1985

Analysis of Special Education Due Process Hearings in Louisiana.

Leona H. Liberty
Louisiana State University and Agricultural & Mechanical College

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ANALYSIS OF SPECIAL EDUCATION DUE PROCESS HEARINGS IN LOUISIANA

The Louisiana State University and Agricultural and Mechanical Col. Ed.D. 1985

University Microfilms International 300 N. Zeeb Road, Ann Arbor, MI 48106
ANALYSIS OF SPECIAL EDUCATION
DUE PROCESS HEARINGS
in
LOUISIANA

A Dissertation

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Education

in

The Interdepartmental Program of Education

by
Leona H. Liberty
B.S., Syracuse University, 1976
M.S., Syracuse University, 1979
May, 1985
Acknowledgments

The author of this dissertation wishes to express her sincere thanks to committee members who assisted her in the drafting and refinement of this manuscript. Special thanks is extended to Drs. Robert VonBrock, major professor and chairman, and Thomas Hosie, minor advisor. Other committee members include Drs. David Blouin, Gregory Dobbins, Joseph Licata, and Richard Musmeche.

Grateful appreciation is also extended to author's husband, Thomas A. Liberty, whose belief, support and encouragement assisted her in realizing her educational goal.
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Abstract

The provision of special education due process hearings is mandated by P.L. 94-142 to resolve any conflict between the parents (or guardian) of the special education child and public school personnel in providing educational and related services that address the unique needs of the child. An impartial hearing officer is to preside at the hearing. This person is empowered to resolve the dispute. If either party is dissatisfied with the decision rendered by the hearing officer, they may appeal to the State, and even higher court level. This investigation was an in-depth analysis of the structural characteristics and outcome of special education due process hearings in Louisiana from 1978-1983.

The findings of the study indicated that there were 147 hearings during this five-year interim. School districts were more successful in resolving the conflict in their favor. If the hearing was appealed, the findings for the school district were even more favorable.

The issue most widely presented for hearing officers to resolve concerned the placement of the child in a private setting, at public expense. Parents of mentally retarded children used the due process hearing most frequently than did parents of children who had other
exceptionalities. The Learning Disabled Child was found to be classified fifty percent of the time as having a secondary exceptionality of Emotionally Disturbed.

There were some similarities between the findings of this study and due process hearings investigated in other states. Further research is needed to determine if certain characteristics of special education due process hearings are continuous, and/or if certain characteristics present a nationwide phenomena.
Chapter I

Introduction

With the advent of the Education for All Handicapped Children Act of 1975, usually referred to as Public Law 94-142, administrators in public schools have been faced with the challenge of providing services that ensure a "free and appropriate public education" for all handicapped students. No other federal educational law has promised so much or sparked so much controversy as this law (Hamilton & Yohalem, 1982). Administrators have had to increase their awareness of the handicapped student's problems, implementing programs that address multi-faceted needs while ascribing to the four key elements inherent in the law: (a) all handicapped children must be provided a free, appropriate public education, (b) the child must be provided this in the least restrictive environment, (c) the program must be appropriate to the needs of the child, as determined by an Individualized Educational Program, and (d) the right to due process must be guaranteed should there be a conflict as to what services and programs constitute an "appropriate" education. Administrators in local school systems have found that translating these key elements into services has caused much confusion in the past, and continues to do so (Freeman, Garvon & Williams, 1982).
The literature does suggest that educators, in general, are positive in supporting the rights of handicapped students who desire a public education. However, at the same time the literature suggests that educators are raising questions as to the scope and extent of services that are to be provided under the special education law with public monies. One of the main problems is that there are no simple, routine, or universalistic programs that meet the needs of the special education population. Rather, a variety of services are needed to provide an appropriate education for each handicapped child. The Special Education Law is social legislation aimed at individual needs for a diverse population; therefore, schools must address and respond to each child individually (Mayer, 1982; Meyer, 1977; Wright, Padilla, & Cooperstein, 1981; Report to the Congress, 1981; Shapiro, 1980).

The intent of this study is to clarify some of the confusion in providing educational and related services to special education students by an investigator reviewing the contents of the special education due process documents in the State of Louisiana from 1978-1983. The due process documents are verbatim transcripts of the actual grievance between the parents and the school system. These documents...
are rich in information relating to real problems and solutions in providing services to the special education student. Surprisingly only a few studies have been published concerning the contents and results of these hearings (Davis, 1983; Kammerlohr, Henderson & Rock, 1983; Pearce, 1983; and Smith, 1981).

To find guidance and comply with P.L. 94-142, and the regulations governing the law, school administrators have turned to constitutional and school laws, as well as previous court decisions which reflect precedents in the education of handicapped students. Educational administrators are guided by principles stated and implied in the Fifth and Fourteenth Amendments and Section 504 of the Rehabilitation Act of 1973. Three landmark court cases may also be considered as guides for educational administrators in special education matters: Brown v. Board of Education (347 U.S. 43, 1954); Pennsylvania Association for Retarded children v. Commonwealth of Pennsylvania (PARC, 334 F. Supp. 1257 ED PA, 1971), and Mills v. Board of Education District of Columbia (348 F. Supp. 866, D.D.C., 1972).

A fourth and recent court case that may have a powerful effect on limiting services for handicapped children was established in a Supreme Court Case, Hendrick Hudson Central School District v. Rowley (102 S.Ct. 3034,
The opinion set forth by the Supreme Court clearly established that schools do not have to provide handicapped children with the "best" or "perfect" education, but rather one that ensures equal access to education, similar to that guaranteed the non-handicapped child (McCarthy, 1983). Although the Rowley case dealt with providing services of an interpreter for a hearing impaired student, the general principles set forth by this case may help to further guide educational administrators in understanding the intent and scope of services intended by Congress in establishing the special education law.

As education is the responsibility of the local educational agency, school districts have the burden of resolving questions concerning the education of the handicapped student at the school building level. Section 615 of P.L. 94-142 details the procedures that must be followed by educational agencies when the schools and parents do not agree on an appropriate educational program for the child. An Impartial Hearing Officer is appointed as the arbitrator and he/she renders an independent decision based upon review of evidence presented by both parties. In deciding the outcome of the hearing it is reasonable to assume the impartial officer is guided by a knowledge base similar to that utilized by educational
administrators.

The selection and appointment of hearing officers to preside at special education due process hearings varies from state to state, according to State law and State Educational Agency regulations. The only restriction P.L. 94-142 stipulates is that the hearing officer must not be an employee of the school system.

All states that receive P.L. 94-142 monies must establish and maintain this process to resolve disagreements that may arise when there is a conflict with respect to evaluation, identification of an educational program, placement of the handicapped child, and other educational or related services related to a free and appropriate public education, should previous, less formal negotiations failed. The right to due process is not limited to parents, but also extends to the school system (Budoff, 1981; Turnbull & Turnbull, 1978).

Either party has the right to appeal the decision of the hearing officer. If the hearing is conducted by the Local Educational Agency (LEA), the aggrieved party may appeal to the State Educational Agency (SEA). This agency is then required to conduct an impartial review of the hearing, in accordance with State regulations, and reach a decision to either uphold or reverse the decision made by the hearing officer. Further recourse is available with
appeal to the district court level, with final appeal to the Supreme Court level. During the initial hearing, and/or subsequent appeals processes, the child remains in the original educational placement. If neither party appeals the initial decision of the hearing officer, the decision is considered final (Sec. 615)(e).

The State of Louisiana chose to receive federal monies and, in 1977, the Louisiana Legislature passed Act 754, The Education for All Exceptional Children Act. This Act incorporated into a single document all of the federal and state requirements required for provision of educational and related services to children identified as having special needs in Louisiana. Act 754 parallels P.L. 94-142 with the addition that Louisiana includes in their special education services the gifted population (Brooks, 1982). As a result of this added classification for special education services the term that identifies the special education population in Louisiana is "exceptional". For clarity in reading this manuscript the term "exceptional" will be subsequently used to describe all children who are recipients of special education services.

Sub-part 505 of Act 754 guarantees a due process hearing when there is a disagreement as to the scope and extent of services that must be provided to guarantee a free and appropriate education for the exceptional child.
In Louisiana the appointed hearing officer is an attorney and the school system is typically represented by the attorney retained by the school district. In the event the hearing officer's decision is appealed, a review panel is appointed by the State to either uphold or reverse the decision made by the hearing officer.

When reviewing the literature on due process and special education due process hearings in Louisiana, it was found that no valid instrument was available to conduct this investigation. Therefore, to determine what information could be gathered from the special education due process documents in a systematic way, the primary researcher developed an instrument entitled the Due Process Documentation Instrumentation (Appendix C). Categories were validated for internal consistency by the investigator conducting a pilot study (see Chapter III), in accordance with guidelines established for document and content analysis by Bailey (1978; Guba & Lincoln, 1981; Holsti, 1969, and Kerlinger, 1973).

Five tasks were identified by these authors as inherent to this process: (a) The population (or sample) is identified, (b) categories are defined and constructed by examining the documents and ascertaining what represents the common elements; these are to be exhaustive, mutually exclusive, and independent from each other; (c) recording
units are defined; (d) context units are defined, and (e) a system of enumeration is established.

The pilot study consisted of twenty randomly selected documents. The relevant categories were determined by the researcher, and a system of enumeration was established. The researcher applied frequency and percentage techniques to the data. A short narrative concerning the outcome of the hearing was recorded. To check inter-rater reliability a complaint management officer reviewed and coded five of the twenty randomly selected hearings. The results of this rater were consistent with the results collected by the primary researcher.

Results of the pilot study will be discussed in Chapter III, Methodology and Procedures. There were no significant trends expected by the researcher due to the small sample size. The intent of the pilot study was to assist the researcher to determine what information was available, if the information was presented in a consistent enough way to proceed with the study, and if the instrument that was developed by the investigator was consistent and valid for the gathering of information.
Statement of the Problem

The problem to be investigated by this study is to determine if there is a relationship between the structural characteristics of the due process hearing, and the outcome of the hearing and/or appeal. Structural characteristics are defined as the date of the hearing, area of noncompliance, the child's exceptionality, the size of the school district, the party responsible for initiating the hearing, if the parents were represented by an attorney, the time lines for the appeal, the types of decisions appealed, and the identity of the presiding hearing officer. The outcome of the hearing and/or appeal is defined as the action found necessary to be taken by the school system as a result of the due process hearing.

Questions to be Answered

Answers were sought to the following questions:

1. What areas of noncompliance were involved in the due process hearing?
2. How many hearings were won by the parents, the school, or were a compromise?
3. What exceptionalities were represented?
4. Do patterns exist with respect to the exceptionality and the outcome of the hearing?
5. How many parents were represented by an attorney, and was this related to number of hearings won by the parents?

6. Is there a relationship between the number of hearings won by the school district and the size of the school district?

7. How many decisions were appealed?

8. What areas of noncompliance were appealed?

9. What exceptionalities were involved in the appeals process?

10. Is there consistency with respect to decisions made among individual hearing officers when presented with the same or similar issue?

11. Are there any discernible trends in the type of decisions made at special education due process hearings in the State of Louisiana pre/post the Rowley III Supreme Court decision of 1982?

**Significance of the Study**

Due process under P.L. 94-142 is intended as a vehicle for resolution of disagreements between parents and schools concerning educational programs and related services. There is little known about the population who use this conflict resolution modality, the outcome of this procedure, or of factors which may influence the outcome.
The significance of this study is that relevant, objective information was uncovered that may guide and assist educators in the future by knowing what recurring problems confronted them in providing services to the special education population, and knowing as well what action the hearing officer found necessary for schools to take to remEDIATE the problem.

The enactment of P.L. 94-142 was in part due to a series of court cases directed at providing equal educational opportunity for individuals with handicapping conditions. If educators are able to predict problems as a result of the findings of this study, projected areas of conflict could be recognized and the need to proceed to a court of law to resolve the issue could be circumvented. Greater clarity in the intent and implementation of Special Education Laws may then result. The study could also serve to show the State of Louisiana is complying with P.L. 94-142 as every three years states must show evidence that they are complying with this federal legislation (Sec. 613) (Karlitz, 1982).

It is a stated fact that the due process hearing is considered an adversarial encounter between the school system and the parents (Budoff & Orenstein, 1981). A knowledge of problems brought up at previous due process hearings may help to prevent this grievance procedure and
allow conflicts to be resolved at the school building level. Therefore, by circumventing the need for a due process hearing, time, money, and emotional expense may be saved for both the school system, the family, and the exceptional child.

Another contribution of this study is that other researchers of special education due process hearings have stated that more studies are needed to discover if characteristics of due process hearings represent a nationwide phenomenon, or if they are unique to each state (Davis, 1983; Kammerlohr, Henderson & Rock, 1983; Pearce, 1983; and Smith, 1981). The study attempted to address this recommendation by researching the special education due process hearings in the State of Louisiana.

**Limitations**

The study of Special Education Due Process Hearings was limited to a review of hearings on file at the State of Louisiana Complaint Management Office, Department of Education from 1978-1983. Knowledge generated from this study is generalizable to other states with the exception that the Education for All Exceptional Children Act, La. 754, includes the gifted population as recipients of special education services. Other states do not traditionally include the gifted as part of state legislation for special education services.
Another limitation this study acknowledged is that the due process hearing officer in the State of Louisiana is always an attorney. Other states appoint as the Impartial Hearing Officer individuals who have a variety of educational backgrounds, and/or other experiences or interests in special education matters. The hearing officer's background as an attorney, a teacher, etc., may make a difference in the way the hearing is organized, and in the outcome of the case.

The goal of this research was to provide recommendations and generalizations to educational administrators that may help to clarify some of the problems for a smooth implementation of services for the special education student. Some of the questions were found to have limited answers due to the limited variation of some of the categories.

Definitions of Terms Used

Appeal

If either side is dissatisfied with the findings of the impartial hearing officer it has the right to appeal to a higher level, e.g., the State Education Agency. The child stays in his/her original placement until the appeals board provides a ruling. This definition is operationalized in item # 14 of Appendix C.

Areas of Noncompliance
This term includes placement in a private school, conflict over exceptionality classification, least restrictive environment, extended school program, (beyond the traditional school year), violation of a change in placement without notice, site designation, related services, independent evaluation request, time frame violated, expulsion, non-specific (general dissatisfaction with the child's educational program), homebound placement, change of placement without IEP. This definition is operationalized in item # 12 in Appendix C.

