

Chapter 2. Literature Review

Models of Conflict Resolution

March and Simon (1993) define conflict as “a breakdown in the standard mechanisms of decision-making so that an individual or group experiences difficulty in selecting an action alternative” (p. 132). When parents of children with disabilities and schools are unable to agree upon the identification, evaluation, placement, or the provision of special education services to a child, they are in a classic conflict situation. Individuals in conflict may either continue to problem solve, elect to do nothing or seek the involvement of a third party to assist in conflict resolution. Four models for conflict resolution have evolved within education and are commonly referred to as the professional, bureaucratic, legal, and mediation models (Neal and Kirp, 1985; Goldberg and Kuriloff, 1987).

Professional model

Conflict resolution within public education has traditionally followed the professional model. The professional model recognizes the expertise of educational professionals (school administrators and teachers) and defers the resolution of disputes to those individuals specifically trained within the profession. Similar to the practice of law and medicine, public education has traditionally been managed by the professionals trained within the discipline. The professional model emphasizes professional discretion and decision-making rather than strict adherence to rules. The recipient of services, be it medical treatment, legal representation or education services has little input into the decision regarding the service to be provided. Disputes concerning the services provided to an individual are typically addressed through a limited peer review process. A judgement regarding the appropriate provision of services is made by the peer review panel based upon the panel’s determination of whether or not the provider had adhered to the profession’s accepted *standards of care*. Within the professional model, the recipient of services is generally passive, deferring to the expertise of the professionals (Neal and Kirp, 1985).

Bureaucratic model

The bureaucratic model is typical of federal or state programs that grant benefits to individuals (e.g. food stamps, public assistance, and social security). Employees of state and federal agencies that manage these programs have significant involvement in the development of eligibility standards, the specification of allowable services and the determination of the allowable provision or limitations upon appropriate services. Administrators of programs that operate under the bureaucratic model are expected to defer to regulatory standards and have much less discretion in determining eligibility, allowable services, etc., than within the professional model. Within the bureaucratic model, the recipient of services is granted limited procedural rights to challenge the decision of the person who administers the program. These rights are typically limited to an appeal to a higher level of authority within the organization and a showing that the decision was “arbitrary, capricious or otherwise a violation of the program’s standards” (Maine Administrative Procedures Act, Title V, M.R.S.A. Part 10000 et seq.).

Legal Model

Neal and Kirp (1985, pp. 65-67) characterized the legal model as “fairly new to policy making in the United States” but none the less “a style close to the mainstream of American social and political culture.” The legal model focuses on the “individual as the bearer of rights...(who can) best safeguard their own interests” and “the use of legal concepts and court-like procedures to enforce and protect rights.” The legal model is based upon a mistrust of the traditional bureaucratic model and its focus on top-down management, decision-making based upon the benefit to the organization, and “norms of fairness using statistical tests across classes of affected people” (p. 65).

The professional and the bureaucratic models grant limited rights to recipients of services who challenge administrative decisions. The bureaucratic model determines agency compliance through the application of procedural rights and generally accepted norms to specific groups of individuals. The legal model, with its adoption of *court-like procedures*, *individual rights*, and *entitlements*, shifts the focus of agency compliance to the provision of a substantive right to the

individual, based upon the individual's unique needs. For example, under the bureaucratic model, while parents may request that a building principal review the placement of their child in Mr. Smith's third grade classroom, the parents have no substantive right to challenge the principal's decision. In contrast, under the legal model, parents of a student with disabilities may challenge a school's administrative decision refusing to provide a full time sign language interpreter to a child who is deaf all the way to the U.S. Supreme Court (Board of Education v. Rowley, 1982).

Alternative Dispute Resolution / Mediation Model

Mediation is the fourth conflict resolution model that parents may use to resolve disputes between themselves and the school. Mediation is a non-adversarial conflict resolution process that encourages joint problem solving, assists both parties to identify alternative solutions to their problem, and promotes effective communication between parents and schools. While both the complaint process and the hearing process typically result in a win / lose relationship between the parties, the mediation process, if successful, typically results in a win / win relationship through the development of a mutual agreeable solution (Goldberg and Huefner, 1995).

