

Putting The Puzzle Together: Moving Beyond Quantitative Due Process Hearing Data



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*Coming together is a beginning.
Keeping together is progress.
Working together is success.*

– Henry Ford



Definition of Conflict

The interaction of interdependent people who perceive incompatible goals and interference from each other in achieving these goals

(Folger, Poole, & Stutman, 2000, p. 5).

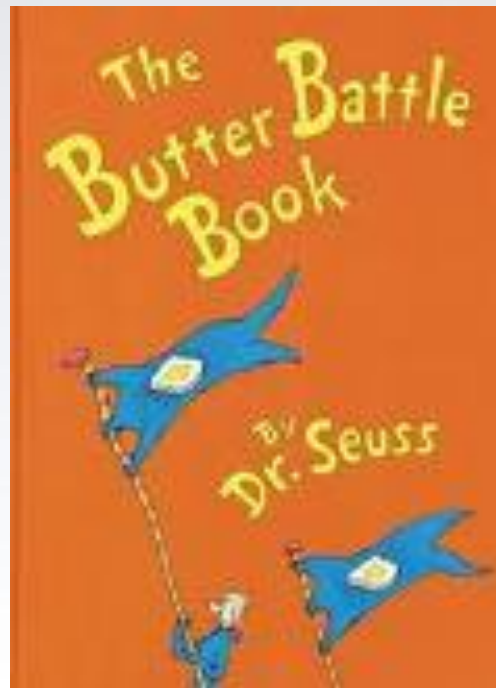


The Snowball Effect



The Moral of The Story....

Silly conflicts can escalate into a dangerous situation



Due Process Hearings: How Much Money and Time Does it Take?

- National conflict resolution = \$90 million
- Due process hearing costs = \$100,000–\$120,000 per hearing (average)
- Time spent worrying and planning for litigation = countless hours



Resolving a conflict without
having to go through litigation=



PRICELESS!!!!!!!!!!!!

The threat of litigation alone has costs for teachers, students and taxpayers: the cost of attorneys in actual hearings and court actions; the cost of attorneys and staff time in preparation for cases that do not reach the dispute resolution system; and the cost of paperwork driven by districts believing that extensive records help prevent lawsuits. These costs and the dissatisfaction with the system merit serious reform.

(U.S. Department of Education, 2002, p. 40)



Disputes of all sorts divert parent and school time and money, and waste valuable energy that could otherwise be used to educate children with disabilities.

Commissioners of Education Report, 2002.



Conflict in Special Education is a National Problem

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"Of course I get picked on in school.
I'm the only kid in my class who
hasn't sued anyone yet."



Putting Together the Puzzle

- What do we know about conflict in special education?
- What do we need to know about conflict in special education?
- What are best practices in conflict resolution for special education?



What do we know about conflict in special education?

SHOW ME THE DATA!!!!



Total Written State Complaint Activity – U.S. Five Year Trend

	2004-05	2005-06	2006-07	2007-08	2008-09
Complaints Filed	6,201	5,897	5,628	5,600	5,008
Complaint Reports Issued	4,380	4,252	3,900	3,981	3,403
Complaints with Findings	2,986	2,940	2,562	2,808	2,378

Total U.S. Mediation Activity	2004-05	2005-06	2006-07	2007-08	2008-09
Total Mediations Held	7,121	4,159*	5,835	5,672	6,054
Total Mediation Agreements	5,434	2,989*	3,679	4,104	4,246
Held, Hearing Related	4,294	1,463*	2,870	2,625	3,201
Agreements, Hearing Related	3,163	820*	1,392	1,743	2,011
% of All Mediations Held that were Hearing Related	60%	35%	49%	46%	53%
% of All Mediation Agreements that were Hearing Related	58%	27%	38%	42%	47%

U.S. Due Process Complaints & Hearings	2004-05	2005-06	2006-07	2007-08	2008-09
DP Complaints Filed	21,118	19,042	18,358	18,869	18,020
Hearings Held	7,349	5,385	4,537	3,218	2,904
Resolution Meetings Held	N/A	4,721	9,100	8,855	7,938
Written Settlement Agreements	N/A	1,743	2,027	2,301	2,090
Resolved Without Hearing	11,408	10,745	11,812	11,430	12,514
Hearings Pending	2,361	2,995	1,874	4,221	2,602
% Complaints Resulting in a Hearing	35%	28%	25%	17%	16%
% Complaints Pending	11%	16%	10%	22%	14%
% of Complaints Resolved w/o	54%	56%	64%	61%	69%

What Do We Need to Know About Due Process Hearings?

