

Chap. 5 - Discussion, Conclusions & Recommendations

Introduction

The ability of parents to challenge the decisions made by schools regarding the identification, evaluation, placement and the provision of a free appropriate public education is a cornerstone of the Individuals With Disabilities Education Act. Parents have the authority to challenge school decisions through either the hearing process (34 C.F.R. 300.507) or the complaint investigation process (34 C.F.R. 300.660). Parents may initiate a hearing “...relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a FAPE to the child” (34 C.F.R. 300.507(a)). Tom Hehir, Director of the Office of Special Education Programs, U.S. Department of Education, has noted that:

... parents may use these (complaint) 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. (Hehir, 21 IDELR 85).

Thus, parents may elect to use either the hearing or the complaint process to address their concerns regarding the provision of special education services to their children with disabilities.

The complaint process is an administrative procedure that provides for an investigation by the State Education Agency (SEA) of an allegation that a Local Education Agency (LEA) has violated a requirement of Part B of the IDEA. The SEA is required to conduct and complete the investigation within sixty calendar days; provide an opportunity for the complainant to submit additional information in support of their complaint; conduct an on-site investigation if necessary; review all relevant information; and issue a written decision in response to each allegation. The decision must include findings of fact, conclusions, and reasons for the SEA's final decision. If the SEA determines that the LEA has failed to comply with Part B, the SEA may provide technical assistance, negotiations and corrective actions to ensure that the LEA

achieves compliance. Prior to the publication of the Federal Regulations for the Implementation of the 1997 Amendments to the IDEA, the appeal of a complaint decision had been limited to a review of the SEA's decision by the Secretary of the U.S. Department of Education (1993, 34 C.F.R. 300.661). The Federal Regulations for the Implementation of the 1997 Amendments to the IDEA are silent regarding the appeal process for complaints.

The Federal Regulations are also silent on the use of attorneys in complaint procedures and the award of attorney fees. One court has awarded attorney fees for complaint procedures, finding that the complaint process is a "proceeding under the IDEA" and thus eligible for an award of attorney fees (Upper Valley Assoc. for Handicapped Citizens v. Blue Mountain Union Sch. Dist. No. 21, 26 IDELR 406 (D. Vt. 1997)).

In contrast with the complaint's administrative process, the hearing is a legalistic process that 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" (Neal and Kirp, 1985. pp. 65-67). Among the rights extended to parents and schools involved in a due process hearing is the right to:

- "...be accompanied and advised by counsel,
- present evidence and confront, cross-examine, and compel the attendance of witnesses,
- a written or electronic verbatim record of such hearing; and written findings of fact and decisions," (20 U.S.C. 1415(h)) and,
- appeal a hearing decision to a SEA review (if a two tiered system of local and state hearings exists under state policy, (20 U.S.C. 1415(g)) or to a state or federal district court (if a single tiered state level hearing system exists under state policy (20 U.S.C. 1415(i)(2)).

While the hearing and complaint processes may address the same issues, marked differences exist between the hearing and the complaint procedures. The purpose of this study was to explore the differences between parents who had initiated hearings and complaints with the Maine Department of Education during the 1996 calendar year and their perceptions about

the hearing and the complaint process. A document review, structured interview and focus group were used to gather information from the subjects. The subjects were randomly selected from the population of all parents who had initiated hearings or complaints with the Maine Department of Education during the 1996 calendar year. The record review and structured interview consisted of twenty-nine parents who had initiated complaint investigations and thirty-one parents who had initiated hearings. The focus group participants included sixteen parents who had initiated complaints and twenty-one parents who had initiated hearings.

This chapter includes the following sections: discussion of findings, conclusions, policy implications and recommendations, limitations, recommendations for further study, and summary.

Discussion of Findings

Differences between parents who initiate hearings and complaints

Annual household income paternal education and type of due process – Significant differences were found between parents who initiated hearings and those who initiated complaints based upon reported annual household income and father's education. Families who initiated hearings tended to have higher income and a higher level of paternal education. The finding regarding paternal education is not surprising since paternal education and the level of household income would be highly correlated. The tendency of higher income families to use the hearing process rather than the complaint raises questions about the accessibility of the hearing process to all families. Although the state and federal government have provided some assistance to families through the Legal Services Corporation, State Protection and Advocacy Agencies and Parent Training and Information Agencies, only nineteen percent of the families received publicly funded assistance with their hearing request. Forty-two percent secured legal assistance through private means and thirty-nine percent had no legal assistance with their hearing request.

