

## Chapter 1. Development of the Problem

### Introduction

The Education of All Handicapped Children Act (EAHCA) , (20 U.S.C. 1400 et seq.), established a number of revolutionary departures from the traditional federal, state, local and parental relationships in public education. The Act has been amended several times including the 1986 amendments that renamed the Act as The Education of the Handicapped Act (EHA) and the 1990 amendments that gave the Act its current title - The Individuals with Disabilities Education Act, (IDEA). Three significant requirements established by the EAHCA and maintained within the EHA and IDEA are:

- All eligible students with disabilities are entitled to a publicly funded education uniquely designed to meet their individual needs.
- The State Educational Agency (SEA) and the Office of Special Education Programs (OSEP), U.S. Department of Education, are responsible for monitoring the efforts of Local Education Agencies (LEA) to educate students with disabilities.
- A due process system which permits parents to challenge a public school's determination of their child's special education eligibility, evaluation, services or placement.

Before the 1975 enactment of the Education of All Handicapped Children Act (EAHCA), children with disabilities were excluded on a regular basis from public schools or offered limited services at public schools. Parents were denied access to the educational record of their children, excluded from the decision-making process concerning their children's education, and had no process to challenge the school's determination of eligibility, evaluations or services (Turnbull, 1993).

The EAHCA provided parents with a number of substantive and procedural rights to correct these inequities. All children of eligible school age with disabilities were entitled to a free

appropriate public education. Children with disabilities were provided a written individualized educational program that was based upon their unique needs and detailed the specialized education services they were to receive. Parents were permitted access to their children's educational records. Parents were permitted to participate in the planning meetings concerning their children. Further, parents were provided opportunities for administrative hearings in order to challenge school decisions.

A number of externalities or unintended consequences developed as the U.S. Department of Education and the fifty states developed regulations for the implementation of the EAHCA.

1. Congress envisioned a process of parent and school collaboration and decision-making by consensus. However, schools experienced increased parent and school conflict and inconsistent decision-making by schools, based in part upon the vague and ambiguous language in the statute and implementing regulations (Weatherly & Lipsky, 1977).

2. Congress intended to maintain local control of education through general statutes, reasonable federal and state regulations, and flexible enforcement that recognized the diverse needs of the children, the states and communities. However, schools experienced the emergence of *legalism*, or the elevation of form over substance, where compliance with the letter of law takes precedence over the intent of the law (Goldberg, 1989).

3. Congress anticipated the development of an informal hearing process similar to binding arbitration that focused on the rapid, relatively amicable resolution of parent and school disputes. However, schools experienced an increasingly adversarial and legalistic hearing process involving attorneys and witnesses, direct and cross examinations, attorney fees and compensatory damage awards (Zirkel, 1993).

### Maine Dispute Resolution Procedures

Maine, like most states, has provided parents with the option to request a mediation, hearing or complaint investigation to resolve a conflict between the parents and the school regarding the identification, evaluation, placement or the provision of a free appropriate public

education (Maine Special Education Regulations, Sec. 10.11). Parents may initiate a hearing, a complaint, or a mediation by submitting a written request with a brief summary of the disagreement. When a parent initiates a hearing, the Department of Education offers mediation to both parties. Mediation is not offered to parents who initiate a complaint.

Data for the period 1990 through 1996 from the Maine Department of Education demonstrate an increasing number of requests for hearings, mediations and complaint investigations (figure 1). The decrease in hearing requests during calendar year 1992 has been attributed to staff reorganization and resignations at the State's protection and advocacy agency. Mediations have increased since 1993 when the Department began to automatically offer mediation upon receipt of a hearing request. Prior to 1993, parties to hearings were offered mediation only upon request. The practice of automatically scheduling mediation upon receipt of a hearing request confounds the data and bars the investigation and comparison of factors which have influenced parental selection of mediations in this study of complaint and hearing requests. The inclusion of mediation information in this section provides a useful comparison of the options available to parents for conflict resolution.