Let's Move Beyond Number Crunching



Common Sources of Conflict	Examples
Design of services	Placement, eligibility, student's needs
Delivery of services	IEP goals, placement, educational practices
Relationship issues	Communication, trust, reciprocal power, valuation, discrepant views of a child
Constraints	Resource restrictions
Knowledge	Lack of educational training



IEP Meetings Are Often the Initial Point of Conflict



An Examination of Special Education Due Process Hearings



Mueller, T.G., & Carranza, F. D. (2011). An Examination of Special Education Due Process Hearings. *The Journal of Disability Policy Studies* (XX (X) 1-9)
doi: 10.1177/1044207310392762

Why Would I Want To Read 575 Due Process Hearings????

- There are no current analysis of due process hearings across all states
- In short, we are *spending millions of dollars on due process hearings without really balancing our checkbook*
- The identification of themes could be used for system changes and conflict prevention



Research Questions

1. Are there some disabilities that are more common in the due process hearings?
2. Are there any dispute issues that are more common in the due process hearings?
3. Is there an association between the student disability and the dispute issue?



Research Questions

4. Is there a trend in the initiating parties and the prevailing parties?
5. Is there an association between the decision rule and the type of dispute?
6. Is there an association between the student disability and the decision rule?



Research Method

- A total of 575 due process hearings that took place 2005-06 from 41 U.S. states were included in this study
- Nine states (Indiana, Montana, Nevada, New Jersey, New York, North Carolina, Rhode Island, South Carolina, and Wyoming) were omitted from this study because the researchers could not obtain data from these regions



Research Method

- The data set included full due process hearing reports and, in some cases, an abbreviated synopsis of the due process hearing cases, depending on a state's data reporting system.



Data Collection Method

- Data collection involved an initial search for cases using state special education websites- yielding the fully adjudicated cases and findings of 17 states.
- To obtain data for the remaining states, e-mails and phone calls were made.



State Department Websites Provided Data Upon Initial Search (N = 17):

- Alabama
- Alaska
- Arizona
- California
- Colorado
- Connecticut
- Delaware
- Hawaii
- Maine
- Maryland
- Massachusetts
- New Hampshire
- Oklahoma
- Oregon
- Tennessee
- Texas
- Washington



State Departments Emailed Links to the Data

(N = 4):

- Georgia
- Minnesota
- Missouri
- Ohio



State Departments Emailed Due Process Data

- Idaho
- New Mexico
- North Dakota
- New York (omitted from study)



State Departments Mailed Due Process Hearing

Data (N = 13):

- Arkansas
- Florida
- Iowa
- Kansas
- Kentucky
- Louisiana
- Michigan
- Mississippi
- Mississippi
- Nebraska
- Vermont
- Virginia
- West Virginia
- Wisconsin



No Data Provided From The State (N = 8)

- Indiana
- Montana
- Nevada
- New Jersey
- North Carolina
- Rhode Island
- South Carolina
- Wyoming



Secondary Findings

- The majority of the states lacked a straightforward method of retrieving data
- There was little consistency across states with regard to the form and detail of data that were reported.



Method- Documentation Sheet

- The codes used for this study were based on preexisting IDEA definitions and regulations.
- The codes were then transferred into a due process hearing document sheet (adapted from the Litigation Documentation Sheet (LDS) used in the Newcomer and Zirkel (1999) study.