Type of assistance and type of due process – A significant difference was found between parents who initiated a hearing and those who initiated a complaint based upon the type of

assistance that they received with their request. Seventy-one percent of the parents who had initiated a hearing received assistance from an attorney or an advocate while forty-one percent of parents who initiated a complaint reported receiving assistance from an attorney or an advocate. This difference may be attributed to the legalistic nature of the hearing process. In a hearing, parents are expected to present evidence, provide direct and cross-examination of witnesses and prove their case in a quasi-judicial process. In the less procedurally focused complaint investigation, the investigator gathers evidence concerning the parent's allegation of non-compliance, determines the district's compliance, and orders any necessary corrective action.

Type of dispute and type of due process – A significant difference was found between parents who initiated a hearing and those who initiated a complaint based upon the type of dispute. Parents whose dispute with the school centered around the placement of their children tended to use the hearing process while parents whose concerns were procedural or dealt with the identification or evaluation of their children tended to use the complaint process. This difference probably reflects the position adopted by the State that the complaint process:

(I)s not authorized to identify, evaluate, or place in program services a student who is the subject of the complaint. In other words, the Department may not conclude that a student is in fact a special needs student if the district has found him not to be, it may not determine the extent of a student's disability for purposes of determining appropriate education, nor may it determine what an appropriate education for the student is. ... these matters are exclusively in the domain of the PET, the state level hearing officer, or the courts.

It is proper for the Department in the complaint process to investigate all aspects of a student's education and proper to make findings regarding whether the school has met all procedural requirements (emphasis added) of the IDEA, whether it applied only proper standards and / or factors for determining an IEP and for determining whether the school district has implemented any IEP,

... If (a school's decision) was based on ... unlawful factors, the Department should not find that the IEP is inappropriate, but should only send the matter back to the local district with an order to develop an IEP consistent with the law. (Doiron, 1996, p. 4).

This emphasis upon procedural compliance appears to be inconsistent with the scope of complaint investigations articulated by Hehir in his 1994 memorandum regarding the complaint

process. Furthermore, the Federal Regulations for the Implementation of the 1997 Amendments to the IDEA at 300.660(b) (p. 12465) states: “In resolving a complaint in which it has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address: (1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and (2) Appropriate future provision of services for all children with disabilities.”

The State’s policy of limiting complaints to procedural compliance may also contribute to the feelings of anger, frustration, and confusion stated by parents in the focus groups. In at least one instance, this policy has resulted in a parent withdrawing her complaint and re-filing her concerns as a hearing. The complaint and the hearing procedures should provide a mechanism for parents to resolve their concerns with schools in a timely manner with minimal cost and stress to the parties in conflict. The arbitrary limitation of the scope of the complaint investigation only serves to increase the costs and adversarial relationship between the parties.

Mean income and due process outcome – A significant difference was found between the mean income of parents who withdrew their request for a hearing or complaint and those parent whose requests resulted in a decision. Parents with higher reported household income tended to withdraw their due process requests rather than receive a decision while parents with less reported household income tended to receive a decision rather than withdraw their request for due process. Parents within the focus groups noted the expense involved with hearings and the frustration and stress parents experienced in both the hearing and complaint processes. Parents who withdrew their requests also indicated that they tended to either settle with the school or to give up. Parents in both the interviews and the focus groups who had the financial resource indicated that it was more cost effective to provide services to their children at their expense rather than pay for legal services. This raises the interesting irony that families with higher household income tend to use the hearing process and tend to withdraw their requests because

either they (through their attorney) were able to craft an agreement with the school or decided to pay for services privately.

Due process type by outcome – A significant difference was found between the type of due process (hearing or complaint) and the results or outcome of the request for due process (decision, mediated or withdrawn). The majority of parents (77.4%) who initiated a hearing tended to either withdraw or mediate their requests while the majority of parents (75.9) who initiate a complaint tend to receive a decision. A number of factors may contribute to this difference.

