Children with disabilities are entitled to free, appropriate, public education as defined by the Individuals with Disabilities Education Act (IDEA) 1997 reauthorization. Growing from parents’ desire to have their child’s educational needs met, due process for students in special education has been mandated since the inception of the Education for All Handicapped Children Act in 1975 (Public Law 94-142). The right to due process ensures children with disabilities equal treatment as compared to that of their peers without disabilities, as mandated by law.

Due process hearings are the principal vehicle for resolving disagreements between school districts and parents of children with disabilities concerning identification, evaluation, placement, or provision of a free, appropriate, public education (Katsiyannis, Yell, & Bradley, 2001). Three pertinent areas of due process hearings include:
1. Due process procedural guidelines.
2. Litigation and noncompliance on the part of the school.
3. Effects of a due process hearing on the parties involved.

IDEA 1997 serves to guarantee the equal treatment of all students in a school district. IDEA 1997 Part B ensures procedural safeguards to make certain equal treatment prevails. The primary procedural safeguards include:
- The right of parents or guardians to examine their child’s records.
- The responsibility of the school to notify and include parents or guardians in educational meetings and decisions, specifically child identification, evaluation, program, and placement.
- The right of parents or guardians to pursue mediation or a due process hearing.

Due process hearings are a last resort to resolve conflicts or problems between school districts and parents. They are requested by parents or guardians, students (upon reaching the age of majority), or school districts. Parents and guardians are often the party that initiates the request, although there have been instances wherein school districts have initiated a due process hearing.

Since 1997, when the 1990 Act was reauthorized, parents have had the option of using mediation instead of, or prior to, a due process hearing. Mediation is voluntary and must not interfere with the right of a parent or guardian to request a due process hearing.

Due Process Reviewed
An accurate number of due process hearings is difficult to ascertain because many variables must be considered. School districts often decide that it is more expedient to meet the requests in question than to proceed in due process. When cases do proceed and the ruling is in favor of the school district and the law has not been violated, those cases do not become part of the statistic. Fiedler (2000) reports the number of due process hearing requests has increased nationally from 4,125 in 1991 to 5,497 in 1995, an average increase of 7.5% annually.

Most due process requests address placement or program issues (Newcomer & Zirkel, 1999). Havey (1999) reported that parents and guardians tended to seek a more restrictive setting in 67% of the cases in which placement was an issue. Other reasons parents might request a due process hearing include:
- Denial of their child’s free and appropriate public education (East Penn School District v. Scott B., 1999).
- Reimbursement for outside services such as private school placements or therapy services (Frank S. v. School Committee of the Dennis-Yarmouth Regional School District, 1998).

These issues dominate the cases reviewed between 1980 and 2000; however, there are many unique reasons for requesting a due process hearing.

A significant factor regarding due process is the financial issue. It is often cost effective to meet a parent’s request over a dispute. For example, the Michigan Office of Special Education Early Intervention Services found the average cost of a due process hearing fluctuated between $13,000 and $61,000 at the local level in 2001 and between...
Due Process Procedures

According to IDEA 1997, school districts must follow specific guidelines in order to ensure a student’s right to due process. Once a due process request has been made, only a hearing officer can refuse to proceed with a due process hearing. IDEA 1997 has no definitive timelines once a due process request has been formally made, and it defers to state law. State timelines require prompt action upon receipt of the request. It may be viewed as inexcusable neglect if the responsible party fails to comply with the request in a timely manner. Furthermore, failing to respond to the request may result in violation of IDEA 1997 and constitute a denial of a free appropriate public education to the child as stated in the regulations, 34 C.F.R. 300.660-300.661 (Gorn, 1999).

Either party can appeal the decision of a due process hearing once a decision has been rendered. In an analysis of 200 court cases between 1980 and 1998, at both the federal and state level, Newcomer and Zirkel (1999) reported that school districts won 49% of the cases and parents prevailed in 41% of the cases, with the remaining decisions being split evenly. Newcomer and Zirkel also reported that school districts won 60% of the cases while parental victories constituted 28% of the wins at the federal level.

Hearing Officers

Most hearing officers are lawyers or educators. Because IDEA 1997 does not specify qualifications for hearing officers, it defers to the states to determine these guidelines; however, there are limitations regarding who can be a hearing officer. The 1997 reauthorization states that a person cannot be a hearing officer if he or she is an employee of the state or of a local education agency or if he or she is involved in the education or care of the child. In addition, a hearing officer cannot have a personal or professional interest in the child, because it might conflict with his or her objectivity in rendering a decision.

Once a person has been appointed as a hearing officer and each party has presented their case, the hearing officer generates a report. The law is not specific about how extensive the hearing officer’s findings need to be.

Procedural Violations

Yell and Drasgow (2000) found a variety of procedural violations in the cases they reviewed. School districts were at fault in one or more of the following categories:

- Parental participation
- Evaluation
- Individualized education program (IEP)
- Placement
- Qualifications of personnel.