The Documentation Sheet

1. Case identification information (state, case title/number, year, petitioner, and gender)

2. Documented student disability (IDEA 13 disability categories for eligibility)

3. Dispute issue (placement, eligibility, assessment/evaluation, extended school year [ESY], IEP, compensatory education, tuition reimbursement, transition, behavior, related services, placement, and procedural),

4. Hearing officer decision (parent, district, student, or split).



Data Analysis

- Chi-square goodness-of-fit (GOF) tests were performed to determine the most common categories for exceptionality and dispute.
- Specifically, chi-square tests were performed for each categorical variable to detect whether the category sizes were significantly different from each other



Results

- The due process hearing cases of 575 male ($N = 329$) and female ($N = 254$) special education students were reviewed.
- The mean age of the students involved in the hearings was 12 years ($SD = 3.89$), with a range of 2 years to 21 years.



The Five States that Produced the Highest Number of Hearings in this Study were:

1. Pennsylvania ($N = 156$)
2. Maryland ($N = 67$)
3. Massachusetts ($N = 50$)
4. Hawaii ($N = 45$)
5. California ($N = 38$)



When Factoring the Per Capita Statistics (i.e., number of hearings per 100,000 children served under IDEA). The five highest states:

1. Hawaii
2. Maryland
3. Pennsylvania
4. New Hampshire
5. Connecticut



Breakdown of Due Process Hearings Per State

****See hand-out****



Research Question 1: Are there some disabilities that are more common in the due process hearings?

Disability	Percent of Cases
Severe Learning Disability	26.3
Autism	20.2
Other Health Impairment	15.1
Emotional Disturbance	13.2
Intellectual Disability	7.3
Multiple Disabilities	5.7
Speech or language impairment	4.9
Orthopedic Impairment	2.6
Hearing Impairment,	2.0
Deaf/blindness	0.4
Traumatic Brain Injury	0.8
Visual impairment including blindness	0.8
Deafness	0.6

Research Question 2: Are there any dispute issues that are more common in the due process hearings?

Dispute Issue	Percentage of Cases
Placement	25.4
IEP	23.9
Assessment/Evaluation	11.9
Eligibility	10.8
Behavior	8.5
Related services	6.9
Procedural	4.6
Compensatory education	2.7
Tuition	2.1
Extended school year	1.8
Transition	1.4

Note. Missing data = 1.9%.



Research Question 3: Is there an association between the student disability and the dispute issue?

- There was **no association between the student disability and the dispute issue**; that is, the type of disability did not determine the reason for dispute.
- However, **a pattern did develop** according to the disability category for the most common disputes.



Disability and Dispute

Autism

- Placement (34%),
- IEP and program appropriateness (27%)
- Assessment and evaluation (10%)

Emotional Disturbance

- Placement (36%)
- IEP and program appropriateness (17%)
- Behavior (16%)
- Eligibility (11%)



Disability and Dispute

Multiple Disabilities

- Placement (39%)
- Related Services (25%)
- IEP and Program appropriateness (31%)

Specific Learning Disability

- IEP and program appropriateness (25%)
- Placement (20%)
- Assessment and evaluation (18%)
- Behavior(12%)



Research Question 4: Is there a trend in the initiating parties and the prevailing parties?

- A majority of the hearings (84.5%) were initiated by parents, compared to only 14.1% of hearings initiated by the districts.
- In more than half of the hearings (58.6%) the district prevailed, in 30.4% parents' prevailed, and in 10.4% both the district and the parents prevailed..



Research Question 5: Is there an association between the decision rule and the type of dispute?

- Eligibility (75% district and 25% parent),
- Assessment and Evaluation (72% district and 28% parent),
- IEP (57% district and 43% parent)
- Placement (71% district and 29% parent),
- Behavior (68% district and 32% parent),
- Related services (64% district and 36% parent)



Research Question 6: Is there an association between the student disability and the decision rule?

- The students' disability **was not associated with the hearing officers' decision ruling.**
- There was no difference in how the hearing officer ruled for any disability category.
- In each disability category, the district prevailed, but the differences were not above chance levels.



What Does This Research Mean to the Field of Special Education Conflict?