The practice of providing mediation for parties involved in a hearing contributes to the number of mediated hearing requests. Mediation is offered by the Maine Department of Education to all parties who initiate a hearing in an effort to reduce costs and resolve disputes in a timely, less adversarial manner. Although Maine's Notice of Procedural Safeguards contained within the Maine Special Education Regulations (1995) states that mediation is available upon request, several parents within the focus groups noted that they had requested a hearing in order to access mediation. Therefore, some parents may be initiating a hearing solely to access mediation but schools and parents are incurring costs for legal services and parent and school relationships are being chilled through the hearing process.

There are alternative arguments for the number of mediated or withdrawn hearing requests compared to the complaint requests mediated or withdrawn. Hehir's (1992) research supports that schools are more inclined to settle with parents rather than incur the costs of legal counsel for a hearing and the potential for payment of parental attorney fees should the parent prevail. Alternatively, parents who initiate a complaint may not be aware that mediation is an alternative available to them to resolve their conflict with the school. Schools may be less inclined to initiate settlement discussions with parents who have initiated complaints, given the low cost and procedural focus of the complaint process and the State's practice to remand an issue of non-compliance back to the school's IEP team for correction.

Discussion of Focus Group FindingsHow schools contribute to due process requests

Parents in the hearing and the complaint groups reported that poor relationships, poor communication between parents and schools, and compliance issues contributed to a parent's decisions to initiate a hearing or a complaint. Relationships with the school and communication issues were cited more frequently than compliance issues. Parents within the hearing group tended to cite the school's failure to attend to or respect the opinions of independent evaluations and consultants hired by parents and compliance issues as contributing to their decision to request a hearing. Parents within the complaint group tended to identify communication and relationship issues more than compliance issues as contributing to their decision to initiate a hearing.

How schools could prevent due process requests

Both the hearing and the complaint groups identified improved parent and school collaboration as means of preventing a hearing or complaint request. Collaborative activities included respecting parental input, treating parents as equal partners and providing honest responses to parents. The relationship and interaction between parents and schools was cited more frequently (91.7%) by focus group participants than compliance or provision of special education services as means by which schools could prevent due process requests.

How parents contribute to due process requests

Parents in both the hearing and the complaint groups identified their assertive behavior and advocacy on behalf of their children as contributing to their dispute with the school. Parents within the hearing group mentioned their initiatives to become knowledgeable in special education laws and regulations. Parents in both groups tended to identify behaviors that could be characterized as self-righteous behaviors (child advocacy and assertiveness). This assertion of aggressively advocating for their child may be a process by which parents absolve themselves of

any responsibility for contributing to the dispute and place the blame for any problems with the schools.

How parents could prevent due process requests

Parents in both the hearing and the complaint groups identified either passive acceptance of the school's decisions or active avoidance of the school through moving away, enrolling in another school, etc., as means by which they could have avoided the need to initiate a hearing or a complaint. Parents provided fifty percent more responses regarding how schools could have prevented the need for due process than responses regarding how parents could have avoided the need for due process. Only three of the thirty-four responses to this question could be considered proactive or collaborative activities by parents that could have prevented the dispute.

Why parent selected either the hearing or the complaint process

Parents in both groups selected the hearing or complaint process based upon the recommendations of others. Many parents indicated that a less adversarial process such as mediation and informal meetings had been tried but was unsuccessful. Some parents within the hearing group indicated that they had selected the hearing process to invoke the stay-put provisions under the IDEA (34 C.F.R. 300.514) while other parents indicated that they had initiated the hearing request in order to access the mediation process.

Mediation is available upon request to the Department. The Maine Department of Education automatically offers mediation to anyone who requests a hearing. Staff members from the Department of Education and various parent advocacy agencies were reported to have advised parents that they needed to request a hearing in order to access mediation. The state's practice of automatically offering mediation when a hearing request has been filed may have contributed to this misunderstanding and may have inadvertently resulted in a number of unnecessary hearing requests.

Additionally, the parents' reported efforts to resolve their concerns through less adversarial means is inconsistent with testimony provided to the Maine Legislature and the U.S.