Exceptional Child

By definition, an exceptional child is any child who is evaluated and determined to have a condition which affects educational performance to the extent that special education is needed. This term is more broadly defined in Act 754 than in P.L. 94-142. In the Louisiana Act the term includes "gifted and talented children, educationally handicapped, and slow learners, in addition to those with physical or mental limitations, "from birth to their twenty-second birthday ". The term "exceptionality" is operationalized to include children who are autistic, multiply handicapped, mentally retarded, learning disabled, hearing impaired, gifted, talented, deaf-blind, educationally handicapped/slowlearner, hospital/homebound, other health impaired, severe language disordered, speech
impaired, emotionally disturbed, orthopedically handicapped, visually impaired, unclassified, and/or noncategorical preschool handicapped, and handicapped infants. This definition is operationalized in item # 3 in Appendix C.

**Impartial Hearing Officer (IHO)**

The impartial hearing officer serves as an objective decisionmaker to resolve disputes between parents and the school system at due process hearings. The person chosen as the IHO must not have any personal or professional interest that could bias the decision. In Louisiana, attorneys are typically IHO's, although this is not a specific requirement stated in P.L. 94-142. A definition of the identity of the hearing officer is operationalized in item # 9 in Appendix C.

**Individualized Education Program (IEP)**

The IEP is a written statement developed for each exceptional child. This statement identifies services and provides an educational plan and program to be developed which addresses the unique needs of each child. The IEP is developed mutually by parents and school personnel, and it serves as a communication vehicle to resolve differences prior to due process. The IEP can be thought of as a management tool to insure children are accorded a free and appropriate public education, as well as an evaluational
device to gauge progress and/or identify problems in the child's educational program. This term is operationalized as an area of noncompliance and may be found in item # 12 in Appendix C.

**Least Restrictive Environment (LRE)**

The intent of this term is to ensure that the exceptional child is not separated and isolated from the mainstream of society. However, LRE is not synonymous with mainstreaming. LRE is a provision to integrate education of the special education child with children not identified as such, to the maximum extent appropriate. This definition is operationalized in item # 12 in Appendix C.

**Outcome**

The outcome of the due process hearing, and/or appeal, is operationalized as the action found necessary to be taken by the schools for the provision of a free and appropriate public education. This definition is operationalized in item # 18 of Appendix C.

**Related Services**

This term includes transportation as well as developmental, corrective and other supportive services that are needed if the exceptional child is to benefit appropriately from special education services. This definition is operationalized in item # 12 of Appendix C.
School District Size

For purposes of this study, school district size has been divided into four categories, based upon pupil population (1982-83). The largest category was established at 30,001 pupils, or greater. The next category reflects schools that have a pupil population from 20,001 to 30,000; 10,001 to 20,000 pupils comprise a medium size school district; less than 10,000 pupils comprise the smallest school district. This term is operationalized in item # 7 of Appendix C.

Organization to the Remainder of the Study

Chapter II presents a review of literature relevant to school law, constitutional law, due process, the Special Education Laws, and court cases that may influence the decision and outcome of the special education due process hearing procedure.

Chapter III presents a rationale and description of research methodology that was selected for this research, and includes procedures used for collecting the data. A discussion of the validation of the Due Process Documentation Instrument and the pilot study will be found in this chapter.

Chapter IV presents the findings and results of the study.

Chapter V presents the summary, conclusions, and
recommendations of the investigation, as well as recommendations for future research.

The study concludes with a bibliography and appendixes.
Chapter II

Review of the Literature

Introduction

The United States has traditionally placed great importance on the availability and quality of public education. Schools have been entrusted with the responsibility to provide educational services to all children since the 1800's largely as a result of Horace Mann in Massachusetts and Henry Barnard in Connecticut (Campbell, Cunningham, & Usdan, 1980). Yet, in 1975, Congress found that 1,750,000 physically, mentally, or emotionally handicapped children received no education at all, and another 2,200,000 children received instruction inadequate to meet their educational needs (Senate Report, 1975). To address this lack of services and ensure all handicapped children would be provided with a "free and appropriate public education" (FAPE), Congress passed the Education for All Handicapped Children Act in 1975, usually referred to as Public Law 94-142.

To support compliance with the Special Education Law, federal monies, currently in the form of categorical grant-in-aid programs, are made available to the states. However, while P.L. 94-142 provides for financial incentives to states that agree to carry out its provisions, regulations inherent in Section 504 of the
Rehabilitation Act of 1973 enforce compliance of an appropriate educational plan to all handicapped students whether or not a state chooses to receive federal monies (Weatherley, 1979). As of 1984 all states are currently receiving P.L. 94-142 monies. Prior to 1984, the State of New Mexico did not accept federal grants for education of handicapped children (Hamilton & Yohalem, 1982; New Mexico joins P.L. 94-142, 1984).

Public Law 94-142 requires that all handicapped children, regardless of the severity of their handicapping condition, from their third to twenty-second birthday, be provided (a) a free, appropriate public education (FAPE), (b) education must be provided in the least restrictive environment (LRE), (c) the educational program must be appropriate to the needs of the child, as determined by an Individualized Educational Program (IEP), and (d) the right to redress must be provided should there be a conflict as to what services and programs constitute an "appropriate" education (procedural safeguards). Translating these four principles into required services continues to cause confusion in the local school systems (Freeman, Garvon & Williams, 1981).

A major purpose of P.L. 94-142 is to assure that rights of handicapped children and their parents (or guardians) are protected. In developing this regulation
Mr. Randolph (Congressional Record-Senate, November 19, 1975, p. S20427) addressed these rights:

"Another important feature of this legislation concerns the expansion of due process procedures in existing law. By building on those safeguards of due process in Public Law 93-380, we will assure handicapped children and their parents or guardian the right to have written prior notice whenever the educational agency plans to initiate, change, or refuses to change or initiate, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child; the right to examine relevant records; the right to have an opportunity to present complaints; and the right to have an impartial due process hearing" (Morra, 1978, p. 7).

Section 614 of Public Law 94-142 follows up on Mr. Randolph's dictum where it is stipulated that

"a local educational agency or an intermediate educational unit ...shall establish a goal of providing full educational opportunities to all handicapped children, including ...the participation and consultation of the parents or guardians of such children ..."

Therefore, when a child is first identified as needing special educational services, P.L. 94-142 mandates that parents must provide informed consent, in writing,
prior to any evaluation. Parents must also be included as a member of the evaluation team, and accept the educational plan, in writing, prior to its implementation. If the family judges the educational plan to be unacceptable, they have the right to an appeal before an impartial hearing officer (Section 615). Rules that guide the hearing vary from state to state according to state law and state educational agency regulations. The right to due process is not limited to parents, but also extends to the school system (Budoff, 1981; Turnbull & Turnbull, 1978).

The information gained from this study has attempted to identify and analyze certain characteristics that reflected areas of conflict between the families of the exceptional child and the school system in the State of Louisiana, and which resulted in resolution of the issue at the due process hearing or appeals level. As the study was grounded in a legalistic framework, a review of school law, court precedents, procedural due process, and the special education laws serves as background.

School Law and Related Court Cases
The United States Constitution makes no direct reference to public education, or to the education of the exceptional child, yet the federal role has become real in the matters of providing services to exceptional children.
A review of school law and related court cases may help to illustrate this:

The management and control of public education has been found to be the ultimate responsibility of the state. How the states acquired the responsibility of education originates from the Tenth Amendment where it is stated:

"...powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to states, or to the people."

Today, practically every detail of each state legislature provides for the operation of the schools from financial support, curriculum, qualification of teachers, policies concerning pupils, and a myriad of other school management matters, policies, and procedures. The control by the state legislature is subject to states' regulations. These regulations contain broad guidelines in either mandatory or permissive language. Through powers delegated from the state legislature, local school districts carry the major responsibility for day to day operations and are therefore considered a quaisi-corporate body, created by state law to exercise certain delegated powers over local schools. Unless a conflict erupts, decisions concerning the nature, extent, and quality of the school system, rests with the local school boards.

In the event of a educational conflict, school districts have the burden of resolving the dispute at the
school building level. All potential remedies must be
exhausted before the State will intervene. If the
litigatous parties find no satisfactory relief, the
conflict passes to the state court system (from trial
courts to appellate courts) to a last resort at the State
Supreme Court level. In the event there is still no
satisfactory resolution, the case would move to the federal
court system and be heard by justices at the United States
Supreme Court level. Unless the Supreme Court believes the
case involves an invasion of constitutional rights, or the
state has acted in an ultra vires manner, or has failed to
act when it had the responsibility to, it will not hear the
matter, and remand it to a lower court for resolution

When the courts have been called upon to resolve
conflicts, lawsuits under the Fifth and Fourteenth
Amendments have been most frequently called upon to clarify
educational grievances and especially special education
grievances. The Fifth Amendment states in part that
"...no person shall be...deprived of life, liberty,
or property without due process of law..."
followed by the Fourteenth Amendment which states that
"...No state shall make or enforce any law which
shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any persons of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws" (Sec.1).

Section 504 of the Rehabilitation Act of 1973, a basic civil rights provision that prohibits discrimination in places supported by public monies, is also a source cited to uphold liberty and property rights for the handicapped population. The statute reads:

"No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance."

Three court cases can be considered a precursors which test the principles stated or implied by these amendments, and Section 504. These principles paved the way for the establishment of the Education for All Handicapped Children Act of 1975, Public Law 94-142:

In the landmark case of Brown v. Board of Education (347 U.S. 43, 1954) the court found the Topeka Kansas Board of Education in violation of the Fourteenth Amendment and ordered remedies to address discriminatory practices against black children in the public school system. In
this case, the courts wrote that education is required in
the performance of our most basic public responsibilities,
as it is the foundation of good citizenship, a principal
instrument for introducing to the child cultural mores and
values, and for preparing the child for later vocational
training. If equal education is denied to black children,
it is doubtful that they may be expected to succeed in
life. The concepts and philosophical underpinnings found
in the Brown case were later transferred as rationales for
the handicapped student to be guaranteed a free public
education (Gilhool, 1974).

In 1971 the rights of mentally retarded children
were addressed in the Pennsylvania Association for Retarded
Children v. Commonwealth of Pennsylvania (PARC, 334 F.
Supp. 1257 ED PA, 1971). The suit asserted that
Pennsylvania's failure to offer educational opportunity to
severely retarded children represented a denial of equal
protection, as guaranteed by the amendment to the United
States Constitution. Expert witnesses focused and testified
on the following major points: (a) the provision of
systematic education programs for mentally retarded
children will produce learning; (b) education cannot be
defined solely as the provision of academic experiences for
children; rather education must be seen as a constant
process by which individuals learn to cope and function
within their environment. Thus, for children to learn to clothe and feed themselves is a legitimate outcome achievable through an education program; (c) the earlier these children are provided with educational experiences, the greater the amount of learning can be predicted. The court ordered that there be made available publicly supported education by September 1972, for all retarded children between the ages of 6-21. The decree also stated it was highly desirable to educate mentally retarded children in a program most like that provided to nonhandicapped children, giving educators guidelines in terms of the least restrictive environment, a term that has caused problems and confusion for educators and parents alike. This topic will be discussed subsequently in the literature review (Weintraub, 1974). The PARC case states the following:

"....among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class, and placement in a special public school class is preferable to placement in any other type of education and training" (343 F. Supp. 307).

In 1972 the Mills v. Board of Education District of Columbia (348 F. Supp. 866 D.D.C., 1972) expanded the
principles set forth in the Pennsylvania order to include all handicapped children. As a result of this case, the District of Columbia public schools were ordered to provide a free appropriate public education for all handicapped children, despite the school district's complaints that they did not have sufficient funds to provide full services. The court found that the District of Columbia's interest in educating the excluded children clearly must outweigh its interest in preserving its financial resources.

The PARC and the Mills cases both established that education is a right guaranteed by the United States Constitution, and a right which will be upheld by the court system. Three important propositions are said to have been established by this litigation: (a) all children have a right to a public education; (b) the school system must provide procedural due process safeguards when identifying, classifying, and placing children in the school system; (c) all handicapped children can benefit from education or training. (Bersoff & Veltman, 1979).

A recent court case that has significant implications for the educational rights of handicapped children was set forth in the Hendrick Hudson Central School District v. Rowley (102 S.Ct. 3034, 73 L.Ed. 2d 690, 1982). The central issue in this case was whether a school
The district was obligated, under Public Law 94-142, to provide a sign language interpreter for a hearing impaired child who, without the assistance of an interpreter, was making above average progress in the regular classroom. The case was initially won at the lower court levels by the parents who were requesting the service for the daughter, Amy Rowley. United States District Judge V. Broderick reasoned that, without an interpreter, the child, Amy Rowley, was not receiving a "free appropriate public education", defined as the "opportunity provided to other children" (Rowley v. Board of Education, 1980a, p. 532). An interesting sidenote to this particular case is that Amy's parents are hearing impaired and fully functioning adults. The opinion was appealed by the school system to the Second Circuit United States Court of Appeals. On July 17, 1980, in a split (2-1) decision, the appeals court upheld the lower courts decision (Rowley v. Board of Education 632 F.2D. 945, 1980, Rowley II). The majority affirmed the decision (reasoning that the lower court had based its decision on a preponderance of the evidence), weighed and evaluated the evidence carefully, and applied the standard of "appropriate" education as intended by Congress. The case was once again appealed and on March 23, 1982, the United States Supreme Court heard the case and reversed the lower courts decision, ruling that since Amy Rowley was receiving
substantial specialized instruction and related services at public expense, a "free and appropriate public education" was upheld. The opinion set forth by the Supreme Court clearly established that schools do not have to provide handicapped children with the "best" or "perfect" education, but rather one that assures equal access to education, similar to that guaranteed the non-handicapped child (McCarthy, 1983).

"...the intent of the Act (P.L. 94-142) was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside" (Rowley III 102 S.Ct. at 3043).

Through school law and through the precedents of court decisions, school administrators seek to know what they must do and what is the right decision for providing services to the special education student. The impartial hearing officer, in due process hearings, is also guided by principles established through this criteria.
The Special Education Law - Public Law 94-142

The review of literature thus far has shown how the United States Constitution and the court system has enforced and interpreted the rights of handicapped citizens to a free, public education. This criteria can also be thought of as contributing to the force that helped to create the Education for All Handicapped Children Act, Public Law 94-142. Four major principles act as guidelines for provision of educational services to the special needs child. These principles have often been misconstrued by school officials and parents alike, causing confusion and conflict, and resulting in the resolution of the dispute at the due process hearing level.

1. The term "free, appropriate public education" (FAPE) means special education and related services which
   (a) have been provided at public expense, under public supervision and direction, and without charge, (b) meet the standards of the State educational agency, (c) include an appropriate preschool, elementary, or secondary school in the State involved, and (d) are provided in conformity with the individualized education program (Sec 602 (4) (18).

