the district prevailed in 9. Eight of the decisions favored maintaining the student in the neighborhood school, and 7 favored placement outside of the neighborhood school.

Eight hearings involving placement centered on the level of service provided to the student. In seven of these cases, the school sought a more restrictive placement; in one case, the parent sought a more restrictive placement. The school prevailed in six of these cases, and the parent prevailed in two.

A detailed analysis of hearing decisions involving issues of evaluation was conducted. Fifteen separate hearings involved this issue. Of these, 9 centered on the parents’ request for reimbursement of the costs associated with an independent evaluation. The district prevailed in 6 of these disputes, and the parents prevailed in 3.

Fourteen separate hearing decisions involved issues of procedural due process, and these were also analyzed in detail for this study. Ten of these centered on parent involvement, with parents contending that opportunities for participation in decisions regarding their child’s education were not adequate. The district prevailed in 9 of these cases, and the parents prevailed in 1.

**Issues by Gender**

Figure 1 indicates the type of issues identified in due process hearings held for boys versus those for girls. In general, boys were involved in due process hearings more often than were girls (37 and 13 hearings, respectively). The number of hearings involving boys was somewhat higher than expected, given that they make up approximately 66% of the special education population but were involved in 74% of the hearings analyzed. Interestingly, certain issues were identified more often for girls than for boys. This was true of related/support services, identified as an issue 10 times for girls and 8 times for boys. It was also true for the issue of methodology, identified as an issue for girls three times and for boys one time. Conversely, girls were not involved in any due process hearings concerning the issue of identification during this time period and only rarely in those involving issues of suspension/expulsion.

For both genders, issues of placement/LRE, evaluation, and procedural safeguards were among the most frequently named. For boys, issues of IEP contents were also frequently named. For girls, an additional issue named frequently was that of related/support services. Although suspension/expulsion was identified as an issue only once for a girl, it was identified eight times for boys.

**Issues by School Level**

Issues were also analyzed in terms of the school level of the student involved. The most frequently named issue for chil-
FIGURE 1. Issues named in due process hearings by gender.
dren in early childhood programs was extended school year services, which was identified 4 times. For elementary school children, this issue was less common relative to other issues in dispute, and it did not appear at all beyond the elementary level. The most common issues disputed at the elementary school level were evaluation and placement/LRE, each identified 10 times. The most common issues disputed in middle school/junior high school were suspension/expulsion and procedural safeguards (each identified 7 times), with evaluation issues closely following (identified 6 times). Placement/LRE was the most common dispute issue in high school (identified 8 times). Issues involving the contents of the IEP and related/support services were also named relatively frequently at this level (identified 6 times and 5 times, respectively).

**Prevailing Party**

Because many hearings involved more than one issue, prevailing party was analyzed based on individual issues rather than on the overall hearing (see Figure 2). The local education agency (usually the school district) fully prevailed most often, in 79 of 126 issues named (62.7%). The parent fully prevailed in only 43 of 126 issues (34.1%). Four issues resulted in a mixed decision. Neither the parent nor the LEA prevailed.

An analysis was conducted of the prevailing party for different types of issues. The local education agency prevailed more often in issues of evaluation, placement/LRE, related/support services, procedural safeguards, and extended school year services. In addition, it prevailed in every issue involving methodology and identification. The parent prevailed more often when the dispute involved issues of IEP contents and suspension/expulsion. The parent prevailed in every dispute involving graduation as an issue.

**Discussion**

A request for a due process hearing is one important way that parents can express dissatisfaction with the educational services received by their children with disabilities under IDEA. Indeed, the National Council on Disability reported, “Parents are still a main enforcement vehicle for ensuring compliance with IDEA” (2000, p. 70). A detailed analysis of the areas where parents are displeased or feel that the needs of their children are not being met is critical to improving the collaborative efforts of parents and school officials in the interests of children with disabilities. Where due process hearings occur, there clearly is a disagreement between parents and school officials regarding the requirements of IDEA and its implementation. Clarification of legal requirements in these areas would do much to improve (a) the working relationships between parents and educators and (b) implementation of IDEA. Most important, students will be better served when potential areas for dispute are identified early and preventative measures are taken.