Some Highlights

- States **lacked easy straightforward retrieval** of hearing cases
- **Parents were 6 times more likely to initiate** a due process hearing than were school districts.
- Yet, in **more than half of the cases** reviewed by these researchers, **the district prevailed.**



Future Directions

- More research is needed to explore patterns (**local and state level**)
- Future research is needed to **investigate case studies of disputes** in special education that could focus on other venues for potential dispute resolution strategies.



Qualitative Research About Conflict Prevention and Alternative Dispute Resolution



What is a Win-Win-Win Approach?

A Different Look at Conflict Resolution



Special Education Director Study

Qualitative Interviews with 10 directors about conflict in special education

Q1: How Do You Try to Prevent Conflict?

Conflict Prevention Themes:

1. Communication
2. Parent Support
3. Leveling the playing field



Special Education Director Study: Conflict Resolution Theme

Q 2: How Do you Address Conflict?

1. Intervene at the Lowest Level
2. Keep the focus on the child
3. Find a middle ground
4. See Each Other's Point-of-View



IEP MEETING ALERT LEVELS

SEVERE

SEVERE RISK OF VEIN-POPPING,
HEART-STOPPING OUTRAGE

HIGH

HIGH RISK OF SHOUTING MATCHES
AND THREATS OF LEGAL ACTION

ELEVATED

SIGNIFICANT RISK OF LAW VIOLATION
AND DENIAL OF SERVICES

GUARDED

GENERAL RISK OF
MISINFORMATION AND GUILE

LOW

LOW RISK OF
BACKSTABBING AND DECEPTION



What Do We Know About IEP Facilitation?



I'M NOT SURE WHY MR. BARTH ALWAYS FEELS COMPELLED TO BRING AN ADVOCATE TO THE IEP MEETING.



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OUTNUMBERED?



An Initial Qualitative Look at Facilitated IEP Meetings

- Qualitative Interviews with 13 educational stakeholders (parents, advocates, facilitators)
- Interviews took place over the phone for about 45 minutes to 1 hour
- Interviews specifically focused on the participants perceptions/ experiences with IEP meetings



Findings

Five Themes Emerged:

The Facilitated IEP...

- Neutralizes Things
- Focuses on the Child
- Levels the Playing Field
- Does not waste time (getting it done)
- Uses a Win/Win approach



Neutralizes Things

“ It’s somebody from the outside working with the parties. It’s someone that is listening to both sides, it’s someone where they control the line of communication and the agenda, and they, they allow the parties to, think, express their opinions, and, and if there is any miscommunication, that mediator is able to step in and maybe solve some of the miscommunications.” #2. P4



Focuses on the Child

“I felt like the facilitators were advocating for the students. They weren’t there to beat up the school, and they weren’t, you know, there to, to beat up the parents.” #7. P5



Levels the Playing Field

“I think it creates a neutral, a neutrality for both the, for the district staff and for the parents ...neither of them are necessarily in charge of the meeting... but I think that there’s an element of neutrality then for the, for the district and for the parent, and I think that puts them on kind of a more level playing field.” #6.p4



Does Not Waste Time (getting it done)

“That’s another good thing I love about mediation and facilitated IEP meetings from the dispute resolution, people are very quick to respond. So you’re not waiting weeks, the parents are contacted, the school is contacted within 10 days, I mean, you got a date and you’re ready to roll. And that’s a good thing because we are not wasting time.” #3. P4, 5.



A Win/Win Approach

“Due process hearings are so, so antagonistic, and so, you know, you’ve got lawyers involved and it’s, it’s a win/lose...whereas, with facilitated IEPs, it’s often a win/win for both sides.” #5. P3.



What Is Next?

- More research is needed on the patterns of due process hearings
- There needs to be a more uniform way for states to report data
- Facilitated IEP meetings are an emerging practice in need of research for overall effectiveness
- More qualitative research that explores working through highly litigious relations can inform the field of other ADR practices



A Resource for IEP Facilitation

- Mueller, T.G. (2009). IEP Facilitation: A Promising Approach to Resolving Conflicts Between Parents of Children with Disabilities and School Districts. *Teaching Exceptional Children, 41 (3), 60-67.*



*A boat does not go forward if
each one is rowing their own
way.*

- Swahili proverb



Questions?

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