The term "free" is self-explanatory. The State must provide services to special needs children without cost to the parents (or guardian). The confusion arises is often one of quality. Can the public school provide the
same or similar services as a private school? Public schools have received bad press lately (A Nation at Risk, 1983). Consequently, parents often feel the private school offers their special needs child superior education, and request financial aid. As was previously discussed, Rowley III (1982) has helped to clarify this term, and clearly established that schools do not have to provide handicapped children with the "best" or "perfect" education, but rather one that assures equal access to education, similar to that guaranteed the non-handicapped child (102 S.Ct. at 3043).

2. The term "least restrictive environment" (LRE) requires the setting in which educational programs are provided to special needs children be as close to normal as possible. In Lebank v. Spears, Civil No. 71-2897 (E.D. La., April 24, 1973) the court ruled that

"...all evaluations and educational plans, hearings and determinations of appropriate programs of education and training...shall be made in the context of a presumption that among alternative programs and plans, placement in a regular public school class with the appropriate support services is preferable to placement in special public school classes..."

The concern has been to maintain the special needs child in a setting which is most normal, and one in which
they can learn most effectively. However, there has been some confusion with the meaning of LRE. A problem occurs when parents, classroom teachers, administrators, and supervisors are unfamiliar with the limiting effects of physical, mental, and emotional handicaps, and use the term synonymously with "mainstreaming", a term that centers on supporting the social advantage that occurs when handicapped students are placed with students who do not have special needs and who do not require special education services. Mainstreaming is akin to a normalization principle that espouses all citizens should participate in the "mainstream" of life, and that by doing so, differences between persons will be minimized. The reality for special needs students is that some handicapping conditions warrant separate classroom activity. What must be emphasized in the education of special students is the standard of "reasonableness", and that actions taken by school officials and parents, represent the best interests for the child (Arundel, 1982; Meyen & Lehr, 1981; Weintraub & Abeson, 1974).

3. The term "individualized education program" (IEP) means a written statement for each handicapped child, developed in conjunction with the parents and the school system, which includes a statement of present levels and annual goals, including short term instructional
objectives, to the extent in which participation in regular education is possible, with evaluation methods reviewed at least annually. The IEP is to develop a baseline from what the child knows, and project to what the child should be able to do at some stipulated date. The plan must be rational, developmental, sensitive to parental priorities, and relate to a student's movement toward a less restrictive environment. Once agreed upon by the parents and the school, the IEP becomes a binding promise by the school district to provide all services in the manner prescribed in the plan. Typically, hearings in special education occur when one of the parties refuses to sign the IEP (Humes, 1982; Nazzaro, 1976).

The IEP can be viewed as a management tool to insure that each child is provided with services appropriate to his/her individual need. It can be viewed as reflective of the American ideology of individualism which adheres to the philosophy of viewing each individual with dignity and worth, thereby once again supporting the principles inherent in the United States Constitution. Through the IEP, P.L. 94-142 is considered a vehicle aimed at individual needs, and one which distributed social ideologies, and helps to create conditions to accept and enforce these ideologies (Meyer, 1977).

Yet the concept inherent in the IEP is a
double-edged sword. While the IEP addresses the unique problems of the exceptional child, it is based on an individual deficit model which leads to a preoccupation with the child's deficits (Weatherley, 1979). Solutions are requested to be identified in behavioral terms, a reductionistic, mechanistic model..."rules, regulations, objectives, measurements prediction and control, external quantifiable child behaviors are paramount. The children themselves are secondary." (Heshusius, 1982, p.7). Shapiro (1980) supports this saying "The IEP reflects a behavioristic view of education. Its goals are highly circumscribed, minutely fragmented, and quantifiable...Overall the approach is clearly congruent with bureaucratic values" (p. 221). He continues saying that the IEP may result in solutions aimed at changing the child and fitting him into the existing educational framework, rather than addressing individual needs. And, if the child does not neatly fit into the bureaucratic model, it may be seen as a problem that is the responsibility of the exceptional child (and his/her family), what William Ryan calls the ideology of "blaming the victim" (Shapiro, 1980).

Thus, while the law requires parental participation in the IEP, nothing addresses the quality or amount of participation by parents or recognizes that parents may
have difficulty in the development of their child's educational program. A vast difference exists between allowing parents to attend an IEP meeting and school officials encouraging full parental participation (McCarthy, 1983).

It would be misleading to say the schools are against the principles and/or the provision of the IEP. Their needs as an organization must also be taken into consideration. The IEP imposes much extra work for school administrators. Not only must the IEP be properly filled out, but school districts must also send an accurate and complete set of data regarding the progress of each handicapped student to their state agencies on a regular basis (Sec.614)(a)(3). Jasper Harvey concluded some 250,000 additional personnel would be needed to provide full and comprehensive services to fulfill the requirements imposed by P.L. 94-142 (McCarthy & Marks, 1977).

4. The term "due process procedures" in the Special Education Law is interpreted to mean the right to redress should there be a conflict between the family of the exceptional child and the school system as to what services and programs constitute an "appropriate" education. Section 615 of the law states

"...Any educational agency, any local educational
agency, and any intermediate unit which receives assistance (federal monies) shall establish and maintain procedures...to assure that handicapped children and their parents or guardians are guaranted procedural safeguards with respect to the provision of free appropriate public education by such agencies and units"...and shall include but not be limited to ...an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational matter placement of the child..."

As the focus of this study is the special education due process hearings, the procedure of this grievance mechanism will be presented in greater detail in the following section.

The Impartial Due Process Hearing

The basic meaning of the due process hearing clause is that fair procedures must be followed before a state can deny certain, important interests of individuals. Substantive due process means that individuals are protected from arbitrary, unreasonable, or capricious decisions that result in loss of liberty or property. If one is going to be denied liberty or property rights, then it must be for substantiated reasons. Procedural due process is the mechanism by which an individual is assured the right they will be granted a fair hearing to challenge
the authenticity and reasonableness of anything that may represent a violation of their liberty or property rights (Alexander, 1980). Due process originates from the Fifth and Fourteenth Amendments. It must be flexible enough to meet the specific context to which it is applied.

"In general terms procedural due process embodies principles of orderliness, fairness, and respect for the rights of the individual. More specifically, due process requires that an individual faced with state action threatening basic rights has the right to be informed of the imminence of such action (right to notice), to have assistance in defending against such action (right to counsel), to present evidence and question those presenting evidence regarding such action (right to hearing) and therein to confront and cross-examine adverse witnesses and have impartial review of such action (right to appeal)." (Budoff, 1978).

In terms of education of the handicapped or special needs student, due process means that no child can be deprived of an education without the opportunity to exercise the right to protest any recommended programs and services. In essence, procedural due process ensures there will neither be arbitrary nor capricious evaluation, or placement of the exceptional child in an education program. It is a concept embedded in law and, as such, has legal and
moral force.

Each party has the right to be accompanied and advised by an attorney as well as by other experts. Each party presents related evidence. All evidence may be examined, and confronted by either party; witnesses may be compelled to attend. Both parties have an opportunity to make written and oral arguments and receive a written account of the hearing and the findings. No evidence may be introduced by either party unless it is disclosed at least five days before the hearing. The parents must have the opportunity to have their child present and to have the hearing open or closed to the public (Sec. 615)(d). The decision must be sent to the state advisory panel, as established under Sec. 613 (a)(12) (Brooks, 1982; Turnbull & Turnbull, 1979).

Unless a party appeals from the initial hearing or begins a court action after the appeal, the decision of the initial hearing is final (Sec.615)(e). If the hearing is conducted by the Local Educational Agency (LEA), the aggrieved party may appeal to the State Educational Agency (SEA), which is required to conduct an impartial review of the hearing, reach a decision and send a copy of its decision to the parties within 30 days. If there is still dissatisfaction with the decision, an appeal may be requested at trial court levels. During the initial
hearing and/or appeal process, the child remains in the current educational placement.

Procedural due process in theory appears to be a mechanism that helps to ensure equal educational opportunity and full participation by parents or guardians in developing a suitable educational plan for their exceptional child. However, the mechanism has been shown to have its faults.

One of the critical problems identified by authors, in discussing whether or not the due process hearing has helped in the education of the special needs child, is the critical fact that parents may not request a due process hearing for fear of it being too intimidating, and/or that their child may suffer if school officials are charged with failure to provide mandated services. Budoff and Orenstein (1981) comment:

"Experiences of initial users of hearings in Massachusetts indicate a profound disillusionment with hearings, even though the participants believed the hearings had been fairly conducted. The adversarial hearing process seemed to inflame rather than reduce the antagonism that led to alienation of contending parties" (p. 41).

Also, it takes knowledge and money to challenge the appropriateness of programs. Weatherley (1979) found that
nearly all appeals under Massachusetts Chapter 766 came from affluent Boston suburbs, and not from the city proper where poorer families live. Parents must be given access to school records; they need to have the knowledge to interpret test scores and other technical knowledge. In addition, parents need funds for independent evaluations, expert witnesses, and legal counsel. As poorer families tend to have less education and financial resources, they may not have the wherewithal to proceed to due process if in disagreement with the school's recommendations for their exceptional child.

All parents, even the affluent, may be at a disadvantage in due process hearings because the decision of the impartial hearing officer may place greater reliance on the judgment of educators, rather than on parents (Keim, 1976). In a recent study of Oklahoma due process hearings (Davis, 1983), it was found that the hearing officer decided in favor of the school system 57.6% of the time. Similarly, in Illinois, in a study done by Kammerlohr, Henderson and Rock (1983) the outcome of the appeals process favored the school 51% of the time while only 23% of the time the parents received a favorable decision (the remaining 26% were combined decisions). In a national study, Smith (1981) found rulings favored the school system two-thirds of the time and cited that the uneven win-lose
record may be due to parents being at a disadvantage, the parents using the hearings to "harrass and punish" schools, or the parents having a misunderstanding of the meaning of "appropriate" education (p. 236).

While the parents may be dissatisfied with the results of the hearings, the schools appear equally dissatisfied. School administrators report they resent their professional judgment questioned, and believe that, as a result of using the due process hearing to settle special education grievances, the relationship between the parents and the school deteriorates. School administrators prefer a less formal and less adversarial mediation procedure to settle special education disputes. They believe such a model would be in the best interests of the child-parent-school relations, and that more constructive dialogue would result between parties (Budoff & Orenstein, 1981).

The procedure recommended by school officials was recommended as a conflict resolution model in 1977 by Kotin and Eager. The procedure mocks mediation efforts similar to that found in collective bargaining disputes. It is more representative of active negotiation efforts and less formal than the quaisi-judicial process of due process hearings. Massachusetts and Connecticut are among the first states to independently institute mediation
procedures as a complement to hearings (Budoff & Orenstein, 1981).

The selection and appointment of hearing officers who preside at the special education due process hearings varies from state to state, according to State law. Although each state agency must keep a list of hearing officers and their qualifications, little is known as to whether there is a bias by employing an expert in special education matters or employing a lawyer skilled in managing the due process hearing as a judicial review. This issue of whether the impartial hearing officer should be an attorney or a special education person is another way researchers have studied the impartial due process hearing.

In a study done by Turnbull, Strickland and Turnbull (1981) current guidelines governing the appointment of the hearing officer were found to be insufficient to ensure the appointment of a qualified and impartial third person. Results of their study revealed one-third of the hearing officers to be attorneys, and one-third were active professional educators in local public schools or in higher education. The other occupations were diverse, ranging from homemaker to research biologist.

P.L. 94-142 doesn't specify who should preside at the hearings, but only mandates who may not be a hearing
officer:

"...no hearing...shall be conducted by an employee of such agency of unit involved in the education or care of the child" (Sec. 615 (2).

Abeson, Bolick, and Hass (1975) specified criteria for selection of effective hearing officers. Individuals presiding at hearings should:

"possess special knowledge, acquired through training and/or experience about the nature and needs of exceptional children. An awareness and understanding of the types and quality of programs that are available at any time for exceptional children is essential...They should have sufficient strength to effectively structure and operate hearings in conformity with standard requirements and limits and to encourage the participation of the principal parties and their representatives (p.32)."

Bersoff (1978) recommends that hearing officers have knowledge concerning the tenets of the Constitution, common law, and due process; be knowledgeable about the summary of all the laws related on the rights of handicapped children, their parents, and the school; have an opportunity to role play the conduct of a hearing, and practice in the writing of final decisions which include both findings of fact and conclusions of law (pp. 197-198).
Still another problem in special education due process hearings concerns the interactive style and the role played by the impartial hearing officer. Budoff and Orenstein (1981) interviewed hearing officers in Massachusetts. One concern they had was how active they should be in eliciting information in the due process hearing. Few studies have analyzed differences between hearing officers in terms of activity. One reason for this may be due to the confidentiality of the impartial due process hearing and the inaccessibility of researchers to view the actual hearing.

Parents have an option to the hearing being open or closed. In a study done by Kirp and Yudolf (1975) one problem cited in assessing the decision-making standards of hearing officers was that 230 or the first 255 due process hearings studied were closed.

Researchers have attempted to look at the child's exceptionality to see if a particular medical, psychological, or social condition was representative at the special education due process hearing. If so, an assumption could be generalized that schools have a particularly difficult time in dealing with a handicapping condition. Researchers also studied what particular issues were brought before the hearing officer for resolution. Generalizations were then made to alert the schools that
these issues were to ones the schools appear to experience as most troublesome.

Information provided by Davis (1983) revealed the exceptionality typically represented at special education due process hearings in Oklahoma was mental retardation, and that a free and appropriate public education (as stipulated by the Individualized Education Program) was the issue presented the majority of time for resolution by the impartial hearing officer. Kammerlohr et al. (1983) found the majority of special education due process hearings in Illinois involved placement of the handicapped child in a non-public setting, and the exceptionality most represented was behavior disorders. Pearce (1983) and Smith (1981) also found the issue most represented in their study to be placement of the exceptional child in a non-public setting. The exceptionality most represented in Maryland by Pearce (1983) was learning disabilities, while Smith, in his national study, found the exceptionality most represented was mental retardation.

The impartial due process is a method for accountability to special education children and a means of assuring that the educational system will do what is required under law. As the information found in these hearings are reflective of problem areas the schools are having difficulty with in providing educational and
related services to the special education student, the researching of this information may allow schools to become more cognizant of problem areas that arise from mandated, federal legislation. Budoff, Orenstein and Abramson (1981) suggest that even if the parents lose in procedural due process the school at least did become aware of special education issues and problems from a parent's perspective.