School districts often decide that it is more expedient to meet the requests in question than to proceed in due process.

More specifically, Yell and Drasgow (2000) reported that school districts failed to provide adequate notice of the IEP meeting, tests were administered incorrectly or by nonqualified personnel, team members wrote goals that were not meaningful or were too broad, and school districts failed to provide needed services (see Table 1).

Effects of Due Process Hearings

The course of a due process hearing can have many emotional ramifications for all parties involved. These ramifications may be founded or unfounded; nonetheless, these ramifications, or perceptions, may impede a student’s educational progress. This impediment is the ultimate contradiction to the initial intent of the law, yet one that cannot be disregarded. Therefore, an awareness of these perceptions by various stakeholders may positively affect educational outcomes during and after the course of a due process hearing.

The school district may spend many hours and dollars to defend itself in a due process hearing, in addition to the accommodations currently and previously made for a student. The feelings that develop between the student, the parents, and the school personnel in a due process hearing undoubtedly place strain on a person’s professional and personal life. All parties involved in a due process hearing—the student, the parents, and the educational professionals—can be affected personally and professionally. The student may experience emotional distress, confusion about the process and about the disagreements between his parents and the school, and he may be the recipient of negative attitudes from educators as well as peers. Equally important, the student may not receive a free appropriate public education during the course of due process and, worse yet, may drop out of school.

Parents and guardians may develop feelings of distrust or anger toward the school before, during, and after the course of a due process hearing. Parents may have lingering concerns about the violation of their child’s rights and may harbor feelings of displeasure concerning the time and money spent during due process.

Educational professionals may develop negative and cautious attitudes toward the student and his parents, as well as develop feelings of distrust and anger. Finally, due process hearings may add to the rapidly increasing teacher attrition of special educators (Boe, Bobbitt, Cook, Whitener, & Weber, 1997).

Because the teacher shortage increases on a daily basis, the field of special education cannot afford to lose educators. Table 2 offers a summarization of possible perceptions of the stakeholders involved and possible outcomes of a due process hearing.

Areas for Improvement

Accountability in special education needs improvement. If more school districts and professionals were held to higher standards, there might be fewer due process requests in the future. All stakeholders involved in the special education process must be accountable.
The Study of Personnel Needs in Special Education (SPeNSE; United States Department of Education, 2003) found special educators frequently cited dissatisfaction with their jobs in relation to required forms and administrative paperwork. Many special educators are already buried under paperwork, and although this concern may be legitimate, accountability is tied with paperwork. This concern cannot undermine accountability. Paperwork is not the only accountability measure. Many aspects of accountability include, but are not limited to, identification, evaluation, service delivery, and qualified personnel. Student placement and services also needs improvement. Many due process requests stem from school districts fitting students into existing programs and providing the services that are currently available. IDEA 1997 requires multidisciplinary teams to identify students’ educational needs first, then determine placement.

Finally, all educators, general and special, have a responsibility to understand and implement IDEA 1997 to the fullest extent. This includes due process procedures. Specifically, educators need to know

- Procedural guidelines.
- Legal timelines.
- Roles of all stakeholders involved in the process.
- Implications of a due process hearing.

### Table 1. Violations

<table>
<thead>
<tr>
<th>Categories of Procedural Violations</th>
<th>Examples of NonCompliance</th>
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| Failure to involve parents/guardians in the special education process | Failure to provide adequate notice to parents/guardians of upcoming meeting  
Failure to invite parents/guardians when holding a meeting on a student’s education plan  
Failure to provide adequate notice of IEP meetings  
Failure to inform parents/guardians of their rights under IDEA 1997  
Failure to involve parents/guardians as equal partners in developing the IEP |
| Problems with evaluation | Tests administered by nonqualified personnel who do not have expertise in the area to be assessed  
Failure to evaluate all areas (communication, behavior, etc.) when determining a student’s strengths and needs  
Nonqualified examiner making recommendations at the IEP resulting in denial of FAPE |
| Inaccurate individualized education programs | Team members wrote goals and objectives that were too general or inappropriate for the individual student  
Team members did not provide the method of measurement or mastery criteria |
| Placement issues | School districts failed to provide needed services  
Team members determined placement based on availability, not on individual need |
| Lack of qualified personnel | School districts failed to provide mentoring and support for new teachers  
School districts failed to provide professional development for staff to be fully qualified in their area of specialization  
School districts failed to consider recommendations from experts |

Because the teacher shortage increases on a daily basis, the field of special education cannot afford to lose educators.
Future Perspectives and Final Thoughts

Although legislation mandates equal treatment of students with disabilities in school and society, this is not always practiced; thus, the advent of the due process request. The number of due process requests will continue to rise until the field of education truly accepts people with disabilities and learns how to accommodate individual special needs. More than 40 years have passed since the civil rights movement, and there are members of society who continue to work toward acceptance of all human beings equally. In regard to people with disabilities and people from minority groups, time, as proverbial as it might sound, will tell.

References

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