Departmental data for calendar year 1996 indicate that the average cost to the Maine Department of Education for a hearing, complaint or mediation was \$522, \$810, and \$292 respectively (Coulombe, 1997). These costs do not include expenses incurred either by parents or local schools. With respect to the timeliness of a decision, mediations typically average a decision within 20 days of the request compared to the 36 days for complaints and 49 days for hearings (Opuda, 1995). Thus, complaints appear to be slightly more expensive for the Maine Department of Education but provide a more timely response to the parties than a hearing. No data have been collected to assess the relative costs to parents for complaints or hearings, nor has any systematic inquiry addressed the parental perceptions of either the hearing or the complaint processes.

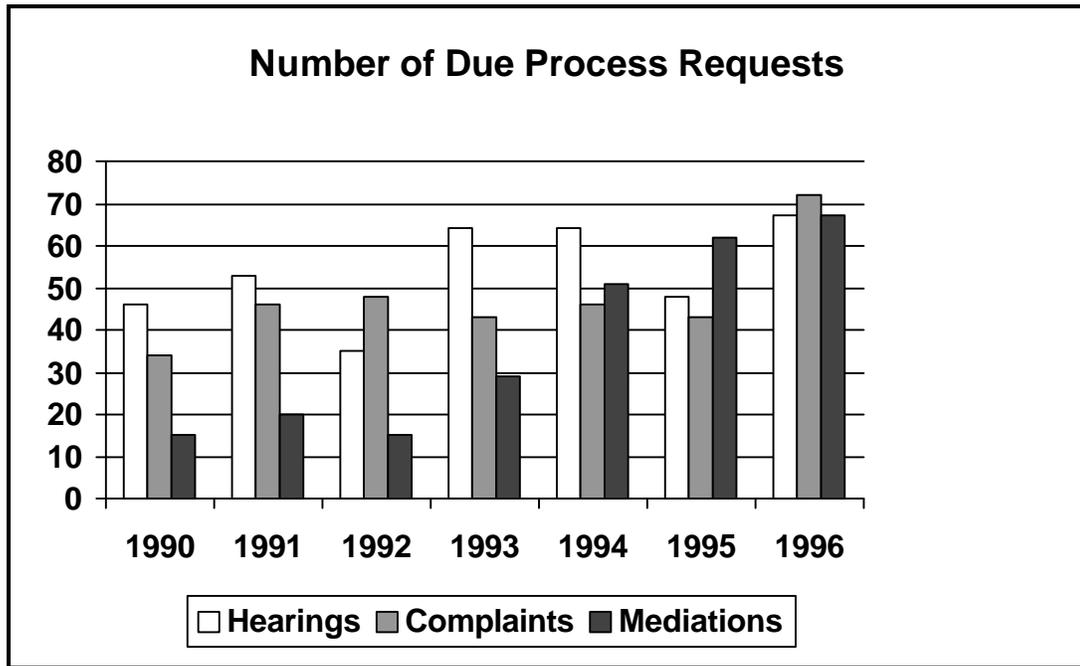


Figure 1. Total due process requests per calendar year (Maine Dept. of Ed.)

Table 1 represents the number and the results of all 206 requests for mediations, complaint investigations and hearings filed with the Maine Department of Education between the period January 1, 1996 and December 31, 1996. This represents a duplicated count, since parents may file more than one action within any given year and since mediations are offered upon receipt of a hearing request. Of the 206 requests filed during 1996, sixty-two requests were duplicate requests involving the same parents, child, and school. Fifty-six of the duplicate requests for a hearing also had a mediation assigned. Five of the duplicate requests represent parents who had filed two hearing requests within 1996 and one of the duplicate requests was a complaint which was withdrawn and refiled as a hearing.