**Louisiana's Special Education Law**

Public Law 94-142 assigned the State Educational Agency (SEA) the principal responsibility for assuring that Local Educational Agencies (LEA) carry out the intent of Congress in providing educational services to children with special needs. In 1977, the Louisiana Legislation passed Act 754, The Education of All Exceptional Children's Act (LA.R.S.17:1941 et seq.) This act incorporated into a single document all of the federal and state requirements required for provision of educational and related services to exceptional children in Louisiana. Act 754 parallels P.L. 94-142 with the exception that Louisiana includes the gifted and talented population in addition to the physical, emotional, mentally retarded, learning disabled, and culturally deprived population, as recipients of special education services (Brooks, 1982). Criteria to identify exceptional children can be found in Bulletin 1508, the Pupil Appraisal Handbook.
Once a student is suspected as being possibly exceptional, parents must be notified. They must consent to an evaluation within ten operational days of identification. Due process rights are guaranteed under Section 505 of Act 754. If there is a disagreement of some special education matter that cannot be satisfactorily resolved at the school building level, a due process hearing may be requested. Reconcilliation efforts are required prior to the request for the due process hearing (Sec. 508).

A school system, or the family of the exceptional child, may initiate a hearing whenever (a) a school system proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free, appropriate public education of the child, or (b) a school system refuses to initiate or change the educational program (Sec. 509).

A school system initiates a hearing by providing full and effective notice of its intent to the parent and to any affected public or nonpublic school personnel. A parent initiates a hearing by sending a written request to the parish supervisor. The school system is to inform the parent of any free or low-cost legal assistance, or any other relevant services available in the area.

The person chosen as the special education hearing
officer in the State of Louisiana is an attorney, licensed to practice in Louisiana. The State Department is mandated to maintain a separate list of at least three qualified hearing officers for each of the eight state planning regions. Thus, 24 people must be identified and available as impartial hearing officers. Before placing the name of any person on this list, the State Department must verify that the person has successfully completed an inservice training program, approved by the State Department. A problem that Louisiana currently faces is a lack of qualified hearing officers. Only 15 attorneys currently make up the roster. Some of the northern parishes are without a qualified due process hearing officer.

After selecting a proposed hearing officer, the parish supervisor must, within three operational days, give the parents (or guardian) full and effective notice of the name of the proposed hearing officer. The parent may disqualify the choice of the parish as not being impartial. Only one disqualification is permitted without cause; others may be disqualified if cause is shown.

Hearing procedures (Sec. 511) of Act 754 parallel those identified in Section 605 of P.L. 94-142. The hearing decision must be mailed to each party within 45 calendar days unless an extension is granted after the hearing. A decision made by the hearing officer is final.
unless an appeal to the State is requested by either party within 15 operational days. A review panel is appointed to evaluate the decision, and either affirm the hearing decision, reverse the hearing officer's decision, or order the initiation of a new hearing. This decision must be provided within 30 operational days from receipt of the hearing record.

The revised regulations (July, 1983) stipulate that the review panel for appeal shall consist of three persons and one alternate who are presently serving as independent hearing officers. With such a small roster of qualified hearing officers in Louisiana (15), the potential of the appeals process being an independent, and impartial process may be threatened.

The decision made by the review panel shall be final unless a party brings a civil action within 30 operational days. The exceptional child remains in his/her present educational placement until such time the issue is resolved (Bulletin 1706, 1983).
Summary of Related Literature

The Education for All Handicapped Children Act, Public Law 94-142, based upon constitutional and school law and court precedents, was enacted by Congress in 1975 to address the lack of public education services for the handicapped student. To assist states in complying with the law, federal monies were made available to states. In 1977, the State of Louisiana established Act 754, The Education for All Exceptional Children Act. Under Act 754, the gifted and talented student was included as a member of the special education program.

Four major principles were established by federal legislation that State Educational Agencies must ascribe to in providing services for the special education population. They are: (a) a free, appropriate public education must be provided to all students, (b) the educational program must be in the least restrictive environment, (c) appropriate to the needs of the child, as determined by an Individualized Educational Program, and (d) the right to redress must be guaranteed should there be a conflict as to what services and programs constitute an "appropriate" education (procedural safeguards).

The responsibility for the actual implementation of services and programs for the special education student is
the responsibility of the Local Educational Agency (LEA). Regulations were adopted by states and provided to the LEA's to interpret and implement the four principles mandated by P.L. 94-142. However there remains some confusion between the parents of the special educational child and the school system over the scope and extent of services intended by the law and regulations. Consequently, there has been conflicts and disagreements between the families of the special education student and the school system as to the intent of Congress in stipulating these principles.

The due process hearing was established as a formal mechanism to address and resolve disagreements. Disagreements may be conceptualized as the school system to be in questionable compliance with the law and regulations. Due process originates from the Fifth and Fourteenth Amendments, with guidelines suggested by the PARC and Mills court cases.

There is little known about the nature, outcome, and characteristics of parties who have used the due process hearing to resolve conflicts in the education of the special education student. Some authors have criticized the mechanism as a process only affluent parents can utilize due to the needed preparation for a hearing (Weatherley, 1979), or that parents will not typically use
this mechanism to resolve conflicts out of fear that there will be negative repercussions for their child, as well as themselves (Budoff & Orenstein, 1981). Other authors have raised questions as to whether or not the hearing was fair, in the best interest of the child, and being an adversarial encounter, question it being a helpful model for conflict resolution (Budoff & Orenstein, 1981; Keim, 1976; Kotin, 1977; Smith, 1981). Studies have addressed the issue that parents are dissatisfied with the logistics of the due process hearing; similarly, studies have shown the schools to be equally dissatisfied (Budoff & Orenstein, 1981; Smith, 1981). An explanation for this general dissatisfaction may be that legislators framed requirements for special education services in legalistic framework, a framework that differs from how educational services are organized and provided.

Some researchers have focused on the impartial hearing officer, the qualifications of the officer as well as his/her background, education, sex, and age. No conclusions were drawn whether or not fairness can be insured if the hearing is conducted by a person with a legal background (such as an attorney), or a person more knowledgeable in educational matters (such as a retired teacher, or a higher education faculty member) (Abeson, Bolick & Hass, 1975; Bersoff, 1978; Budoff & Orenstein,
Four studies were reviewed that studied structural characteristics and the outcome of the due process hearing in selected states (Davis, 1983; Kammerlohr, Henderson & Rock 1983; Pearce, 1983; and Smith, 1981). The results of these researchers did not indicate that any one exceptionality was typically represented. In three of the studies (Kammerlohr et al. (1983; Pearce, 1983; and Smith, 1981) the issue the hearing officer was asked to make a judgment on the majority of the time was placement of the child in a non-public setting. The rulings tended to favor the states in all of the studies. Smith (1981) felt the reason for this may be due to a misunderstanding by parents as to the school's responsibility to the child or that the parents, out of frustration in dealing with the school system, used the hearing mechanism to "harrass and punish" the schools (p.236).

The conclusions and recommendations reiterated by these researchers were that more studies are needed to discover if characteristics of the due process hearings and the outcome (finding) of the hearings represent a nationwide phenomenon or if they are unique to each state. This study attempted to address this recommendation by studying the due process hearings in the State of Louisiana.
Chapter III  
Methodology and Procedures  

Introduction

This present investigation was conducted to determine and analyze data related to the nature and outcome of the special education due process hearings in the public school districts of the State of Louisiana from 1978-1983. It was designed as a descriptive study that surveyed the total population of special education due process documents on file at the Louisiana State Department of Education Complaint Management Office. Approximately 147 documents were available. Authorization to conduct the research was obtained from appropriate officials. The research was conducted in conformity with guidelines established by P.L. 94-142 with respect to confidentiality of student's due process records. Collection of data by the researcher excluded any specific identification of the child or his/her parents, or guardian (see Appendix A). As documents had to be confined to the State Department, all data was coded by the researcher at the Complaint Management Office.

The Due Process Documentation Instrument (DPDI) was developed by the primary researcher so that categorical information could be systematically studied and subsequently analyzed. The procedure to analyze the data gained from the
DPDI was performed in two stages:

In the first stage the categorical information was assigned a numerical value for each possible response found in the DPDI. In the second stage computer analysis packages (SAS and SPSS) were utilized to analyze the data. Relative frequencies and percentages were calculated for each variable. Cross tabulations of selected information was performed to generate answers to the questions proposed for this study.

Rationale for Document Analysis

The use of documents for research purposes is supported by Allport (1942), Bailey (1978), and Guba and Lincoln (1981). All of these authors note the opportunity researchers have in using raw data embedded in the context it exists, yet they are disappointed at the low frequency of times documents are utilized for research purposes. Evidently, the more traditional modality of experimental design appears to be favored by researchers. The reason for this may be explained by two major problem areas confronted by researchers: (a) gaining access to information and (b) coding and analyzing data contained in the documents. Both of these problems have been overcome for this study.

The value of using documents as a research tool goes back to Allport (1942) who stated four reasons to substantiate the use of document analysis for research.
methodology: (a) documents provide a rich and rewarding stable resource; (b) documents constitute a legally unassailable base; (c) documents represent a natural source of information, arising from the context it exists; (d) data is nonreactive; it does not create an artificial situation, and may be considered an unobtrusive technique (p. 139).

Expanding on Allport's four advantages in supporting the use of documents for research purposes is Bailey (1978), who adds the notion that documentary analysis allows researchers to have access to inaccessible subjects. As the special education laws guarantee confidentiality of due process records, families who have used this modality to resolve conflicts have been typically inaccessible for public scrutiny. The problem of accessibility was overcome for this study. A letter requesting permission to review the special education documents was responded to favorably by state officials (see Appendix A).

Other advantages Bailey cites to support the use of documentary analysis is that such research represents longitudinal analysis, an important consideration for researchers. Also, documents are usually gathered in a centralized location, avoiding the need for postage and/or travel monies (Bailey, 1978).
In contrast, criticisms that Allport stated over 20 years ago concerning the use of documents for research purposes are still discussed as plausible pitfalls for the modern day investigator: (a) documents may provide unrepresentative samples; (b) information contained in documents may be too subjective to look for internal consistency; (c) the effect of the researchers mood may impinge upon accuracy.

Holsti (1969) issues this warning for the investigator of documentary analysis:

"documents as documents, especially formal documents, sometimes have a semi-hypnotic effect on the minds of those who use them ..." (p. 14).

Other criticisms that researchers have cited in using documents as data sources are similar to those enunciated by Bailey (1978) when he adds that using documents exclude any effect nonverbal behavior may have on the outcome of the study, as available by employing an observational method. Also, a major threat to validity is that external events may cause drastic changes which cannot be controlled.

The conclusion drawn by researchers for using documents as a research base that this methodology has its strengths and weaknesses (as does the more traditional experimental design). What is most important is that
researchers recognize and address the deficits, controlling them as best as possible, so as to provide a meritorious contribution to the literature (Allport, 1942; Guba & Lincoln, 1981; Kerlinger, 1973).

**Instrumentation**

To determine how categorical information could be systematically studied, the researcher developed an instrument named the Due Process Documentation Instrument (Appendix C). The researcher based the categories for the instrument by reviewing related literature. Categories were expanded as the study progressed.

The investigator validated the categories for internal consistency by conducting a pilot study of 20 randomly selected documents. The validated and final version of the instrument is presented in Appendix C.

**The Pilot Study**

When reviewing the literature on due process and special education due process hearings, the author of this study found that no valid instrument was available to conduct the present study. Therefore, prior to proceeding with the study, an instrument, the Due Process Documentation Instrument (DPDI) was developed by the researcher. A pilot study was conducted to validate the author-constructed instrument. The pilot study which validated the instrument was conducted in accordance with
guidelines established by Bailey (1978), Guba and Lincoln (1981), Holsti (1969), and Kerlinger (1973) for content and document analysis. Twenty documents were reviewed.

The primary researcher had previously determined the basic categories for construction of the DPDI by reviewing related literature. As the researcher became familiar with the information contained in the documents representing characteristics unique to the State of Louisiana special education due process hearings, categories were expanded; a system of enumeration was established. The researcher coded all information according to rules of confidentiality that no child or parent(s) would be identified. As some of the categories reflected a judgment on the part of the researcher, an inter-rater reliability check was conducted. A complaint management officer reviewed and coded five randomly selected hearings. The results of this rater were consistent with that reported by the primary researcher.

One problem the author had in conducting the pilot study so as to validate the DPDI, was that other studies of special education due process hearings did not address the outcome of the hearings (what the schools must do to ensure a free and appropriate public education). Therefore, there was some difficulty in knowing the variety of responses related to the outcome/rationale questions (#17,18). To
overcome the uncertainty in these categories the researcher chose to record a short narrative describing these items. It was felt that, as the study progressed, the narratives could be subsequently condensed and arranged into general themes. Samples of the outcome/general comment/rationale have been included as part of the Due Process Documentation Instrument.

The procedure used by the researcher to collect the data was to transfer the categorical, and nominal data into arabic numbers. This was done so that the data could be quantified. The enumerated data was subsequently transferred onto IBM sheets. The DPDI provided a way to systematically guide the researcher in this coding process and expedite the collection of information.

As the study was limited in number, the researcher only applied frequency and percentage techniques to analyze the data. This was done so that the researcher could gain more familiarity with the study. The conclusion, drawn by this researcher from the pilot study, was that questions posed for this research were answerable by utilizing the Due Process Documentation Instrument.

Procedure

The procedure the researcher employed to collect the data for this investigation was to utilize the Due Process Documentation Instrument, developed by this
researcher specifically for the study of the special education due process documents in the State of Louisiana (see Appendix C). All categorical information was assigned an arabic number by the investigator so that quantification of nominal data was possible. As approximately 147 documents were available for review, the first numerical coding employed by the researcher was to assign a three digit identification number, beginning with 001, to each case. Consecutive numbers were assigned to the documents as they were found on file at the State Department. All information was coded onto IBM data sheets.

The investigator coded the following categorical information:

- the sex of the child, the exceptionality, the month and year of the hearing. School districts were assigned a number by the researcher. The size of the school district was determined according to pupil population identified by the Louisiana School Directory (1982-1983). The largest category was established at 30,001 pupils, or greater. The next category for school district size ranged from 20,001-30,000 pupils; 10,001-20,000 pupils comprised the medium size school district; less that 10,000 pupils comprised the smallest district. The cutoffs for school district size was determined by reviewing pupil population.

The party who initiated the hearing was assigned a numerical code by the researcher. The identity of the presiding hearing officer was similarly coded. If the parents were represented by an attorney (or represented by a person not an attorney), or if the parents were not represented, was coded and enumerated by the researcher, as were areas of noncompliance, if the decision favored the parent or the school, if the case was appealed, and the time lapse for the appeals board to make a decision.

The investigator coded the outcome of the case, expanding the variables as the study proceeded. The outcome was defined as the action the hearing officer and/or appeals board found necessary for the school to provide so as to ensure the exceptional child was guaranteed a free and appropriate public education. A short narrative statement was collected for each case that described the rationale for the decision, and/or any general statement of the case that the researcher determined as useful information to collect.