Congress. School representatives reported to both bodies that parents frequently filed their requests for due process without advising schools of their concerns. This testimony contributed to the new requirements under the IDEA '97 that parents provide notice to the schools of their intent to file for a hearing (20 U.S.C. 1415(b)(7)). The contradictory claims by schools that they were unaware of the parent's concerns and the claims by parents that the schools failed to respond to their concerns underscores the problem of effective parent and school communications.

Parental recommendations to other parents considering due process

The majority of parents (81% of the hearing group and 61% of the complaint group) indicated that they would recommend the process they had used (either the hearing or complaint) to another parent. This response is somewhat surprising in light of the decidedly mixed response to the question regarding satisfaction with the results of their due process request where parents were evenly split between satisfied and dissatisfied (Fig. 4.3). A common theme in the rationale for their recommendation was the involvement of a third party (the hearing officer or the Department of Education) to monitor and compel the school system to correct deficiencies. The complaint group noted that the complaint process was less adversarial than the hearing process.

Arguments against the use of the hearing process included cost and stress of the hearing. A lack of effective follow up by the Department of Education to ensure compliance with corrective actions ordered to remedy findings of non-compliance were cited as the basis for not recommending the complaint process.

Why parents withdraw, mediate, or receive decisions

Parent elected to go through the hearing or complaint process and receive a decision because they believed it is the only way to compel the school to change. Parents in the hearing group that received a decision noted that efforts to resolve their concerns were attempted through mediation but that the school was either unwilling to negotiate or demonstrated bad faith by using the mediation process as a form of discovery.

Parents who mediated their disputes were able to successfully craft an agreement with the school to resolve their concerns. Only one family who had requested a complaint had mediated their dispute. This is largely a reflection of the State's practice of automatically offering mediation upon receipt of a hearing request but not offering mediation upon receipt of a complaint request.

Parents who withdraw their requests tend to withdraw either after crafting a settlement agreement with the school outside of the mediation process or after deciding to give up when faced by the complexity, stress, and expense of the hearing process. Of the nine parents who participated in the focus group and who withdrew their hearing or complaint request, five parents withdrew after reaching a settlement, three "gave up" and withdrew and one withdrew the complaint and filed a hearing request to address substantive issues. Because of the small numbers of parents who withdrew their requests, caution should be exercised in drawing any conclusions.

Parental feelings about due process

The feelings evoked in parents by the hearing and the complaint processes do little to encourage parent and school collaboration and appear to create strained relationships for significant periods. Parents reported anger, frustration, and fear because of their initiation of a hearing or complaint. Anger regarding the costs incurred was expressed by parents in the hearing group while parents in both the hearing and the complaint groups cited anger and frustration with the school for having to resort to these processes to secure appropriate services for their children.

Parents expressed fear of retaliation against them or their children by the school because of the parents' use of the due process system. This fear reflects the breakdown in the collaborative relationship between the parents and the school that contributed to the initial decision to file a hearing or complaint request and represents a potential deterrent for other parents who are considering the use of due process. The Office for Civil Rights, U.S. Department of Education, has the authority to investigate allegations of retaliation against an individual who

has exercised their right to due process. The Maine Department of Education may wish to inform parents and schools of this authority when the Department receives a hearing or complaint.

An interesting aspect of the negative feelings expressed by parents in the focus groups is to recognize that all of the focus group participants had filed their requests six to eighteen months prior to the meeting, yet these feelings were readily and vehemently expressed by the parents. Ironically, some parents who had not only prevailed in their hearing requests but for whom the schools had also made significant accommodations seemed the angriest. These parents required redirection by the focus group facilitator on several occasions to assist them to focus on the questions under discussion and away from the past wrongs committed by the school against their children. This raises the possibility that the due process system creates a codependent relationship between the parent, the public school, and the State Department of Education. This codependence is caused by validating any real or perceived injustice by the school against the child and by inserting a third party into the dispute without providing the parties with the skills to resolve future disputes between the parties.

Problems parents experienced with the due process system

Confusion about the hearing and complaint process and the lack of information and support to families were identified by parents in the complaint and the hearing groups as problems they experienced in their efforts to exercise their due process rights.