Table 1

Total Due Process Requests Maine 1996

Type Of Due Process	All Requests	Decisions	Mediated	Withdrawn	Other
Hearing	67	10	20	35	2 <sup>a</sup>
Complaint	72	61	2	9	
Mediation	67	N/A	31	15	18/3 <sup>b</sup>

**Note:** a.) Two hearing requests were appeals of complaint investigations - The Maine DoE declined to conduct hearings on these requests. b.) Eighteen mediations were unsuccessful and the parents took no further due process action, either the parent or the school declined three mediations offered by the Department.

A number of studies have investigated the use of mediation and hearing procedures to resolve parent and school disputes in special education (Ahern, 1994; Forbis, 1994; Stockdale 1994; Regan, 1990). Building upon this research, researchers have published several articles recently which address the need for less adversarial means to resolve parent and school conflicts (Goldberg and Heufner, 1995; Schumack and Stewart, 1995; Schrag, 1996b; Zirkel, 1993). The U.S. Department of Education and the Congress have recognized the adversarial nature of the hearing process and have incorporated several provisions in the 1997 Amendments to the IDEA (IDEA '97). These provisions limit attorney fees, require parental notice to the school of a dispute, and require that mediation be made available to parents and schools. President Clinton signed the 1997 Amendments to the IDEA into law on June 4, 1997. The responsibility to pay for the attorneys' fees of parents are limited to hearings in which a parent prevails and the results are more than what would have been achieved if the parents had accepted a settlement offer. Parents are required to provide a written notice to schools that summarizes the parents' dispute and possible remedies prior to requesting a hearing. All states are required to offer mediation as a

means for resolving parent and school disputes through a non-adversarial conflict resolution process.

### Statement of the Problem

What has been lacking from the public debate is an understanding of the existing options available to parents and schools to resolve disputes as well as knowledge of the factors that contribute to the success of each option. Notably absent are studies of the complaint process. A search of the ERIC, Dissertation Abstracts, and Psychlit databases, identified a limited number of papers or dissertations concerning the complaint investigation process (Suchey, 1997; Lakes, 1995; Arizona Dept. of Education, 1994; Opuda, 1992). An area of research that has not adequately been pursued to date is a comparison of parents who select the complaint process versus the hearing process to resolve their disputes with the school.

Due process hearings are expensive and threaten the credibility of staff and administration (Forbis, 1994; Hehir, 1992; Sachen, 1988; Turnbull and McGinley, 1987). Parents and school personnel perceive the hearing process as a very negative experience (Dragan, 1996; Goldberg and Huefner, 1995; Hehir, 1992). There has been little research conducted regarding the complaint process and the variables that influence parental selection of either the complaint or the hearing process. This research intends to begin the exploration of this fertile area of inquiry.

### Purpose

This study is an exploratory investigation of parents who filed hearings and parents who filed complaints to resolve their disputes with public schools regarding the provision of special education services to their children with disabilities. This study investigates those factors that influence parental selection of the hearing versus the complaint process. Differences in the demographics of parents who select hearings versus complaints were identified. The perceptions of parents concerning the hearing and the complaint procedures were studied.

Research Questions

This study is limited to parents who have filed either a request for a hearing or a complaint investigation with the Maine Department of Education during the period January 1, 1996 through December 31, 1996. It is hypothesized that there are identifiable differences between parents who select the complaint process and parents who select the hearing process to resolve their disputes with the school regarding the provision of special education services to their children with disabilities.

This study addressed the following research questions:

Are there differences between parents who initiate a hearing versus those who initiate a complaint in reported household income, education level, type of dispute, access to advocacy services, and availability of free time to advocate? Access to advocacy services is defined as the availability of paid or volunteer advocates or attorneys to assist the parent. Availability of free time is defined as the ability of a parent to participate during regular business hours in dispute resolution meetings with the school.

Are there differences between parents who initiate a hearing versus those who initiate a complaint in the age and type of disability of their child? The type of disability and the type of dispute will be determined from the written request and records at the Maine Department of Education.