**Data Analysis**

The researcher analyzed the collected data in a way which sought to answer the questions posed for the study. Frequency and percentage techniques were applied by
utilizing two computer analysis packages (SAS and SPSS).
Chapter IV

Findings

Introduction

This chapter presents the results of the analysis of data collected concerning the special education due process hearings found on file at the Louisiana State Department of Education Complaint Management Office from 1978-1983. A total of 147 due process hearings were heard by Impartial Hearing Officers during this interim. There were six hearings in 1978; 34 hearings in 1979; 22 hearings in 1980; 25 hearings in 1981; 51 hearings in 1982, and nine hearings in 1983. The parents initiated 121 of the hearings (82 percent).

The material presented in this chapter is organized into seven sections in response to the research questions posed for this study. The sections are: (a) Areas of Alleged Noncompliance, (b) Exceptionality of the Child, (c) Representation for Parents, (d) School District Size, (e) Appeals, (f) Consistency Among Individual Hearing Officers, and (g) the Rowley Supreme Court Decision of 1982.

Areas of Alleged Noncompliance

The findings of this study indicate six main areas of alleged noncompliance represent areas of conflict between the parents of exceptional children and the school
district. Table 1 presents these areas and the party who was favored by the Impartial Hearing Officer. They are: placement in private school, related services, (school building) site designation, extended program, least restrictive environment, gifted programs, and a miscellaneous category.

Placement in Private School

From the total number of hearings (147), placement in private school was found to be the most frequent area of alleged noncompliance (58 percent; 85 hearings). The Impartial Hearing Officer (IHO) rendered a decision in favor of the school district 64 percent of the time (54 hearings). The general rationale by IHOs for their decision rested on the ruling that if public schools could reasonably justify an appropriate program exists within the public school district, public funds do not have to pay for private schooling.

When the hearing officers favored the school district and denied the parents' (or guardian) request, oftentimes the IHO cited passages in court cases and laws to substantiate their decision. The IHO referred to the landmark special education court case, Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (PARC, 334 F.Supp., 1257 ED PA, 1971), and other pieces of Civil Rights Legislation (e.g., 1973...
Rehabilitation Act) which supported the idea that there are too many handicapped people in isolated settings. The PARC case stated that special education children will benefit by being mainstreamed with regular education children, both socially and academically; the 1973 Rehabilitation Act similarly stated this concept.

There were 24 hearings in this study where the child was currently attending a private school. The parents were assuming the responsibility for tuition and other related costs. They requested a hearing to see if they could maintain their child in a private setting, while being relieved of these costs. The parents maintained that their child was at a private school because no appropriate public educational program existed to meet the unique needs of their child. The hearing officer ruled in favor of the school district in 18 of these hearings (75 percent).

In the six hearings where the hearing officer rendered a favorable decision for the parents, the rationale for the decision was that evidence presented at the hearing indicated it may be too upsetting for the child to change from a private to a public school setting. They parents argued that private schools have a lower teacher-pupil ratio than public schools. Therefore, parents pleaded, the child's needs would be more adequately met in a private school. The decision rendered by the hearing

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officer appeared to be based on a personal and subjective evaluation that private schooling is more responsive to the child's needs, rather than to question if the public school is able to offer an "appropriate" program for the child, as stipulated by law and regulations.

At the due process hearing, either side may request that "expert witnesses" testify on their behalf. When an administrator from the private school that a child was currently attending testified that a boy entering adolescence needs to be with his age peers, rather than in a public classroom where there are students who range in ages, this testimony proved to be enough to gain the support of the Impartial Hearing Officer (IHO), and the hearing was decided in favor of public sponsorship for private schooling. The decision rendered by the hearing officer was substantiated more on subjective persuasion of an affective nature by the "expert witness", rather than on concrete, objective information that demonstrated the "appropriateness" of the Individualized Educational Program (IEP).

Similarly, a psychologist testified that he had done extensive research on the effect of social acceptance of handicapped children by their non-handicapped peers. He reported his research indicated that handicapped children are less socially accepted by non-handicapped peers, and
more socially rejected. The IHO appeared to take this information into account, credit the psychologist as an "expert" in special education, and, ruled in favor of the parents' request that their child be provided a private educational setting, at public expense.

Safety and ridicule were supportive reasons given by parents and expert witnesses to support the contention that private schooling more adequately meets the child's unique educational needs. Parents also stated that their child would be more likely taken advantage of by non-handicapped peers at a public school. These contentions encouraged the IHO to rule that private placement was the most appropriate educational setting for the child.

Related Services

The second largest number of hearings involved related services as an area of alleged noncompliance. Impartial Hearing Officers in Louisiana rendered decisions on 18 cases (12 percent) that had this issue as a central focus. The parents were favored in the majority of the decisions (56 percent; 10 hearings).

"Related Services" may be defined as any service the exceptional child needs to benefit from, and participate in, a special education setting. The list of related services is not a mutually exclusive list.
Services may range from developmental, corrective, and/or supportive services. One example of a related service can be found in the Rowley case (Hendrick Hudson Central School District v. Rowley, 102 S.Ct. 3034, 73 L.Ed. 2d 690, 1982) which dealt with providing services of an interpreter for a hearing impaired student.

In Louisiana, the hearing officer favored the parents' request for related services when the service that was requested appeared to be a "reasonable request." The principle of "reasonableness" is grounded in legalistic framework (Alexander, 1980). As all hearings in Louisiana utilize practicing and licensed attorneys as the Impartial Hearing officer, it appears logical to conclude that hearing officers may be guided in their decision by using this principle.

For example: At two hearings the conflict to be resolved concerned transportation of the child to a public school. Both hearing officers ruled that schools must provide accessible and appropriate transportation for the child. One hearing officer rendered a decision in favor of the parents when they requested the school district purchase a "lift-bus" for their wheelchair-bound child. However, when another parent requested an aide accompany a wheelchair-bound child and ride the school bus to/from school, the hearing officer ruled that this request was not
"reasonable", and rendered a decision in favor of the school district.

There was one case similar to the Rowley case where the parents requested that there be a sign-language interpreter in the classroom for their hearing impaired child. The decision of the hearing officer was guided by this court case, reaffirming that school districts do not have to provide the "best" available services for the exceptional child, but, rather must provide services that ensure the child receives "adequate" educational services.

In another case the hearing officer concluded there must be an appropriate fire alarm system for a hearing impaired child. The school district was directed to establish visual as well as audio clues when the fire alarm rings.

There were three cases concerning vocational training as part of related services. The schools involved in these cases did not believe these services were to be included as part of a related service. The hearing officers involved in these cases disagreed with the school's interpretation of the special education law and directed the school district to include vocational services as part of each child's Individualized Educational Program. These schools were instructed to form a coalition with nearby vocational-technical schools and arrange for the
children to take classes at this facility on a part-time basis.

In cases where the decision of the hearing officer favored the school district the conflict posed before the hearing officer was not whether a related service should be provided, but rather how much of a service must be provided. The question was one of quantity, as opposed to quality.

For example, the services of a Physical Therapist were being provided to an orthopedically handicapped student. The question before the hearing officer was to determine if these services should be offered two times per week (as proposed by the school district), or three times per week (as proposed by the parents). There was no conclusive evidence presented that indicated the child would be harmed, or regress, without extra services. When hearings involved "how much", the hearing officer typically ruled in favor of the school district. The rationale for this trend in favor of the schools was based upon school law which stipulates that local educational agencies must be able to exercise their decision-making powers to run the school as effectively and as efficiently as possible, without interference from outside sources.

**Site Designation**

There were 10 cases (7 percent) that required the
hearing officer to resolve conflicts between the school district and the parents of exceptional children regarding which party had the prerogative to choose the school building site where the child would receive his/her education. Eight (80 percent) of these hearings were won by the school district. The two hearings where the decisions favored the parents were heard by one individual hearing officer. Both of these cases involved gifted students whose parents were requesting their child be placed at a magnet school, rather than remain in a gifted program at a school where there are children who have a variety of academic abilities.

It is stipulated in the regulations that site designation is the responsibility of the local and/or state educational agency. Therefore, parents do not have the option to request a particular (building) site for their child to receive his/her education. The hearing officer who ruled in favor of the parents erred in his/her decisions. The rationale for these two cases rested on the IHO's interpretation of "reasonableness." The IHO felt that this request would not require a great deal of effort for the school district. What the IHO failed to perceive was greater implications for ruling in favor of the parents (large classes at desired schools, inability for school districts to schedule bus transportation for students,
The school district appealed the decision rendered by the hearing officer in the two cases which were ruled in favor of the parents. Upon appeal, both of these decisions were reversed. Therefore, all hearings that involved (school building) site designation as an area of alleged noncompliance were won by the school district.

Extended Program

There were eight hearings where the area of alleged noncompliance had as a focus parents of exceptional children requesting their children be provided an extended educational program (beyond the traditional 180 days). The parents were able to present evidence that suggested the child may regress without a year-round educational program. In seven cases the decision of the hearing officer favored the parents. School districts were ordered by individual hearing officers to include in the child's Individualized Educational Program a provision for an extended program. In one case the parents and the school district arrived at a compromise during the due process hearing. The child was pre-kindergarten. The parents agreed with the school that the child was too young to have a year-round educational program, and that it may be more beneficial for the child to have a carefree summer, in contrast to a summer of organized activities.
The request for year-round schooling is one that may be seen at future due process hearings due to the fact that so many more mothers are entering the labor force, and consequently unavailable to care for their children during the summertime. It may also be an issue which the courts will be asked to resolve. All children tend to slightly regress during the summer recess/vacation. If both parents of an exceptional child are working full time, it may not be that difficult to request a summer program for their child, based on this common knowledge. If this trend should become established, the schools may have to eventually provide extended educational programs for all special and perhaps, even regular education students.

**Least Restrictive Environment**

There were six cases where the area of alleged noncompliance concerned the child being educated in the Least Restrictive Environment (LRE). When the hearing officer upheld that the child must be educated in the LRE, the conclusion rested on the regulations which stipulate that a child may not be removed from a regular educational environment and placed in a more restrictive environment unless the severity of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (La.Act 754 s 448).
Three of these cases were initiated by the school district. In two of the cases, the school district requested a due process hearing to place the child in a more restrictive environment. The school district believed the child was too disruptive to other students in the classroom. The parents believed their child would regress, or not progress, if placed in a more restrictive environment. In both of these cases the hearing officer rendered a decision in favor of the parents, and requested the school to maintain the child in the LRE.

Conversely, in one case the parents requested a more restrictive environment so as to protect their child from ridicule and teasing by other students. The hearing officer who rendered a decision in this case ruled that a more restrictive environment is in conflict with the intent of the special education law, reaffirming that no party may insist on a more restrictive educational environment for the child.

In one case where a more restricted environment was being recommended by the school, the hearing officer concluded that homebound placement (a more restrictive environment) was warranted as the parents were not willing to provide adequate medical support services (medication) to permit the child to attend classes in the regular classroom.
One hearing where the decision of the hearing officer did not favor the school district concerned the school's request for a more restrictive environment. The school had requested the child be placed in a residential setting (institutionalized). This type of placement is considered the most restrictive placement. The hearing officer rendered a decision that stipulated a least restrictive alternative. The school was to provide the child with educational and related services in his/her own home. This conclusion was supported and favored by the parents. The school therefore had to ensure that a homebound teacher was available to provide educational services for the child.

**Gifted Programs**

The State of Louisiana is unique in that it includes in its special education services the gifted population. Consequently, all special education children in Louisiana are referred to as "exceptional".

There were six hearings in this study where the area of alleged noncompliance concerned the provision of an appropriate gifted program. The hearing officers who rendered decisions favored the school district 50 percent of the time. One of the six hearings resulted in a compromise.

When the parents were favored, it was the sentiment
of the hearing officer that a school district should provide a gifted program to a child if there was some indication that the child could benefit from a specialized educational program. The question before the hearing officer in one case was to rule whether or not an independent evaluation (outside the school district), that identified the student as gifted, should take precedence over the school's evaluation that the child was not gifted. The general rationale the hearing officer provided for his/her decision was to give the child the benefit of doubt, place the child in a gifted program, and see if in fact the child is "exceptional" in a trial program.

Two hearings that involved gifted programs concerned pre-school age children. The parents of these children requested a due process hearing so that their child could be provided with pre-school gifted services. Both of these children had been identified as gifted children. One of these cases was decided in favor of the parents; one was decided in favor of the school district. The reason for the disparity between the two decisions appeared to rest upon the fact that one school district had an established pre-school gifted program. The availability of the program appeared to facilitate the hearing officer rendering a decision in the parents' favor.

Miscellaneous
There were a total of 14 hearings where the areas of alleged noncompliance were grouped into a miscellaneous category. The reason for this grouping was due to such a small representation in the due process hearings of the particular issue.

Three of these hearings involved a request by parents for an additional independent educational evaluation for their exceptional child. The school district had previously provided one outside (independent) evaluation. The parents believed the evaluation was inaccurate. The school district disagreed. The hearing officers found no reason to question the credentials of the independent evaluators. They denied the parents' request for additional testing for the child stating that unless there was some new information, or some meaningful change in the child, it was unreasonable to request the school district to pay for an additional independent evaluation.

However, schools may not delay an evaluation due to the complaint they are backlogged. Schools must provide educational evaluations within appropriate time lines. These time lines are identified in the Pupil Appraisal Book (1983). If schools are backlogged, and, consequently unable to provide timely evaluations, they must secure and pay for an independent evaluation.

In other hearings which were collected in the
miscellaneous category, the hearing officers affirmed that schools may not change the placement of the child without the parents' approval. Schools may not expel a child if their disruptive behavior is causally related to their exceptionality. However, school districts may request the child receive schooling in their home if the school district can document that homebound placement is a program that can most appropriately meet the needs of the exceptional child.

**Exceptionality of the Child**

Individual due process hearing officers rendered decisions for children identified as special education students under La. Act 754. These students are considered as students who have "exceptionalities." The classification system is indicative of the referent system utilized by the pupil appraisal team to determine a child eligible for special education services.

There were 10 primary exceptionalities represented in this study. Table 2 depicts the primary exceptionality of the child by the party who was favored in the hearing. Table 3 depicts the outcome of the hearing by the exceptionality of the child.

Of the total number of hearings, the results of the study show that parents of mentally retarded students use the due process hearings as a vehicle to resolve conflicts
more frequently than parents of children with other exceptionlities (46 hearings; 31 percent). The issue in 29 of these hearings (63 percent) was a request for private schooling.

When the hearing officers rendered a favorable decision for private schooling for the mentally retarded child, there was an expression of sentiment that mentally retarded children are generally not well accepted by non-handicapped peers. As a result of poor and low social acceptance of the mentally retarded child in the public setting, the hearing officer concluded that educational services that protect and shelter the child more appropriately meet the child's educational needs. The decision appeared to be more related to affective information provided by the parents (and/or their witnesses), and the personal values and attitudes of individual hearing officers toward retardation, rather than on concrete, objective factual information. Their ruling is in conflict with special education laws and regulations that education be provided in the least restrictive environment.