Mediation had previously been available only at the discretion of the state and is referenced in a note in the 1993 version of the Federal Special Education Regulations at 34 C.F.R. 300.506. The 1997 Amendments to the IDEA at 20 U.S.C. 1415(e) and the implementing regulations issued March 12, 1999 by the U.S. Department of Education at 34 C.F.R. 300.506, now require the SEAs to offer mediation to resolve disputes between parents and public schools. Thirty-nine states had implemented a mediation process prior to the 1997 IDEA Amendments. Three of the remaining 11 states were reported by Ahearn (1994) to be actively involved in the development of mediation projects.

The Development of the Special Education Conflict Resolution Process

The Fifth and Fourteenth Amendments prohibit a state, including LEAs that act as an agent of the state, from depriving "any person of life, liberty or property, without due process of

law.” The landmark cases, Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (1972), (*PARC*) and Mills v. the District of Columbia Board of Education (1972) (*Mills*), recognized the property right of children and their parents to education and the right to procedural due process to protect this property right. In the *PARC* case, Judges Broderick, Adams and Masterson directed that parents be provided “notice and (a) due process hearing before the educational placement of any retarded child may be changed.” Judge Waddy in the *Mills* case built on the foundation set by the *PARC* Court. He granted parents the right to a hearing whenever the school takes action regarding a “child’s placement, denial of placement or transfer... or the exclusion, suspension, expulsion, postponement, inter-school transfer, or any other denial of access to regular instruction in the public schools to any child for more than two days.” The due process rights established under the *PARC* consent decree and the *Mills* decision included the right to:

1. be accompanied and advised by counsel, and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. a written or electronic verbatim record of the hearing;
4. written findings of fact and decisions;
5. inspection of all education records;
6. have the hearing open or closed to the public at the parent’s discretion.

In the interim between the *Mills* and the *PARC* cases and the passage of the Education of All Handicapped Children Act (EHA), there were 36 right to education cases filed throughout the United States, (Congressional Record, May 20, 1974, p 15270). There was significant pressure upon Congress by the states seeking federal financial assistance to assist with the expenses of educating students with disabilities.

Congress recognized that any financial assistance targeted to children with disabilities would require some form of procedural due process to permit parents to challenge decisions made by the state and local education agencies. The challenge for Congress was to establish a due process system which would establish a timely and effective process for resolving parent and school disputes.

There was an effort during July, 1975, to adopt a bureaucratic model rather than a legal model as the House of Representatives considered the passage of H.R. 7217, the House version of the EHA. This model would have provided a three-tiered review of a parental grievance.

1. A complaint “regarding the maintenance of the handicapped child’s educational rights” could be filed with the local education agency (LEA) for an informal review and corrective action.

2. If the local process was not satisfactory to the complainant, a review by the State Education Agency (SEA) could be requested. The SEA was authorized to review the facts and findings of the LEA and “take measures for the expeditious correction of any ... non-compliance.”

3. Finally, the complainant could request the U.S. Department of Education to “cut off funds for Federal education programs specifically designed for the education of the handicapped going to the local district or the State if non-compliance is found and not corrected” (Congressional Record. July 21, 1975, p. 23704).

The House proposal was not acceptable to either the parent advocacy groups or the educational establishment. The advocacy groups, which had a long history of attempting to ensure educational services for students with disabilities through local and state level advocacy efforts, “did not trust local school administrators and teachers.... Their experiences in the field produced a belief in rights, courts and court-like procedures and a profound mistrust of bureaucratic accountability.” The educational establishment, with its long tradition of local

control of education, had similar mistrust of a “watchdog agency large enough to police 16,000 school districts” (Neal and Kirp, 1985, p. 74).

In the alternative, Congress adopted the legal model of conflict resolution and incorporated into the EHA both the due process hearing and the parental rights adopted by the courts in the *PARC* and *Mills* cases.

The Hearing Process

The passage of the EHA formalized the *legal model* for the protection of individual rights for students with disabilities. This model was premised upon the belief that parents were best equipped to safeguard the interests of their children through an appeal process to an impartial decision-maker. The hearing process was incorporated into the EHA at 20 U.S.C. 1415 and 34 C.F.R. 300.507 – 514. The hearing provides the parents the right “to present a complaint (*sic*) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education” (20 U.S.C. 1415 (b)(6)). The term *complaint* appears in several sections of IDEA and IDEA’97 law and regulations relative to hearings. It is possible that this term is a remnant of H.R. 7217.