The parents in the hearing group cited the cost for legal counsel as a major problem. Seven parents in the focus groups had hired attorneys in private practice to represent them while only one parent was able to secure the services of a publicly funded attorney from Maine Advocacy Services, the State Protection and Advocacy Agency (P&A). Of the thirty-one families in the hearing group who participated in the interview, an attorney or an advocate represented sixty-one percent compared to seventy-one percent of the schools. Thirteen families (42%) had secured an attorney in private practice, and publicly funded attorneys or advocates represented six families (19%). Of these six families, four were represented by the state P&A and one each were represented by an advocate from the P&A agency and from an advocate from

the Maine Department of Mental Health and Mental Retardation. An attorney or advocate did not represent twelve parents (39%) while nine schools (29%) were not represented by counsel.

Parents within the hearing group complained of the inequity that, while tax dollars were supporting the school's attorney, they were required to hire an attorney at private expense. This perceived inequity and lack of a "level playing field" contributed to the anger and frustration expressed by parents in the focus group discussions.

The adversarial legal process was also cited by the parents of the hearing group as a problem they perceived with the hearing process. Parents were surprised at the emphasis upon legal precedent and process and several cited that the emphasis upon legal requirements lost sight of the needs of their children and providing services in the best interest of their children. The emphasis upon parent and school collaboration in the development of the IEP for a child with a disability has created a parental expectation that the hearing would be a similarly collaborative process. The adversarial nature of the hearing process, while designed to elicit facts and uncover truth, does little to facilitate continued parent and school collaboration and contributes to the development and continuation of poor relationships between the parent and the school.

While parents in the complaint group did not cite cost and the adversarial legal process, these parents were concerned with the lack of accountability and follow-up by the Maine Department of Education. Several parents noted that public schools would fail to comply or only minimally comply with the corrective action plans that were ordered by the SEA to correct any findings of non-compliance. Parents alleged that schools submitted inaccurate or misleading documentation of compliance, stalled implementation of corrective actions, ceased implementation as soon as the case was closed and no longer monitored by the SEA or refused to implement the corrective actions. Some parents noted that "... even when they won they lost" since the school controlled the delivery of services and engaged in a war of attrition in an effort to wear parents down until they either gave up, moved away or their children graduated. Ironically, Hehir (1992) notes that special education directors who had experienced a hearing stated "If you win, you lose" (p.65). It would appear that hearings are truly a "no-win" situation.

Parent perceptions of fairness in the due process system

Parents in both the hearing and the complaint groups were evenly split regarding their perceptions of fairness of the hearing and the complaint process. Parents frequently defined fairness as whether or not they received a decision or outcome that was favorable to them. An alternative standard for fairness was expressed as actions taken by the hearing officer or complaint investigator as leveling the playing field to ensure that information was fairly gathered and all issues were explored while keeping the school or the school's attorney "in line." This emphasis upon balance reflects the parental perception that the school has more knowledge regarding the hearing or complaint process, greater access to the law, and more financial and personnel resources than parents have.

Parents within the hearing group who felt that the process was not fair noted the lack of parental access to legal resources, the adversarial legal process, and the focus upon minimal legal compliance rather than the best interests of the child as contributing to their perceptions of an unfair process. Parents noted that the threat of a hearing was used "as a weapon against the parents" and the hearing "becomes an issue of who has the most money and the most legal expertise."

The parents within the complaint group who felt that the complaint process was not fair noted the lack of compliance by the school with the corrective action plans and the failure of the Maine Department of Education to follow-up on complaint decisions.

Parent recommendations to improve the due process system

Parents from both the hearing and the complaint groups identified the need for increased parent information and support concerning the hearing and complaint procedures and a stronger role for the Maine Department of Education.

Parents identified a need for user friendly information and training specifically designed for parents in "common English" which would help parents to better understand the hearing and complaint processes and the special education laws and regulations. Parents who participated in

the structured interview noted that they received information about their due process options primarily through telephone contact with various advocacy agencies, the Maine Department of Education, and other state departments. Therefore, while parent friendly materials need to be developed to provide parents with information, it would appear that an initial training initiative for the SEA needs to be targeted to staff at those advocacy agencies and state agencies who are advising parents of their due process options.