The parents of Learning Disabled Students were represented in 18 percent of the hearings (27 hearings). There were 17 hearings (63 percent) where the issue before the hearing officer concerned private placement. Twelve
hearings (44 percent) resulted in the child being recommended for private placement.

When the data was collected, an attempt was made by the researcher to see if children who were classified as having a primary exceptionality, were, also classified as having a secondary handicapping condition. Typically, most children were not identified as having a secondary handicapping condition. However, in 14 of the 27 hearings that involved Learning Disabled children (50 percent) the child was also classified as Emotionally Disturbed. A review of the literature does not support that these two classifications are interdependent.

The Hearing Impaired Student was represented in 15 percent of the hearings. This may be related to a School for the Deaf ceasing its operation and the children being mainstreamed into a public education setting. The parents were using the due process hearing to express concern that their child was accustomed to education in a private setting, and to request that their child's educational program be continued in a private setting, with public monies.

The school district was able to demonstrate in 6 of the 17 hearings that involved Hearing Impaired students they could adequately meet the needs of the Hearing Impaired child. Consequently, the parents' request for
private placement was denied. However in 11 of the 17 hearings (65 percent) the hearing officer rendered a decision in favor of private placement.

There were two cases where the father of the Hearing Impaired child had a doctorate in higher education. In a third case the father was an audiologist. Each Impartial Hearing Officer who heard these cases rendered a decision in favor of the parents. A speculation for this finding may be related to the hearing officer viewing these credentialed persons as "expert witnesses."

Representation for Parents

In the State of Louisiana school districts are represented by an attorney at all special education due process hearings. However, the parents (or guardian) of the exceptional child have the option of either representing themselves (no formal representation), have a person who is not a licensed attorney represent them (e.g., professor, advocate, outside consultant, etc.), or have a licensed attorney represent them. If the parents choose to have someone represent them, the financial burden for payment of representation is their responsibility.

Table 4 displays the area of alleged noncompliance by the party who represented the parents, by the party who was favored in the hearing. Of the total number of hearings where the hearing officer rendered a decision
an attorney was retained by the parents 45 percent of the time (62 hearings). The parents chose to represent themselves 40 percent of the time (55 hearings). The parents retained a person other than an attorney 15 percent of the time (20 hearings).

The findings indicate that when parents have either an attorney, or someone other than an attorney represent them, they have as equal a chance as the school to have the hearing ruled in their favor. However, when parents represented themselves (no representation), the chance of having the hearing officer render a decision in their favor was reduced to 33 percent. A reasonable conclusion to infer from this finding is that parents should be advised by the school district that as the school will have an attorney represent them in the hearing, it is also advisable for the parents to have an attorney or advocate represent them.

School District Size

In this study, school districts were grouped into four categories. The groupings were determined by pupil enrollment during 1982-1983 (La. School Directory). Table 5 displays the Outcome for the Area of Alleged Noncompliance, by the School District size, by the Party Favored in the Hearing.

School districts, with enrollment greater than
30,001 pupils, were represented in 74 percent (102 cases) of the due process hearings. The school district was favored by the hearing officer 47 percent of the time (65 hearings) in the larger school districts. Parents were favored when the enrollment was less than 10,000 pupils.

Of the total number of hearings represented in this study there were only four hearings in the mid-size school district where the pupil population ranged from 20,001-30,000. As one of these hearings resulted in a compromise, it appears that these school districts do not have as great a difficulty in providing services to the special education population, as do the other-size school districts. However, an explanation for this may not exclusively rest with the size of the school district. Rather, this phenomenon may be related to the administrative or management style of the school administrators.

Table 6 shows how many parents were represented by an attorney, by a person other than an attorney, or were self-represented (no formal representation), by school district size. In school districts that had enrollment less than 10,000 pupils, and, when they were self-represented, parents were favored by the the hearing officer almost an equal number of times than if they had an attorney represent them.
In contrast, in schools where the pupil enrollment was between 10,001-20,000 pupils, the parents lost the majority of hearings if they did not have an attorney represent them. The parents appeared to be favored by the hearing officers in the smaller school districts. There is no conclusive explanation for this, and may be an area for future exploration. In the larger school districts (greater than 20,000 pupils), the school districts were favored the majority of times. One explanation for the larger school districts to be favored in the due process hearing may be related to the fact that a larger district may have more monies available, and, consequently, may be able to offer a greater variety of services, and more adeptly meet the unique needs of the special education child.

Appeals

If either party is not satisfied with the decision rendered by the Impartial Hearing Officer (IHO), they have the right to appeal the decision to the State level. Prior to July 1, 1983, an appeal was submitted to the State Board of Elementary and Secondary Education (BESE) for their review. The BESE board rendered a decision based upon La. Act 754 Regulations. No new information was to be submitted to the BESE board from either side, nor could any appeal be made in person. When the Board met, they reviewed the decision rendered by the individual hearing
officer. Subsequently, the board notified both parties, in writing, of its decision to either uphold or reverse the initial decision. In the event either party was still dissatisfied with the outcome of the hearing, parties were notified by the board that they may appeal to a district court, and even higher court level.

In July, 1983, a new procedure for special education due process appeals was established in Louisiana. Three people, plus one alternate, from the current roster of Impartial Hearing Officers (licensed and practicing attorneys), are selected by the Complaint Management Office and asked to review the decision made by the hearing officer who presided at the hearing. The decision to uphold or reverse the decision made by the presiding hearing officer is decided by a majority vote of the appointed appeals board. The board does not provide any specific rationale for its decision, but informs both sides they have a right to further redress.

There were 15 attorneys serving as Impartial Hearing Officers in Louisiana during 1983. The appeals process takes an average of four months. During this interim, the child stays in his/her current program.

Table 7 displays the areas of alleged noncompliance by the party who appealed the decision of the hearing officer, by the party who was favored in the appeals
process. Sixty-nine hearing decisions were appealed. The parents appealed 34 decisions; the school district appealed 35 decisions. Prior to the appeals the parents were favored 40 percent of the time (59 hearings). After the appeals process the parents were favored 28 percent of the time (38 hearings).

Upon appeal, the parents lost 10 additional requests for their child to be educated in a private setting, with public monies. It should be kept in mind that upon appeal, the child remains in his/her original placement until the time that both parties are satisfied with a decision. With an approximate four-month wait for an appeals process to be completed, it is possible that either side may delay any change in placement until the next school year.

This strategy is contraindicated to the philosophy of providing "free and appropriate" public educational services to the special education student.

Consistency Among Individual Hearing Officers

There were 29 individual hearing officers who presided at special education due process hearings from 1978-1983 in the State of Louisiana. The qualifications for being appointed a hearing officer include that the person is a licensed and practicing attorney, and, successfully completed an inservice training program
sponsored by the State. Individual hearing officers presided at as few as one case, and as many as 23 cases.

The State Department is mandated to maintain a separate list of at least three qualified hearing officers for each of the eight state planning regions. Thus, 24 people are to be identified and available as Impartial Hearing Officers (IHO). A problem that Louisiana currently faces is a lack of qualified hearing officers. Only 15 attorneys currently make up the IHO roster. Some of the northern parishes are without a qualified due process hearing officer.

Tables 8, 9, and 10 were constructed by the primary investigator of this research to see if there were consistencies among individual hearing officers when faced with the same, or similar issue. To view consistencies, or disparities, hearings that had as a focus one of the three greatest areas of alleged noncompliance were further analyzed.

Table 8 shows that there were 19 individual hearing officers who rendered a decision where the issue concerned placement of exceptional children in a private setting, at public expense. Of these 19 hearing officers, seven hearing officers rendered a decision on four or more cases.

Hearing Officer #1 rendered decisions in 12 cases.
Four of these cases were decided in favor of the parents (33 percent). Hearing Officer #3 presided at 13 hearings. Of these, only one (eight percent) was decided in favor of the parents. Hearing Officer #5 presided in 18 cases where the issue was placement of the child in a private school. The parents were favored in two cases (11 percent). This hearing officer facilitated a compromise between parties in 3 cases (17 percent). Hearing Officer #7 presided in 12 cases. Seven of these hearings (58 percent) favored the parents. Hearing Officer #8 favored the parents in 3 hearings (50 percent). This Hearing Officer heard a total of 6 cases that concerned this area of alleged noncompliance. One of these hearings resulted in a compromise. Hearing Officers #7 and #8 were the only hearing officers who presided in more than 3 cases where the majority of findings favored the parents' request for private schooling for their child.

Hearing Officer #10 rendered an equal number of hearings in favor of both parties. In contrast, Hearing Officer #22 favored the parents in only one of the six hearings (17 percent).

These findings suggest that there was some uniformity in the way hearing officers rendered a decision, as the majority of times the school district had decisions rendered in their favor. However, these findings also
suggest that hearing officers appear to render a decision based upon the merits and specifics of each case. This latter explanation would provide a rationale as to why two hearing officers rendered decisions more favorably for the parents, rather than the school district.

Table 9 displays the decisions rendered by 14 individual hearing officers when the area of alleged noncompliance concerned related services. There were a total of 18 hearings in this category. Individual hearing officers rendered favorable decisions for the parents in 10 of these hearings. One hearing resulted in a compromise. The hearing officers appeared to be consistent in ruling for the parents when the issue appeared to be a reasonable request, and did not arbitrarily warrant the school to expend a great deal of money to accommodate the child. When the issue before the hearing officer concerned how much of a related service should be provided (e.g., Physical Therapy two vs. three times/week), individual hearing officers consistently ruled in favor of the school district.

Table 10 displays the decisions rendered by nine individual hearing officers when the area of alleged noncompliance concerned the site where a child receives his/her education. All hearing officers, except one, rendered decisions in favor of the school district. One
individual hearing officer heard two cases and rendered both decisions in favor of the parents. The rationale for this hearing officer to render a decision in favor of the parents was that the request did not appear to be excessive, and was "reasonable." Both of these decisions were appealed. The outcome of the appeal for each case was that the decisions were reversed. This suggests that the hearing officer may have been guided by his/her emotions and values, rather than school law, per se, or suggests the hearing officer lacked adequate knowledge of the regulations governing the education of the special education child.

The Rowley Supreme Court Decision of 1982

The intent of special education laws and regulations is to ensure that all children are provided with free educational and related services that appropriately meet their needs. In Hendrick Hudson Central School District v. Rowley (102 S.Ct. 3034, 73 L.Ed. 2d 690, 1982) the term "appropriate" was interpreted by the Supreme Court. The opinion set forth by the Court clearly established that schools do not have to provide handicapped children with the "best" or "perfect" education, but rather have to provide educational and related services that ensures equal access to education, similar to that guaranteed the non-handicapped child (McCarthy, 1983).
"...the intent...was more to open the door of public education to handicapped children on appropriate terms, than to guarantee any particular level of education once inside." (Rowley III, at 3043).

This ruling by the Supreme Court should assist parents and educators to have a more definitive understanding of the intent and scope of special education laws. As a result of this court case therefore, it is plausible to consider that there may be differences in decisions made by individual hearing officers pre/post the Rowley ruling.

This study was designed to see if there were any discernible trends in services provided as a result of the Rowley decision. However, as there were only nine cases in 1983, no conclusive trends were evident.
Table 1
Areas of Alleged Noncompliance by Party Favored

<table>
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<th>Area of Alleged Noncompliance</th>
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<th>School</th>
<th>Compromise</th>
<th>Total</th>
</tr>
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<tbody>
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<td>No.</td>
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<td>No.</td>
<td>%</td>
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<tr>
<td>Placement in Private School</td>
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<td>Extended Program</td>
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<td>88</td>
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<td></td>
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<tr>
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<td>33</td>
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<tr>
<td>Gifted Program</td>
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<td>78</td>
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* % rounded off to whole numbers
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Outcome of Hearing by Exceptionality of Child

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<th>GF</th>
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<th>MH</th>
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Table 4
Areas of Alleged Noncompliance by Representation for Parents by Party Favored

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</table>

* 10 hearings compromised
  Attorney Representation = 3 Hearings
  Other Representation = 1 Hearing
  No Representation = 6 Hearings
Table 5
Outcome of Area of Alleged Noncompliance by School District Size by Party Favored

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<td>10,001-20,000</td>
<td>20,001-30,001</td>
<td>30,001 and larger</td>
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<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
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</tbody>
</table>

* 10 Hearings Compromised

- Under 10,000 = 2
- 10,001-20,000 = 2
- 20,001-30,000 = 1
- 30,001 and over = 5

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Table 6
Representation for Parents by School District Size

<table>
<thead>
<tr>
<th>Parents Represented by</th>
<th>School District Size</th>
<th>10,000- Under 10,000</th>
<th>20,000- 10,000</th>
<th>30,000- 20,000</th>
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<th>and Larger 30,000-</th>
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* 10 Hearings Compromised
Table 7
Areas of Alleged Noncompliance by Party who Appealed by Party Favored

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<th>Area of Alleged Noncompliance</th>
<th>Party who Appealed</th>
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<td>5 29</td>
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<td>35 25</td>
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*10 Hearings Compromised
### Table 8

**Decision of Individual Hearing Officer**  
*by Party Favored*  
**Area of Alleged Noncompliance**  
**Placement in Private School**

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Table 9
Decision of Individual Hearing Officer
by Party Favored
Area of Alleged Noncompliance
Related Services

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Table 10

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Chapter V

Summary, Conclusions, and Recommendations

Summary

Since the inception of the Education for All Handicapped Children Act of 1975, P.L. 94-142, administrators in public schools have been mandated to review the problems, rights, and needs of special education students. To implement this federal mandate in the State of Louisiana, in 1977 the Louisiana legislature passed Act 754, The Education for All Exceptional Children Act. This Act incorporated into a single document all of the federal and state requirements which provide education and related services to students who qualify for special education services.

Act 754 parallels P.L. 94-142 with the addition that the State of Louisiana includes gifted students as recipients of special education services. As a result of incorporating gifted students in the special education population, all children who are in need of special education in Louisiana are labeled "exceptional."

The special education laws have been considered by several authors as being one of the most complicated and comprehensive pieces of legislation aimed at educational institutions (Abeson, Bolick & Hass, 1975; Bersoff, 1978; Budoff, 1978; Hamilton, 1982; McCarthy, 1983; Meyer, 1983).
At the heart of the laws was the demand that each local educational system develop a quality program for the child. To ensure quality, the law stipulated that an Individualized Educational Program (IEP) be developed for each special education student.