Among the rights extended to parents and schools involved in a due process hearing are the right:

- to be accompanied and advised by counsel;
- to present evidence and confront, cross-examine, and compel the attendance of witnesses;
- to receive a written or electronic verbatim record of the hearing; and,
- to receive written findings of fact and decisions (1415(h)).

The hearing must be held “at a time and place reasonably convenient to the parents and child involved” (34 C.F.R. 300.511(d) and, at state discretion, may be conducted by either the Local Education Agency with a state-level review (two-tiered system) or conducted by the State

Education Agency (single-tiered system). The hearing officer may not be an employee of the SEA or of the LEA involved in the education of the child (1415(f)(3)).

The Complaint Process

A complaint process consistent with the bureaucratic model for conflict resolution has existed for some time within the U. S. Department Education's General Administrative Regulations at 34 C.F.R. parts 76.780 - 782 and was incorporated into the IDEA Regulations at 34 C.F.R. 300.660 in March of 1993. The complaint process under the IDEA Regulations permits any interested party to file a signed written complaint alleging that the school has violated a requirement of the IDEA or the regulations implementing the IDEA. The State Department of Education (or at state discretion, the local educational agency) is required to complete an investigation of the complaint, to provide an opportunity for the complainant to submit additional information, to review all relevant information and to issue a written decision. Additionally, the SEA is required to ensure the provision of technical assistance activities, negotiations, and corrective actions to achieve compliance with the SEA's decision. The only substantive change to the complaint process specified in the Regulations for the Implementation of the 1997 Amendments to the IDEA is that the Regulations no longer provide the complainant with the right to request the Secretary of the U.S. Department of Education to review the SEA's final decision (34 C.F.R. 300.660-662).

In contrast with the legalistic hearing process, under the complaint process there is no right to be represented by counsel nor is there any right to appeal for judicial review specified within the regulations. The complainant has the right to submit "additional information"(300.661(a)(2)) and the SEA is obligated to conduct an investigation that presumably would include a review of documents maintained by the school. Unlike the rights granted to parties in a hearing, there is no right within the complaint process to present exhibits or witnesses, to conduct direct or cross-examination of witnesses, or to compel the attendance of witnesses.

In 1994, Tom Hehir, the Director of the Office of Special Education Programs U. S. Department of Education, issued OSEP Policy Memorandum 94-16 (21 IDELR 85) which clarified the scope of due process hearings and complaint investigations. According to Hehir,

Under the Part B regulations, parents of children with disabilities have two separate means available to them for resolving disputes with public agencies concerning the education of their children--i.e. (1) the complaint management system required in §§ 300.660-300.662 (which is the subject of this memorandum), and the impartial due process hearing system required in §§ 300.506-300 513.

The state complaint procedures available for resolving (a) complaint that meets the requirements of § 300.662, including (1) complaints that raise systemic issues, and (2) individual child complaints that are filed by parents. Thus, parents may use these procedures--in lieu of the due process hearing system--to resolve disagreements with public agencies over any matter concerning the identification, evaluation, or educational placement of their child, or the provision of a free appropriate public education (FAPE) to the child.

Thus the complaint process, a bureaucratic model of conflict resolution, and the hearing process, a legal model of conflict resolution, can address identical issues in special education disputes. While an impartial hearing officer may not be an employee of the State or Local Education Agency that conducts the hearing, State Education Agency staff may conduct the complaint investigation. While the parties to a hearing have the right to present evidence and to direct and cross examine witnesses, the complainant may submit additional information and the SEA investigator is obligated to conduct an investigation including a review of documents and interview of LEA staff (Hehir, *Letter to Ash*, 1995a).

Literature regarding the complaint process

There is limited literature on the special education complaint process. In 1992, Opuda presented a paper on the complaint process at the 1992 conference of the Council for Exceptional Children. In this paper, the regulatory basis and opinions from the Office of Special Education Programs regarding the complaint process were reviewed and the suggestion made that the

complaint process may prove to be a less adversarial means for resolving parent and school conflict (Opuda, 1992).