Several recommendations were made regarding the need for increased parental support. The provision of an ombudsman at either the state or local levels to assist parents with resolving issues with schools prior to the need to initiate a hearing or a complaint represents a proactive, preventive strategy that deserves further discussion and consideration. The availability of “legal services for everyone,” “provision of an advocate for parents” and the payment of “all related expenses” by the school reflects the needs for increased publicity and possibly funding for the various parent advocacy services. Parents need to be informed about the support systems that currently operate within the state as well as the availability of attorney fees for parents who prevail in hearings.

The recommendations for improved monitoring of school compliance and enforcement of corrective action by the Maine Department of Education emphasizes the parental desire for a stronger role by the State in ensuring compliance with the IDEA. While the SEA has provided assurances to the U.S. Department of Education that LEAs will operate in compliance with the requirements of state and federal special education standards, this emphasis upon a strong state role is contrary to the devolution of authority to local governments.

Conclusions

Relationships are more important than compliance in preventing requests for due process hearings and complaints. While parents cited regulatory compliance and the provision of special education as contributing to their decision to initiate a hearing or a complaint, improved parent and school relationships (collaboration and honesty) were cited more frequently as means of

reducing the need for parents to initiate due process. A school's failure or a parent's perception of a failure in a compliance area may be the catalyst that triggers a parent who already has a poor relationship with the school to initiate due process.

Parents have limited options for resolving parent and school disputes. While some parents reported feeling empowered by the hearing or complaint process, the majority of parents were unable to identify means by which they could reduce the conflict they had with schools other than moving out of the district or passively accepting the school's decision. The inability to identify strategies to effect change with the school may reflect a sense of powerlessness and a resignation on the part of parents regarding their relationship with the school.

Parents have limited knowledge of the due process system. Parents tend to rely upon the recommendations of advocacy groups, the Maine Department of Education, and other state agencies to assist in understanding their options and determining which procedure to initiate. It is incumbent upon the Department of Education to ensure that the state advocacy groups, other state agencies and staff within the Department are knowledgeable of the due process options available to parents. The Department may also wish to offer mediation to parents who have initiated a complaint, or in the alternative, may wish to limit the provision of mediation services to those who specifically request mediation services. The recent amendment to the IDEA which requires SEAs to develop a model form for parents to submit a written request for a due process hearing (20 U.S.C. 1415 (b)(7-8)) may be extended under state policy to include a written request for complaint investigations and mediations.

The lack of availability of free and low cost legal assistance is a major deterrent for parental use of due process system. Within the hearing group, six parents (19%) were able to access free or low cost legal assistance, thirteen (42%) hired an attorney in private practice and twelve parents (39%) were not represented in their hearing request. Several parents expressed frustration that they had contacted every agency on the state's list of free and low cost legal assistance and no one was able to help them.

Even when parents win, they lose. The due process system harms the long-term relationship between parents and the schools. Parents reported that schools became “guarded” in their discussions with parents after a hearing or complaint. The win / lose nature of the procedures contributed to schools who delayed implementation of corrective actions, misrepresented actions taken to achieve compliance to the SEA, and stopped implementing corrective actions as soon as the SEA stopped monitoring the dispute.

Schools engage in a war of attrition to wear down the resolve and advocacy of parents. Numerous parents reported frustration with having to “fight” with schools for any change in their children’s program. Parents report the hearing and the complaint process to be an “emotional roller coaster” as parents’ hopes are raised and dashed and raised again as they progress through the various stages of the hearing or complaint process. Parents report schools assuming a “take it or leave it” attitude when dealing with dissatisfied parents and using the hearing or complaint process as “a weapon” against the parent. Even when parents prevail in a hearing or complaint they report minimal or delayed compliance with the decision and are faced with the prospect of initiating a new complaint or hearing if they wish to compel compliance.