The IEP is a written agreement, developed jointly by parents, teachers, school representatives, and other trained experts, and is to be reviewed annually. The success of the schools' compliance with special education legislation depends on cooperation among the persons who develop the IEP. If there is a disagreement between the parties, either side may request a due process hearing to resolve the conflict. An Impartial Hearing officer (IHO) presides at the hearing, listens to the testimony of both sides, and renders a decision based upon the evidence of the case. The decision of the hearing officer is final, unless the decision is appealed. During the due process hearing and appeals, the child stays in his/her current educational program.

The purpose of this research was to provide an analysis of special education due process hearings in Louisiana from 1978-1983. Data were obtained by the researcher surveying the written documents of the due process hearings on file at the State Department of Education Complaint Management Office. The data were
quantified to allow analysis of the information.

The instrument used in this study was developed by the primary researcher so that information could be collected in a systematic way. The instrument was named the Due Process Documentation Instrument (DPDI; Appendix C). Categories for the DPDI were determined from previous studies concerning special education due process hearings (Davis, 1983; Kammerlohr, Henderson & Rock, 1983; Pearce, 1983; Smith, 1981). Additional categories were included in this study to meet the unique circumstances of special education due process hearings in the State of Louisiana. A pilot study that reviewed 20 cases supported the efficacy of the author-constructed instrument.

The results of the research indicate there were 147 special education due process hearings from 1978-1983. The greatest number of hearings were held in 1982. During 1982 there were 51 hearings. This is twice as many hearings as were held in 1981 (25 hearings). For reasons unknown, the number of due process hearings was drastically reduced to nine during 1983.

In comparison to other states, the State of Louisiana held a small number of special education due process hearings. For example, in a study done in Maryland by Pearce (1983), there were 76 hearings in one year. In Oklahoma, Davis (1983) reported there were 86 hearings in
one year. And, in Illinois, Kammerlohr, Henderson and Rock (1983) reported 140 hearings were held in a one-year period.

Parents (or guardian) of exceptional children initiated the hearings in Louisiana 82 percent of the time (121 hearings). This finding is similar to findings reported by other researchers. Davis (1983) reported parents initiated the due process hearing 93 percent of the time, while in Smith's study parents were found to initiate the hearing 96 percent of the time.

It was found that the school district was the party favored by the Impartial Hearing Officer (IHO) in 57 percent of the hearings in Louisiana. The school district increased their success to 72 percent if the case was appealed. This finding was similar to findings reported by other researchers. Davis (1983), reported school districts were favored 55.8 percent of the time; upon appeals school districts were favored 60.5 percent of the time. In Illinois, school districts were favored 51 percent of the time; upon appeal the school district gained an additional 21 percent of the total number of hearings (Kammerlohr et al., 1983). Smith's study (1981) reported that school districts won approximately two-thirds of the due process hearings. He did not report on the win/lose record of hearings that were appealed. Pearce (1983) did not analyze
nor report the win/lose record between parties in due process hearings held in Maryland.

There were six main areas of alleged noncompliance that represented issues for hearing officers to resolve in this study. A miscellaneous category was constructed by the researcher that included hearings where the area of alleged noncompliance concerned less than three hearings. The total number of hearings that comprised the miscellaneous category was 14 (10 percent of the total number of hearings).

The area of alleged noncompliance that Impartial Hearing Officers (IHO) were asked to render a decision on most frequently was a request by parents that their exceptional child be provided education in a private setting, at public expense. Fifty-eight percent (85 hearings) concerned this area of alleged noncompliance. The school district was favored by the presiding IHO 64 percent of the time (54 hearings). Six percent of these hearings (5) resulted in a compromise. The parents were favored by the hearing officer 31 percent of the time (26 hearings).

Placement in private school with public monies appears to represent an area of confusion for school districts and parents of exceptional children on a nationwide basis. Due process hearing studies reported by
Kammerlohr et al., (Illinois, 1983), and Pearce (Maryland, 1983) indicate this to be the predominate issue placed before individual hearing officers in these states (approximately 68 percent of the hearings reported in these states concerned private placement. Neither of these researchers discussed the win/lose record of parents or school districts by the area of noncompliance).

Why parents request private schooling for their exceptional child on what may be a nationwide basis is an area of intrigue. One speculation for this is that parents may feel an extra burden has been placed on them by having a child with special education needs. To ease the load of the extra burden (and/or perhaps guilt), parents may feel convinced that if their exceptional child receives private schooling, their burden is lightened, as they have shared it with others. However, a question raised by the findings of this research is to question the appropriateness of parents using a due process hearing to see if they could be reimbursed for private-placement tuition for their child who was currently enrolled in a private school. (There were 24 hearings where the child was enrolled in a private education, at the parent's expense).

If either party is dissatisfied with the decision of the presiding hearing officer, they may appeal the decision to the State level, and subsequently, to a higher
court level. A total of 69 decisions were appealed to the
State Appeals Board which, prior to July 1, 1983, consisted
of members of the State Board of Elementary and Secondary
Education. After July 1, 1983, the appeals board consisted
of three persons, plus one alternate, who qualify as
hearing officers. The structure of the new appeals board
may represent a problem due to a shortage of qualified
officers. (Act 754, revised, stipulates 24 attorneys must
be appointed as hearing officers. However, only 15
attorneys currently make up the roster).

Parents appealed 34 decisions; school districts
appealed 35 decisions. In all areas of alleged
noncompliance where the decision of the presiding hearing
officer was appealed, the school district gained additional
hearings in their favor. As previously reported, this
finding is similar to findings reported by other
Researchers.

The school district appealed the decision of the
presiding hearing officer in 15 hearings that had as a
central issue private placement for the exceptional child,
with public monies. When the school district appealed,
they gained an additional 10 hearings in their favor. In
26 hearings the parents appealed the decision of the
individual hearing officer. The school district remained
the party favored in all of these cases.
There were 19 individual hearing officers who ruled on the issue of private placement for the exceptional child with public monies. Of these 19 hearing officers, seven rendered a decision in four or more cases. Five of these hearing officers ruled the majority of times in support of the school district. When providing a rationale for the ruling, individual hearing officers appeared to match circumstantial evidence of each hearing against a legal interpretation of the law. When hearing officers rendered a decision in favor of the parents, their rationale appeared to be more related to their own personal values and attitudes towards the special education student, as opposed to objective and concrete facts of the hearings.

It was found that parents of exceptional children were favored by individual hearing officers when the areas of alleged noncompliance concerned related services, extended educational programs (beyond the traditional 180 days), and least restrictive environment. Upon appeal, the parents retained a favorable decision only when the area of alleged noncompliance concerned an extended educational program for the child.

The results of this study showed that there were 10 primary exceptionalities of children represented in this study. Thirty-one percent of the total number of hearings (46) concerned children who were classified as mentally
retarded. In studies done by Davis (1983) and Smith (1981), it was found that mental retardation was the exceptionality represented approximately 34 percent of the time.

Parents of children identified as Learning Disabled (LD) were represented in 18 percent of the hearings. This represents the second largest exceptionality classification found in this study. This finding is similar to that reported by Kammerlohr et al. (1983), in Illinois (14 percent). In a study done by Pearce (1983), the learning disabled child was the exceptionality most frequently represented. Davis (1983) reported that LD children were represented in 23 percent of the total number of hearings in Oklahoma.

The children who were identified as having a primary exceptionality of Learning Disabled were identified 50 percent of the time as also Emotionally Disturbed. Previous research has not identified that the child who has a learning disability will typically have a simultaneous classification of emotionally disturbed. Other researchers did not identify whether or not a child had a secondary exceptionality.

Children with exceptionalities labeled as orthopedically impaired, multiply handicapped, and visually impaired, were found to be favored by individual hearing
officers a greater number of times than children identified as mentally retarded, learning disabled, hearing impaired, emotionally disturbed, gifted, noncategorical, and autistic. Further studies may want to investigate this finding.

In Louisiana, school districts are represented by an attorney in all special education due process hearings. If parents retain an attorney, it is at their own expense. Parents retained an attorney in 65 hearings (44 percent). When parents were represented by an attorney they were favored in 30 hearings (46 percent). Three of these hearings resulted in a compromise. Parents were self-represented (no representation) in 61 hearings. When parents were self-represented the parents were favored by the presiding hearing officer in 18 hearings (30 percent). Six of these hearings resulted in a compromise.

Parents may also choose a person other than an attorney to help them present their case before the individual hearing officer. Parents were represented by someone other than an attorney in 21 hearings (14 percent). One of these hearings resulted in a compromise. Hearing officers rendered a favorable decision for the parents in 11 hearings (52 percent) when a person other than an attorney represented the parents of the exceptional child.
Davis (1983) reported a similar finding. When parents were self-represented, they won 4.7 percent of the hearings; when they were represented by an attorney, parents won 81.4 percent of the hearings; when they were represented by an advocate, parents won 14 percent of the hearings. These findings clearly indicate that parents fare better in the outcome of the hearing when they retain someone to present their case. The reasons for these finding may include: a neutral person may act to control affective displays by the parents; the case may be better organized and argued; factual information may be better researched; expert witnesses may be included; and/or, the hearing officer may be more impressed that the hearing more closely resembles a court of law.

This study organized the size of school districts by pupil enrollment at individual schools (La. School Directory, 1982-83). It was found that school districts could be placed in one of four sizes. School districts with a pupil enrollment greater than 30,001 comprised the largest school district size. There were 102 hearings in school districts that had more than 30,001 pupils. The school district was favored in 65 hearings. Five hearings resulted in a compromise. Consequently, 61 percent of the hearings for the largest school district size in this study resulted in decisions that favored the school district.
The reason for this finding may be related to the fact that larger school districts often have a larger budget than a smaller district. Therefore, more services might be available for special education students in larger districts.

There were a total of 35 due process hearings from the two smallest school district sizes identified in this study (under 20,000 pupils). This comprised 23 percent of the total number of hearings. Four of these hearings resulted in a compromise between parties. The parents were favored in 21 of these hearings (60 percent). Therefore, the results of this study showed that parents of exceptional children were favored by the presiding hearing officer in smaller school districts. This finding may be related to the hearing officer feeling greater empathy for exceptional children who live in a more isolated geographical area (small school districts were in rural areas).

There were a total of 29 individual Impartial Hearing Officers (IHO) who presided at special education due process hearings from 1978-1983. Individual hearing officers heard as few as one case, and as many as 23 cases. Hearing officers typically rendered favorable decisions for the school district. However, among individual hearing officers, there were found to be some variances in the
party who was favored in the hearing (in the same or similar-issue hearing). This suggests that individual hearing officers rendered decisions on a case by case basis.

In Louisiana, the Impartial Hearing Officer (IHO) must be an attorney. In other states the IHO is typically not an attorney. Davis (1983) reported on the profile of the IHO's in Oklahoma. Forty-seven percent of the hearing officers were higher education faculty; 39 percent were special education teachers; 67 percent had Master's Degrees; 32 percent had doctorates. It is up to individual states to appoint hearing officers, in accordance with state regulations. The only requirement P.L. 94-142 stipulates is that the hearing officer may not an employee of the litigating school district, nor have any personal interest in the outcome of the hearing (Sec. 615)(2).

As due process hearings represent a quasi-judicial process, an attorney may be a good choice as the person who is the presiding officer. Their background and training may serve to maintain the orderliness of a judicial process. Studies have not addressed whether the professional training of the hearing officer makes a difference in the outcome of the case. Further studies may want to address this, as well as research the relationship, if any, between the personal philosophy of individual
hearing officers with respect to attitudes towards the special education population, and the decision rendered by the hearing officer in special education due process hearings.

Conclusions

The following conclusions were based upon the findings of this study:

1. The Due Process Documentation Instrument, developed by the primary researcher of this study, is an instrument that could be utilized to assist other researchers to analyze special education due process hearings.

2. There were similarities between the findings of this study and special education due process hearing researched in Illinois, Maryland, and Oklahoma. These similarities include the areas of alleged noncompliance, the party who initiated the hearing, the party favored in the hearing and appeal, and the child's exceptionality.

3. There were differences between the findings of this study and other studies. These differences include the personal profile of the presiding hearing officer (Impartial Hearing Officer), the number of special education due process hearings heard in (any) one year, and differences in the classification of children who are identified as special education students.
4. Special education due process hearings in Louisiana can be characterized as minimal in number in comparison with studies reported by researchers in Illinois, Maryland, and Oklahoma. In a five-year period there were 147 due process hearings in Louisiana. The greatest number of hearings was 51, held in 1982. Other researchers reported from 76-140 hearings in one year. The reasons for the small number of hearings in Louisiana may include: parents (or the guardian) of exceptional children and the school districts agree when identifying services that are to be provided when developing the Individualized Educational Program (IEP); the parents may fear confrontation with school staff who directly work with their child; parents fear retribution for themselves if they disagree with the IEP; parents feel they do not have an equal chance with the school district in special education due process hearings; parents see school personnel as having superior knowledge in developing the IEP; parents are disinterested in the educational program of their exceptional child; parents lack the resources and/or wherewithal to request a due process hearing; parents are not informed of the mechanism of due process to resolve special education conflicts.

5. Special education due process hearings are organized and conducted as a quaisi-judicial procedure, as specified
in the law and regulations. In Louisiana, the person who presides at the hearing is a licensed and practicing attorney. In other states the background and training of the presiding hearing officer is not required to be an attorney. The results of the study indicated that when compared with other studies, the profile of the hearing officer does not appear to make a difference in the outcome of the hearing. School districts are reported to be favored a greater number of times in all hearings, despite the profile of the hearing officer. Some variances in the decisions rendered by individual hearing officers were found when comparing the same or similar issue. This suggests that individual hearing officers render decisions on a case by case basis, as stipulated by special education regulations.

6. La. Act 754, the Education for All Exceptional Children Act, parallels the federal special education law, P.L. 94-142, The Education for All Handicapped Children Act, with the addition that gifted and talented students are included as special education students, and that presiding hearing officers are to be licensed and practicing attorneys. The regulations stipulate that there are to be 24 persons available in the State as Impartial Hearing Officers (IHO). In 1983 there were only 15 persons who were appointed as IHO's. Consequently, Louisiana lacks
personnel to preside at special education due process hearings. An explanation for this shortage may be due to the limited remuneration an attorney receives as the presiding hearing officer.

7. Since July 1, 1983, Act 754 stipulated that the appeals board for special education due process hearings shall consist of three qualified hearing officers, plus one alternate. As there is a shortage of hearing officers, the procedure for an impartial ruling in the appeals procedure may be threatened.

8. School districts are favored the majority of times by the Impartial Hearing Officer in special education due process hearings when the areas of alleged noncompliance concern placement in private school, school building site designation, gifted placement, and a miscellaneous category.

9. Parents (or the guardian) of exceptional children are favored in due process hearings when the areas of alleged noncompliance concerns related services, extended programs, and least restrictive environment.