What contributes to the differences in the outcome of hearings compared to the outcomes of complaints? Why do only 15% of the hearing requests result in decisions when 85% of all complaint requests result in decisions? Why are 52% of all hearing requests withdrawn yet only 13% of all complaint requests are withdrawn?

What are the actions or behaviors of school systems that parents perceive as influencing (increasing or decreasing) parent and school conflict?

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What are the perceptions of parents regarding the hearing or complaint process?

What characteristics of the complaint and the hearing processes contribute to parental selection?

### Definitions

Complaint – A complaint is a bureaucratic process to investigate and remedy a written allegation that a school has failed to comply with the federal and state standards for the provision of special education services authorized under 34 C.F.R. 300.660. Complaints may address disputes between parents and schools regarding the identification, evaluation, placement, or provision of a free appropriate public education to a child with a disability.

Due process – The term *due process* is a generic term used within this study to refer to parents' challenge of a school's decision regarding the provision of special education services. Due process may include the mediation, hearing, and complaint procedures.

EAHCA -- The abbreviation *EAHCA* means the Education of All Handicapped Children Act, P.L. 94-142, passed by Congress in 1975 with an effective date of 1977.

EHA – The abbreviation *EHA* means the 1986 Amendments to the Education of All Handicapped Children Act that renamed the Act as the Education of the Handicapped Act

FAPE – The term *FAPE* means a Free Appropriate Public Education. FAPE includes instruction that has been designed to meet the unique needs of a child with a disability; is provided at no cost to the parent; is provided under public supervision and direction; and, meets the standards of the state for the provision of special education services.

Hearing – A hearing is a quasi-legal, adversarial process established under 20 U.S.C. 1415(f) and 34 C.F.R. 300.507. The hearing permits parents and schools to present exhibits and testimony to an impartial hearing officer. The hearing officer reviews a school's decision

regarding the identification, evaluation, placement, or provision of a free appropriate public education to a child with a disability. The hearing officer is authorized to order corrective actions to remedy a district's failure to comply with the IDEA and state standards for the provision of special education services.

IDEA – The abbreviation *IDEA* means the Individuals with Disabilities Education Act, the 1990 Amendments to the EHA. The regulations for the implementation of the IDEA are found at 34 C.F.R. 300 et seq.

IDEA '97 – The abbreviation *IDEA '97* means the 1997 Amendments to the IDEA. The regulations for the implementation of the IDEA '97 are found at 34 C.F.R. 300 et seq.

LEA – The abbreviation *LEA* means Local Education Agency and is a generic term referring to a local school district or school division.

Mediation – The term mediation refers to a non-adversarial conflict resolution process where the parents and the school meet with an impartial third party to explore alternatives to resolve their dispute. Mediation encourages joint problem solving, assists both parties to identify alternative solutions to their problem, and promotes effective communication between parents and schools.

Parents – The term *parent* means the natural parents, surrogate parents, or legal guardians of students with disabilities eligible for special education services.

SEA – The abbreviation *SEA* means State Educational Agency and is a generic term referring to the state agency responsible for the educational services provided by the LEAs.

### Significance

This study adds to the limited literature concerning special education conflict resolution and goes beyond the description of existing practices by exploring parental perceptions of the hearing and the complaint processes. This study has identified the actions and behaviors of

parents and schools that contributed to a request for a hearing or complaint investigation and has identified factors which influence parental selection of the hearing and the complaint processes. The study findings should inform and influence public policy decisions regarding the complaint and the hearing procedures.

### Organization of the Study

This study is organized into 5 chapters. Chapter 1 provides an introduction to the study, describes the Maine dispute resolution procedures, the purpose of the study, definitions and research questions. Chapter 2 reviews the literature relevant to the study. The methodology used in the study is detailed within Chapter 3 including the study sample, instrumentation, data collection procedures and data analysis. Chapter 4 presents the quantitative and qualitative results of the study. Chapter 5 discusses the results, the conclusions and recommendations of the study.