The Arizona Department of Education published a topical paper that described Arizona's complaint investigation process (AZ Dept. of Ed., 1994). The paper was directed to LEAs within the state to inform the schools and parents concerning the complaint investigation process and to clarify the role and responsibility of the state department in conducting complaint investigations.

Lakes presented a paper at the 1995 conference of the American Council on Rural Special Education that discussed the procedures used by the Nevada Department of Education to conduct complaint investigations. Lakes noted that over the previous four years the number of complaints received by the department had increased over one hundred percent. This increase was attributed to an increase in the state population, active parent advocacy groups, and the success of the complaint process in resolving parent and school disputes (Lakes 1995).

Suchey (1997) surveyed the Department of Education for each state in order "to gain an overall perspective on how the states were implementing the complaint procedure and what impact the complaint procedure was having on each state." Thirty-five states (70%) responded to her survey. Suchey found that there were some problems with the data maintained by the states, specifically information regarding the issues under dispute, whether the complaints were systemic or individual complaints and whether the specific complaints addressed substantive or procedural issues. Suchey found that twenty-seven states addressed substantive and procedural issues while seven states limited complaints to addressing procedural compliance issues. The majority of the states responding to her survey (70%) do not have a program to evaluate the effectiveness of the complaint process. Most respondents (79%) inform parents of the complaint process by including it within the notice of parent's rights. Most respondents rated mediation (63%) as most cost effective in resolving disputes with complaints (37%) rated as more effective than hearings (0%). Mediation was identified as being more satisfying to parents (73%) and schools (77%) than complaints (23%). One respondent identified hearings as being satisfying to

parents. Fifty-seven percent of the respondents opined that the complaint process was effective in reducing the number of due process hearings.

Literature Regarding the Hearing Process

The very nature of the IDEA establishes an adversarial relationship between parents and educators. Parents want the best possible program and services for their children yet schools are not required to provide either the best possible program nor a program to maximize children's potential. Schools are required to provide merely an appropriate program. The U.S. Supreme Court defined an appropriate special education program in Board of Education v. Rowley (1982). An appropriate program is one that provides both procedural and substantive rights. The procedural rights include compliance with the procedural requirements of the IDEA. The substantive right includes "educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction" (*Bd. of Ed. v. Rowley*, pp. 188-89). The parents and schools may have widely differing opinions of the threshold of "some benefit." The hearing process was established, in part, to resolve these differences.

During the period from 1991 through 1993 (the latest date for which data were available), an annual average of 4,410 requests for local or state level due process hearings were filed each year within the United States. Of these requests, 31.9% resulted in 1,405 hearings being held and decisions issued annually. Five and one half percent of these hearing decisions resulted in an annual average of 77 appeals to federal or state court (Ahern, 1994).

Some may argue that these 1,482 hearings and appeals demonstrate the failure of education to meet the needs of parents and children and the adversarial nature of the IDEA (Gubernick & Conlin, 1997). Others will note that during 1993-94 period in excess of 5.3 million students with disabilities received special education services under the IDEA (U.S. Dept. of Ed. 17th Report to Congress, 1995) or approximately 3,576 students received special education services acceptable to their parents for each student for whom a hearing was initiated. Either

education is doing an admirable job of educating all children with disabilities or parents are not knowledgeable of or are not exercising their due process rights.

Sixty-eight per cent of all hearing requests that were reported by Ahearn and eighty-five per cent of the Maine hearing requests for 1996 were resolved short of a hearing. Either parties are able to resolve their disputes through less adversarial means (Goldberg and Heufner, 1995) or the parties are “giving in” to avoid the conflict (Hehir, 1992). Hehir studied the experiences of special education directors in Massachusetts with due process hearings. He reported that administrators, knowledgeable of the cost of hearings and the “no-win” options, frequently approach hearing requests with a “let’s make a deal” attitude in an effort to create a win-win option and preserve the parent and school relationship. He reported administrators who stated:

“What are you going to gain from going to an appeal (hearing)? If you win, you lose. If you lose, you lose twice. Why not get the parents on your side? Maybe you can make some progress for the kid and everyone’s happy in the long run” (p. 65).

“Hearings are awful. They’re emotionally draining and really costly” (p. 66).