10. The school district does not have to provide private schooling for the exceptional child if the school demonstrates a public program exists that addresses the child's educational and related special needs.

11. When parents are favored by individual hearing
officers, the rationale for the decision appears to be related to personal attitudes and values of the hearing officer, as opposed to objective and concrete facts of the hearing. When parents have an expert witness or professional person testify regarding the emotional difficulties or differences for the exceptional child in relation to children who are not classified as exceptional, the hearing officer was more likely to discount the least restrictive placement requirement, stipulated by special education law and court cases.

12. When parents are represented by either an attorney, or someone other than an attorney (e.g., advocate), at special education due process hearings, the parents have a better chance to have the decision rendered in their favor than if they were not represented (self-representation). Therefore, parents should strongly consider the necessary expenditures related to retaining an attorney, if they decide to use the due process procedure. Too, in Louisiana school districts always have the school attorney present at due process hearings; parents may need an attorney to organize, develop and sustain an argument that is similar to how the school defends their position. From the findings of this study, it is concluded that schools may have an "edge" if parents do not have representation.

13. If the decision of the presiding hearing officer was
appealed, the school district was able to gain additional support in their favor.

14. When the decision of the Impartial Hearing Officer is appealed, approximately four months elapse between the initial due process hearing and the decision rendered by the appeals board. The child stays in his/her original program during the hearing and appeals process. Therefore, it may be possible for either side to utilize the appeal procedure as a delaying tactic so that the child may remain in his/her current program.

15. Parents of children identified as mentally retarded utilize the special education due process hearing as a grievance procedure more frequently than do parents of other exceptional children.

16. There appears to be some confusion with the label of "Learning Disabled" (LD). No functional, operationalized definition exists that identifies the child with this exceptionality. Children who were identified as LD in this study were considered fifty percent of the time to have a secondary classification of Emotionally Disturbed (ED). Yet, research does not indicate that the LD child will also have severe emotional problems to classify him/her as ED. The other exceptionalities depicted in this study were not typically found to have a linking secondary classification. This finding suggests schools may want to review and
clarify their assessment technique when classifying the LD and ED child.

17. School districts are favored the majority of times by the presiding hearing officer where the pupil enrollment is greater than 20,001 pupils. Parents of exceptional children are favored by the presiding hearing officer in school districts where the pupil enrollment is less than 20,000 pupils. The availability of resources within a school district may be a factor for this finding. The leadership and/or organizational climate within a school district may be another factor. A third factor may be culture specific to the geographical region of the school district, (e.g., urban v. rural, north v. south, attitudes by/toward exceptional children and their parents, and/or toward public education for special education students).

18. "Least Restrictive Environment" means placement in a public school classroom, to the maximum extent possible. The school district may not place a child in a more restrictive environment for administrative effectiveness and/or efficiency. A parent may not expect their child will be provided educational or related services in an isolated setting, unless the child's exceptionality excludes him/her from the mainstream of society. This basic tenet of special education law was found to be supported in this study.
19. Local school districts must be able to exercise their decision-making powers to run the school, without outside interference. Parents should be advised that, according to La. Act 754 regulations, the school district is vested to designate the school building site where the child will receive his/her education. (However, a court order will supercede a school district's site designation.) Therefore, parents should be made aware of this ruling; hearing officers should also be advised of schools' discretionary powers.

20. Generally, children tend to regress during the summer recess vacation. This shared common knowledge was the rationale why school districts were required to provide year-round educational programs for seven exceptional children whose parents requested this service in due process hearings. This finding has implications beyond these seven students. Many families now find it necessary for both parents to work full time. One problem with both parents working is who will care for the children when school is in recess? It appears it may not be that difficult to demonstrate a child will regress during the summertime. Therefore, schools may be required to provide year-round educational programs for all special education students. If this trend become the norm, rather than the exception, working parents of children not identified as
special education students may request equal treatment for their child. This could result in extra financial burden for school districts.

21. School districts should acknowledge that appropriate programs for special education students must show that the program they develop and present to the parents of exceptional children is not limited to academic experiences, but also includes strategies that may help the exceptional student learn to cope with his/her environment. This recommendation is based upon the general findings of this study.

22. A major point for both parties to consider is that school districts do not have to provide the "best" available services for the exceptional child, but rather must provide services that are identified as being "adequate" to ensure a "free and appropriate public education." This finding was stated in the Rowley Supreme Court Case (1982). The general principle set forth by this case was investigated to discover if there were discernible trends in the decisions made at special education due process hearings pre/post this decision. However, it is inconclusive from the findings of this study whether or not this Supreme Court decision has (yet) had an impact on the outcome of the hearings in Louisiana. This inconclusiveness is attributed to the small number of
hearings conducted in 1983 (nine hearings).

Recommendations

The following recommendations are proposed for future research:

1. It is recommended that the present study be continued to determine if the major areas of noncompliance continue to be disputed, and/or if there are new areas which face educational administrators in the implementation of special education services.

2. There is a shortage of persons who are appointed as impartial hearing officers in Louisiana. It is recommended that a study be designed that addresses this issue and suggests ways to overcome this deficit.

3. Further research is recommended that investigates why parents appear to have fewer due process hearings for special education grievances in the State of Louisiana.

4. Further research is recommended that investigates why parents appear to prefer private schooling for their exceptional child.

5. The organizational climate of individual public schools, and/or the leadership style of the administrator could be investigated and related to the number and kind of due process hearings in a school district.
6. An attitude towards disabled persons scale could be additionally correlated with organizational climate, leadership style, and/or environmental considerations of school districts to see what relationship, if any, exists among these variables.

7. Further studies are needed that address the cognitive and affective orientation of the presiding hearing officer to see what relationship, if any, exists with respect to decisions rendered by individual hearing officers.

8. The results of the appeals procedure for special education due process hearings since July 1, 1983 needs to be further studied to determine if there are changes in the outcome of the appeals procedure pre/post this date.

9. There appears to be confusion in the identification and classification of Learning Disabled and Emotionally Disturbed students. Objective, functional criteria is needed to identify these children, and consequently provide appropriate programs that meet the unique needs of these students.

10. It is recommended that further studies address what relationship exists, if any, between the classifications of Learning Disabled and Emotionally Disturbed.

11. Further studies are recommended that address the outcome of hearings pre/post the Rowley Supreme Court
decision of 1982 to see if this court case has had an impact on the extent and scope of services provided to special education students.

The following suggestions are recommended for school districts and/or parents (or the guardian) of exceptional children when contemplating (and/or being requested to attend) a special education due process hearing:

1. It is critical to have concerns and major points presented in a way that supports and sustains a particular position. Attorneys have been trained to relate a point to logic and reason. In the State of Louisiana school districts typically have an attorney prepare and present the school's position. Therefore, for parents to have an equal chance to have the hearing resolved in their favor, they must retain an attorney. If this is not financially possible, (the parents must bear the financial burden if they retain an attorney), parents should seek an advocate, knowledgeable in special education due process procedures, to represent them.

2. The Impartial Hearing Officer is empowered to provide a ruling that favors one of the litigating parties in special education due process hearings. Typically, the presiding hearing officer has limited knowledge and expertise in the area of special education. It is
recommended that both sides retain expert witnesses who can provide evidence and testify on the major point(s) of the hearing.

3. Parents and school districts must search for the most appropriate and rational decisions in developing their defense in the due process hearing. Rational decision-making can be best determined by involving others in the process. Yet, in preparing and presenting your defense, parties must recognize that arguments are not won solely on rational, cognitive facts and behavior. It is recommended that parties incorporate strategies into their argument that combine affective and factual data.

4. Participants should anticipate potential roadblocks they will face in the due process hearing by pre-determining what possible strategies the opposing side will present to support their argument.

5. The due process hearing is a quasijudicial process; its tenets are grounded in legalistic framework. The presiding hearing officer and the members of the appeals board are attorneys (in Louisiana). Therefore, it is recommended that litigating parties utilize legalistic language, citing passages in law and related court cases, to strengthen their defense.

6. Both parties should state their viewpoint from the standard of "reasonableness".
7. Each side should have the courage to maintain their convictions. This does not imply rigidity, but does imply a sense of purpose to support your position.

8. Participants in due process hearings should seek strong support of all those who may be key participants in effecting the recommended educational or related service (or change) for the child. Participants should present a unified front when stating a position. It is recommended that prior to the due process hearing, each side rehearse their position.

9. Although special education services are to be provided regardless of financial burden, it is wise to estimate, to the extent feasible, the human, financial, and physical resources required, and the cost of the requested service(s).

10. When presenting your argument in the due process hearing, consider that timing can be critical. Determine if there is sequential strategy when making a point (too-much, too-soon can be counterproductive).

11. The due process hearing is an adversarial encounter between the parties. Parents and the school districts are on opposing sides. Yet, the Individualized Educational Program (IEP), inherent in special education law and regulations, was designed as a mechanism to promote cooperation between the school district and the parents of
exceptional children. It is recommended that school districts and parents consider utilizing the school counselor to mediate or remediate the grievance, prior to due process. A counselor has the skills and training to listen attentively and help parties clarify their concerns, and the consequences of various decision-making.

Typically, the school counselor is not involved in the development of the IEP. He/she could therefore be considered a neutral party.

12. The official for administering special education programs at the school building level may lie with persons not trained in special education administration, per se. A critical element for strong leadership is informed leaders. It is recommended that in-service training programs be made available for school building level administrators in the general area of special education laws, regulations, and court cases. It is further recommended that parents of exceptional children are also provided with similar information.

13. If federal and state cutbacks continue to be proposed for school districts which result in budgetary constraints, and additional services continue to be demanded for special education students (e.g., year-round educational programs), school administrators and parents of exceptional children will need to join forces to search for creative ways that
respond to students' needs. It is recommended that local educational agencies develop a plan to work with parents and address this (potential) problem.
References


Congressional Record- Senate. (1975). November 19, S20, 427.


Appendix A

Request to Review Documents
September 1, 1983

Ms. Arlene Edwards, Administrative Specialist
Legislative and Legal Analysis
State Department of Education
P.O. Box 44064
Baton Rouge, Louisiana 70804

Dear Ms. Edwards:

Ms. Leona Liberty, a doctoral student of mine is interested in doing research concerning the number and type of agency hearings involving P.L. 94-142. The intended purpose of this study is to identify problems schools are having in the administration of the law. No individual or school will be identified.

It is hoped that such a study will prove valuable in assisting schools in their understanding of what they can and cannot expect in the event of parent appeals and thus avoid needless time wasted in the due process hearings.

The specifics of Ms. Liberty's proposal have not yet been completed, since such a study would not be possible without access to the records of the decisions of the hearing officers. It is the purpose of this letter to request that Ms. Liberty be given access to such records and to assure that the confidentiality of such records will not be violated.

Thank you for your consideration of this request.

Sincerely,

Robert C. VonBrock
Professor of Education
Louisiana State University
Appendix B
Authorization to Review Documents
June 20, 1984

TO WHOM IT MAY CONCERN

Be advised that Leona Liberty, a LSU doctoral student in the College of Education, has permission to review due process hearing files for the purpose of securing non-confidential data to be included in a dissertation.

jfb

APPROVED:

[Signatures]

Leonard E. Hayes
Deputy
Special Educational Services

Irene M. Newby
Assistant Superintendent
Special Educational Services

It is my understanding that no confidentiality data found within any files during purpose of study will be indulged without prior written permission of the parties concerned.

[Signature]

Leona Liberty
Appendix C

Due Process Documentation Instrument
Due Process Documentation Instrument

Special education due process documents may include the following structural characteristics:

1. Identification number of the document
2. Sex of the child: Male, Female
3. Exceptionality of the child:
   (a) Primary Classification
   (b) Secondary Classification
      Multiply Handicapped
      Mentally Retarded
      Learning Disabled
      Hearing Impaired
      Gifted
      Emotionally Disturbed
      Orthopedically Handicapped
      Visually Impaired
      Noncategorical
      Autistic
      Deaf-Blind
      Educationally Handicapped/Slow Learner
      Handicapped Infants
      Hospital/Homebound
      Other Health Impaired
      Severe Language Disordered
      Speech Impaired
      Talented
      None
4. Month of Hearing
5. Year of Hearing
6. School
7. School District Size
   Small  Medium  Large  Extra-large
8. Initiated by
   Parent  School
9. Identity of Impartial Hearing Officer
10. Represented
    No  Attorney  Other
11. Areas of Noncompliance
    Placement in Private School
    Exceptionality Classification
    Least Restrictive Environment
    Extended Program Beyond School Year
    Violation of a Change of Placement without Notice
    Gifted Placement
    Site Designation
    Related Services
    Independent Evaluation Request
    Time Frame Violation
    Expulsion
    Non-specific, general dissatisfaction with school
    Homebound Placement
    IEP different than actual placement

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12. Findings
   Parents wonParents LostCompromise
13. Was it appealed?
   Yes No
14. Month of Appeal
15. Year of Appeal
16. Findings of Appeal
   UpheldReversed
17. Outcome (Action to be taken by the school.)
   Examples of the outcome may include:
   1. Public schools do not have to respond to the parent's wish that their child be educated in a private school if a suitable program exists in the public school.
   2. Schools may be required to provide a year-round educational program for the exceptional child.
   3. Schools may be required to provide monies for an independent evaluation for the child.
   4. The public school system does not have to respond to the parent's wish that their child receive an education in a site chosen by the parent.
18. General Comment and/or Rationale for Decision
   Examples of this type of information may include:
   1. A smaller teacher/pupil ratio is not rationale for private placement of the exceptional child.
   2. While schools may be required to provide monies for an independent evaluation for the exceptional child, only one such evaluation may be the responsibility for the school system.
   3. A student identified as a gifted student does not have to be placed in a magnet school if an adequate program is made available at the site of the current placement.
19. There was mentioned, in the due process document, that the child was reasonably adapting to the public education setting.
   Yes No Information not available
VITA

Leona Helen Greenberg Liberty is originally from Troy, New York. She graduated from Lansingburgh High School in 1958 and was awarded a New York State Honor Regents Diploma. She attended Syracuse University, Syracuse, New York, where she earned a Bachelor's Degree (B.S. cum laude) in Nutritional Science and a Master's Degree (M.S.) in Rehabilitation Counseling.

Her professional experiences include work as an administrator, teacher, and counselor. She was a graduate assistant for the College of Education at Louisiana State University while pursuing her doctorate.

She is married to Thomas A. Liberty and is the mother of James, Christopher, Donna, Thomas P., and Lee.
Candidate: Leona H. Liberty

Major Field: Educational Administration

Title of Thesis: Analysis of Special Education Due Process Hearings in Louisiana

Approved:

[Signatures]

Major Professor and Chairman

Dean of the Graduate School

EXAMINING COMMITTEE:

[Signatures]

Date of Examination: January 17, 1995