The findings in Iowa support findings in other locales regarding placement as the most contentious issue. Moreover, hearing outcomes pertaining to this issue did not consistently favor parents or school districts. In Iowa, the district prevailed most often, with 62% of decisions clearly in districts’ favor, but one third of the decisions favored parents. Clearly there is some misinterpretation of the law on the part of both school district officials and parents.

A detailed analysis of these cases clearly revealed that parents were overwhelmingly seeking to have their children educated in less restrictive environments and were especially interested in maintaining their children in the neighborhood school. By contrast, school districts were proposing service delivery in more restrictive placements within the neighborhood school and frequently in out-of-district placements.

What is sometimes misunderstood is that although the law requires that a continuum of services be available to meet the individual needs of children with disabilities, these services need not be offered in the neighborhood school or even in the resident district. The law merely states that the least restrictive environment is “as close as possible to the child’s home” (34 C.F.R. § 300.552a(2b)) and “unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled” (34 C.F.R. § 300.552e). Thus, although the law appears to encourage placement in the neighborhood school, it does not require it. Parents did not prevail in cases where the placement dispute was based solely on the argument that the least restrictive environment was always the neighborhood school. Rather, proper placement was based on the individual needs of the student and where services and programs to meet those needs were available.

In some instances, clarification of the decision-making process regarding placement may be needed. Although districts are not required to provide the full continuum of services within the district, they must make every effort to provide services in the least restrictive environment. The law states that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 C.F.R. § 300.550b(2))

In practice, this requires teams to design an appropriate IEP that meets the needs of the student in terms of least restrictive environment while also ensuring that educators have access to the resources necessary to implement this plan. This is a challenging task indeed. School districts must ensure that the people responsible for making placement decisions—that is, the IEP team members—are well trained not only in the legal requirements of LRE but also in the pedagogical theory, instructional techniques, and materials available to assist in this
FIGURE 2. Prevailing party on individual issues named in due process hearings.
task. This training must involve not only educators but parents as well, as they are equally involved in making such decisions.

Although technical assistance is available for implementing the concept of least restrictive environment, not a lot of data are available regarding the number of people who make use of training manuals or workshops. Because placement decisions have been and continue to be the most disputed, much could be gained by searching for ways to improve the collaborative planning and decision-making process in this area and ensuring that all stakeholders are knowledgeable on this topic.

Another frequently disputed issue is that of evaluation. A detailed review of the hearings indicated that the parents frequently disagreed with the evaluation conducted by the school or other agencies selected by the school, and they requested reimbursement for an independent evaluation. The law states that a parent has a right to have the child independently evaluated at public expense if the parent disagrees with an evaluation obtained by the district (34 C.F.R. § 300.502(b)). Such an evaluation must meet the criteria established by the district in terms of the qualifications of the examiner and the location of the evaluation. Frequently, the parent was not successful in seeking reimbursement for an independent evaluation because these criteria had not been met. Of the nine cases involving issues of payment, the parents prevailed in only three. If parents hope to be reimbursed for the expense of independent evaluations, they must be more aware of specific criteria. It will be helpful if parents receive such information early in the child’s education so that they can make informed decisions about the expense of seeking independent evaluations.

Occasionally the parents simply do not want the child to be evaluated, whereas the school believes that the child may be in need of special education services and seeks evaluation to assist in that determination. In these instances, the law is clear that schools have an affirmative responsibility to identify, locate, and evaluate children who are in need of special education and related services (34 C.F.R. § 300.125a). This is true even in instances where the parent disagrees with the need for evaluation. This may strike some people as an instance of the state usurping the rights of the parents, but the intent is to make certain that all children in need of services have the opportunity to access them. School officials must bear this in mind and take the necessary steps to identify children in need, even in situations where this puts the officials at odds with the parents.