“The hearing process is ineffective, poor PR” (p. 66).

Hearings are “too much a flip of a coin” and a “crap shoot” (p. 67).

Caution should be exercised when extrapolating from Hehir’s research. Massachusetts has a *maximizing potential* standard for the provision of services to students with disabilities. Most other states have the *reasonable progress* standard adopted by the Supreme Court in the Rowley case. Forbis (1994) believes that the maximizing potential standard has contributed to a disproportionate use of the due process hearings by higher socio-economic groups seeking private school placement at public expense (Forbis, 1994). A comparable study of the perceptions of special education directors regarding the complaint process has not, to date, been reported within the professional literature.

While the hearing may be an option for resolving disputes, it appears from the work of Hehir that a hearing request may also create significant leverage upon a district’s willingness to

consider alternatives. What is the basis for this leverage, does similar leverage exist within the complaint process and what are the perceptions of parents regarding the hearing process and complaint process?

Maloney and Shenker's 1995 review of the number of special education judicial decisions reported from all states during the period 1978 -1994 reveals some interesting trend data (figure 2). The apparent decline in 1993 and 1994 may be an artifact of the delay in reporting court decisions or may indicate a declining use of the judiciary to resolve special education disputes.

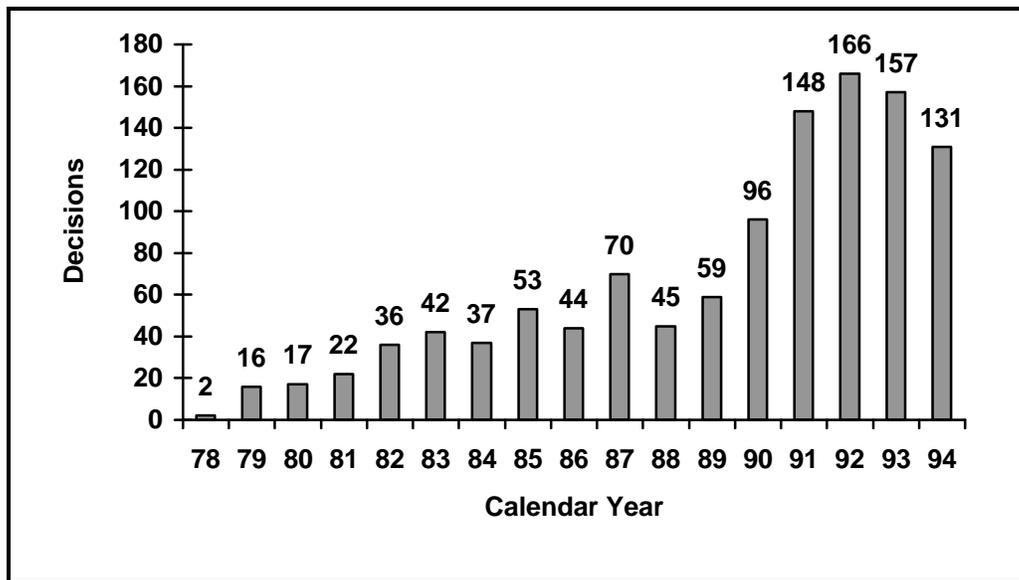


Figure 2. Number of Special Education Judicial Decisions 1978 – 1994 (Adapted from Maloney and Shenker, 1995)

Table 2 breaks the data in Figure 2 into quartiles covering four-year periods. A review of these quartile data indicates that judicial decisions have been doubling every four years since 1978 when full implementation of the IDEA was required. It is noteworthy that the Handicapped Children's Protection Act, passed by Congress in 1986 (P.L. 100-630), permitted the award of attorney fees to parents who prevail in a due process hearing (20 U.S.C. 1415(i)(3)(B)). The availability of attorney fees appears to coincide with a post 1986 increase in the number of

judicial appeals of local and state level decisions. The General Accounting Office (1989) concluded that there had been an increase in the award of attorneys' fee awards because of the passage of the Handicapped Children's Protection Act. Since the courts determined awards, it follows that a proportion of the post 1986 increase can be attributed to litigation for purpose of resolving attorneys' fee awards. The 1997 Proposed Regulations for the implementation of the IDEA have attempted to limit the need for such appeals by permitting a hearing officer to award attorney fees (Note at Proposed Regulations 300.513). This note was removed in the final regulations, consistent with the general decision of the U.S. Department of Education to remove all notes. The Department elected to permit individual state discretion regarding the award of attorney fees by hearing officers (1999, p.12615).

Table 2

Special Education Judicial Decisions 1978 - 1994 by Quartiles

Years	1978 - 82	1983 - 86	1987 - 90	1991-94
# of decisions	93	176	270	602
% of total	8.2%	15.4%	23.7%	52.8%

Percent exceeds 100 due to rounding

The perceptions of parents and school officials regarding the fairness of due process hearings was the focus of a study by Goldberg and Kuriloff (1991). The authors reviewed the transcripts and interviewed the participants in 50 of the 282 hearings held in Pennsylvania between 1980 and 1984. The authors were limited by confidentiality to the investigation of hearings that the parents had agreed to open to the public. Since parents must elect to open their hearing to the public (34 C.F.R. 300.509(c)(1)(ii)) one might assume that an adversarial relationship already existed between the parents and the school systems in this study and the parental initiative to open the hearing was an intent to use the media's presence for leverage.

Additionally, the Goldberg and Kuriloff research should be viewed with caution since the hearing process and case law have evolved greatly since the study period 1980 –84.

Table 3 summarizes the fairness of the hearing process as perceived by schools and parents and reported by Goldberg and Kuriloff.

Table 3.

Parent and School Perceptions of the Fairness of Due Process Hearings

Perception	% Positive Responses		% Negative Responses	
	Parents	Schools	Parents	Schools
Opportunity to present their position	58	84	25	0
Legal rights afforded	51	95*	24	0
Fairness accorded	41	88*	35*	5
Accuracy of hearing officer's decision	36	80*	45*	10
Satisfaction with decision	33	72*	58*	12
Overall satisfaction with hearing	35	70*	54*	9
Current response to hearing experience	11	48*	67*	36

Note: neutral responses not included, adapted from Goldberg and Kuriloff, 1991
 (* $p < 0.05$)

Goldberg and Kuriloff (1991) noted that for both parents and school officials,

“The more they won, the more they perceived the hearings as fair and the more satisfactory they rated them; and the less they won, the less they perceived the hearings as fair and the more dissatisfied they were” (p.552).

Of significance was the overall negative response of parents to the hearing process suggested by the Goldberg and Kuriloff data. Subjective justice is the perception of those involved in a decision-making process that the process is fundamentally fair. If parents’ perceptions of the hearing process are decidedly negative, parents will not be inclined to use a process they feel is biased in favor of the school. An argument has been made by Goldberg (1989) that the schools’ generally positive responses were based upon the schools’ relative

emotional distance from the issues at hearing and the fact that schools tended to prevail more often than the parents (Goldberg, 1989). This favorable response to hearings could contribute to the schools' continued use of the hearing process to resolve parent and school disputes.

Harpin and Rzepski, in an undated manuscript entitled, *Problems in Due Process: Factors Which Result In More Adversarial Procedures*, identified a number of factors that they believed contribute to adversarial procedures within the due process system:

- Ineffective communication between parents and schools, particularly school personnel operating within the professional model while parents were testing the limits of the legalization model.
- Unreal expectations that the due process system will result in a mutually acceptable decision.
- The ambiguity of federal and state special education standards which results in parents and schools turning to the due process system for clarification.
- The threat of due process and its attendant costs as a bargaining tool by parents (and occasionally by schools) in an effort to force the other party to accept a particular option.
- The failure of state and local education agencies to advocate for the education of students with disabilities while advocacy agencies provide significant parental support, resulting in an "us against them" relationship with parents and advocacy agencies pitted against state and local educators.

Sachen, in his monograph *Reflections on an Adversarial Process: The Confessions of a Special Education Hearing Officer* (1988), asserts that the negative impact of due process hearings upon schools far outweighs any benefits gained by parents. Sachen states that "(d)issident parents threaten not only the school's resources and its professional sense of competence and self-esteem, but also threaten to publicly humiliate the district and its

personnel.” Perhaps the open hearings which were the basis for the Goldberg and Kuriloff (1991) study were a similar effort to “publicly humiliate” the schools. Similarly, Zirkel (1993) notes that the due process procedures under the IDEA have resulted in a process that is needlessly adversarial and has lost the original intent of Congress to provide parents with an impartial forum to resolve their grievances.