Issues of procedural due process were often disputed. In nearly all such cases, the parents argued that they were not allowed to be fully participating members of the IEP team. Although the districts prevailed in the vast majority of these cases, the fact that parents believed they weren’t fully involved is telling. The 1997 amendments to IDEA were explicit in the desire to empower parents to be fully involved in decisions concerning their children. Districts appear to be complying with the letter of the law, but parents still are not satisfied. Children benefit when parents and educators work together effectively. If parents are dissatisfied with their role, school officials must work to improve the parents’ perceptions of the teaming process. Training for educators and parents in effective collaboration and teaming strategies would be beneficial to everyone involved, particularly the child. Parent Training and Information Centers, funded by the U.S. Department of Education, are available in all states (Technical Assistance Alliance for Parent Centers, 2002). The purpose of these centers is to train parents and educators and to help families obtain services for their children with disabilities. Unfortunately, simply having a center available is not enough; parents and professionals need to be made aware of the centers’ existence and encouraged to utilize the services provided. This is especially true for parents of children who have not yet been identified as needing services and thus are not yet a part of the system.

Analysis of the differences in the relative frequency of particular issues at different educational levels can provide valuable information regarding the specific training to be emphasized. The current analysis demonstrated that extended school year services was the predominant issue in early childhood programs, but it did not appear at all for levels above elementary school. Training in the procedures and criteria for extended school year services should be the focus for educators and parents of children at this level so that requests for such services are appropriate. In addition, school officials should analyze requests for extended school year services to ensure that the needs of the family might not be more appropriately served through other agencies and service providers. Some parents may need assistance in making the transition from relying on the school system to provide many services that are not directly educational in nature to seeking those services from other providers during school breaks. School staff members must work as liaisons between parents and other service providers to ensure that the parents feel confident that the needs of their children will continue to be met when school is not in session.

Finally, an analysis of those issues in which parents prevailed more often than school districts provides important insight into those areas where districts may need to evaluate current practices. In both hearings in which graduation was an issue, the parents prevailed. A detailed review of the cases showed that the parents were seeking to prevent graduation of their children in order to continue services under IDEA. Iowa does not currently require exit exams for graduation. Should such exams exist, it would be likely that there would also be hearings involving parents disputing the denial of a diploma. In either situation, districts must clarify the criteria for receiving a diploma.

Another issue in which parents prevailed more frequently than did districts was that of suspension/expulsion. IDEA included (a) specific provisions pertaining to the number of days a child may be removed from the current educational setting for disciplinary reasons and (b) a procedure for determining the impact of the disability on the child’s behavior. The intent of these provisions was to ensure that behavioral needs are addressed in the child’s educational programming. This applies
Regardless of the particular category of disability. Based on the results of this analysis, districts must seek to train staff members in behavior management techniques that do not rely extensively on student removal. Districts must also ensure that staff members are aware of the legal restraints on suspension and expulsion for all students with disabilities and the reasons behind such regulations.

Policy Implications

Beginning with the Education for All Handicapped Children Act of 1975 and continuing with IDEA, great strides have been made in providing education for children with disabilities. Nevertheless, disputes regarding the best way to provide education will continue to arise. Due process hearings cannot, and probably should not, be avoided completely. The number can be reduced, however, by addressing the issues presented here. Based on the results of this research, students, parents, and districts may benefit from attention to the following issues:

- Ensure that stakeholders have access to continual training in legal requirements, pedagogical theory, instructional techniques, and resources available for accessing the general curriculum when making placement decisions.
- Provide more detailed information to parents regarding the requirements for independent educational evaluations, especially payment for such services. Information should be provided early in the evaluation process.
- Encourage parents and educators to seek training to enable them to be fully participating members of the team, and provide them with information about available resources. Encourage greater utilization of resources such as the Parent Training and Information Centers.
- Assist parents in obtaining services needed by their children during school breaks.
- Increase knowledge and use of behavior management strategies that avoid reliance on suspension and expulsion for all categories of disability, particularly at the middle school level.

Implicit in each of these points is a need to improve the collaborative efforts of educators, parents, and others who provide services to children with disabilities. To achieve the level of collaboration required, educators and parents must actively seek assistance and training in team building for the purpose of planning and decision making. By improving collaboration and teaming in general, and specifically as it pertains to the findings reported here, the policy behind IDEA to “ensure that all children with disabilities have available to them a free appropriate public education . . . designed to meet their unique needs” can be more fully realized.

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REFERENCES