Problems with the Hearing Process

Jones (1981) noted that “(p)arents and advocacy groups have complained that the school ... has an unfair advantage in the hearing process” (p.94). Parents recognize that the availability of tax dollars to support legal counsel to defend the school, the convenience of school staff to prepare and organize exhibits, and the accessibility of experts to support the school’s testimony, gives schools “an overall advantage.” Jones cautions that school personnel “must recognize this advantage” and strive to work cooperatively with parents.

Turnbull and McGinley (1987), in their study of the use of mediation as an alternative to due process hearings, found several deficits with the use of hearings to resolve parent and school conflicts. These deficits included third party decision-making, adversarial relationships, excessive costs, and limited access. Third party decision-making was defined as the process wherein both parties defer to the decision of the hearing officer. This creates a win / lose mentality and is inconsistent with the consensus-building, decision-making model which is inherent in the intent of the IDEA, if not in practice. The practice of deferring decision-making to a third party shifts the focus from a mutually acceptable solution which emphasizes the needs of the child to a legally correct solution which elevates form (meeting minimal standards for legal compliance) over substance, (a solution in the best interest of all parties).

Turnbull and McGinley found that the hearing process increased adversarial relationships between parents and school personnel. The hearing process is an adversarial process that results in winners and losers. As reported by Hehir (1992) “even when you win you lose.” Professional educators, working in what they perceive to be the best interest of the children in their charge and the school system, trying to meet the multiple demands from the community, are challenged

by parents who perceive the school as failing to meet the needs of their child. The result is a teacher or administrator whose professional reputation and judgement is questioned and a parent whose child is threatened with inadequate or inappropriate services. Rather than resolving the differences in perceptions, a hearing supports one position and refutes the other. As Forbis (1994) notes, "...the process has been found to leave a residue of problematic relationships" – relationships that are not necessarily conducive to trust, communication, and problem solving. Dragan (1996), in his article on repairing parent and school relationships after a hearing, supported the findings of Hehir (1992), Forbis (1994), Turnbull and McGinley (1987). Dragan states that after a hearing,

It's a time when the walls of discontent, disagreement, and dissatisfaction often seem higher and stronger than before. ... Emotions are on edge, people stop talking to each other, and often the most important issue is overlooked – how do we move on from here to benefit the student? (p. 52).

The costs to both parties for a hearing include time, financial and emotional costs. Parents and school personnel must prepare exhibits and testimony, review and organize records, consult with representatives and divert time from other duties to prepare for and participate in the hearing. Parents may lose time from work and other responsibilities while schools must hire substitute teachers and both parties must compensate witnesses and consultants. The emotional costs include the intimidating formality of an adversarial legal process, a process that is inconsistent with typical parental and school relationships.

The cost and the legalistic hearing process may foreclose the use of hearings by parents without access to legal counsel. Stockdale (1994) notes that parents who initiated hearings had higher incomes, higher educational attainment, and higher occupational status than the income, education, and occupation of parents who did not initiate a hearing. Budoff and Orenstein (1982) reported that parents found the costs of hearings to be higher than they expected, and that the hearing process appears to be utilized more often by higher socio-economic status parents.

Recently, there has been an initiative to focus special education dispute resolution upon mediation as an alternative to the hearing process (Ahern, (1994); Forbis, (1994); Goldberg and Huefner, (1995); Schumack and Stewart (1995); Schrag, (1996a,b); and Symington, (1995). Perhaps the passage of the 1997 Amendments to the IDEA with the inclusion of a requirement for mediation will shift conflict resolution towards alternative dispute resolution and win / win solutions. In the alternative, the legal model is a “style close to the mainstream of American social and political culture” (Neal and Kirp, 1985). Even with the development of mediation, both the hearing and the complaint processes will continue to be options available to parents and schools to resolve their disputes. A better understanding of the complaint process, parental differences in the selection of each process, and parental perceptions of the hearing and complaint processes will contribute to informed decision-making regarding the available options for resolving parent and school disputes.