Parents need readily available, consistent information and support regarding due process procedures. Results from the interview indicate that parents seek multiple sources of information when they decide to challenge a school through the hearing or complaint process. Advocacy agencies and the Maine Department of Education were contacted by seventy-three percent of the parents interviewed. Aside from the Maine Special Education Regulations and the Notice Of Procedural Safeguards within the state regulations, there is no readily available written material for parents nor is there any process by which the information provided by the state’s advocacy organizations is verified for accuracy. Even within the Maine Department of Education, inconsistent information is provided to parents who reported being told by Department staff to initiate a hearing in order to access mediation services. Several parents noted the inequity of publicly funded school attorneys defending the schools while parents had to pay privately for attorneys. Although parents may recoup attorney fees if they prevail in a hearing, this is at best a

hollow promise since the parents must initially pay for the legal services without any assurance of recouping their expenses. Furthermore, parents noted that the list of free and low cost legal assistance provided to parents by the SEA rarely resulted in identifying any assistance due to the demand greatly exceeding available resources. Methods to either increase the availability of legal resources for parents or reduce the need for legal counsel need to be considered by the State.

Parents expect the SEA to maintain a vital role in monitoring and enforcement of decisions. The Maine Department of Education has not taken an active role in assuring that LEAs comply with the corrective actions necessary to remedy findings of non-compliance in hearings and complaint investigations. The process used by the State of reviewing documentation submitted by the LEAs to demonstrate compliance needs to be bolstered with telephone interviews with the parent and school personnel and, if necessary, on-site visits for observation and verification.

Policy Implications and Recommendations

This study has identified a number of implications for state and federal policy makers. An argument exists that a complex, legalistic and expensive due process system would give the appearance of fairness and equality while discouraging parents from using the process to challenge schools systems. However, the intent of Congress was to provide a system “designed to encourage early resolution of disputes and foster partnerships between parents and school districts” (Proposed Rules, p. 55045). This study has identified several policy options that states may consider fulfilling this congressional intent.

Scope of Complaint Investigations

Complaint investigations may be used by parents to resolve disagreements with schools regarding the identification, evaluation, placement, or the provision of a free appropriate public education to their child. Maine’s policy of limiting complaints to procedural issues and remanding any findings of non-compliance to the IEP for correction forces parents to use the more expensive, time consuming and adversarial hearing process to address substantive issues.

States may elect to develop state policies that articulate that the scope of complaint investigations include both procedural and substantive issues under the IDEA and applicable state special education law and regulations. Such a broad definition of the scope of complaint investigations would permit increased use of and greater access to a low cost, dispute resolution procedure particularly by parents with limited financial resources.

Representation by Attorneys in Mediations and Complaint Proceedings

Parents are entitled under the IDEA to be represented by counsel and by “individuals with special knowledge or training” (20 U.S.C. 1415(h)(1)). No similar entitlement is extended to parents involved in mediations or complaints. A state may elect to bar the participation of attorneys from mediations and complaint proceedings. Such an initiative would reduce the basis for attorneys fee awards and permit the focus of mediations and complaint investigations to be more child centered and less legalistic and adversarial.

Offering Mediation to Parties Who File Complaint Requests

The majority of the hearing requests filed in 1996 were either mediated (30%) or withdrawn (54%). A minority of the complaint requests filed during 1996 were mediated (3%) or withdrawn (11%). The State’s process of automatically offering mediation to parties who initiate a hearing directly contributes to the mediated hearing requests and probably contributes to the development of settlements crafted after an unsuccessful mediation effort. The process of offering mediation should be extended to parties involved in complaints in an effort to promote timely dispute resolution and parent / school collaboration.

Stay Put for Mediations and Complaints

A number of parents mentioned that they initiated a hearing to invoke the “stay put” provisions of the IDEA. The “stay put” provisions provide that the student will remain in his or her current placement during the pendency of a hearing (20 U.S.C. 1415(j)). While the IDEA and the Federal Regulations for the Implementation of the 1997 Amendments to the IDEA do not specifically include “stay put” for complaints or mediations, the IDEA could be interpreted to

include mediations and complaints within the “stay put” provisions. The IDEA, at 1415(j), states that “...during the pendency of any proceeding under this section (emphasis added)... the child shall remain in the then-current educational placement of the child.” Since both mediation and complaints are proceedings under Section 1415, it follows that a state may elect to include a “stay put” provision for mediations and complaints within state policies.

Binding Agreements for Mediation

Parents who had participated in mediation expressed frustration that mediation agreements are non-binding and that there was no method to compel a school to fulfill the mediated agreement. Parents reported using the hearing and the complaint process to secure an order to compel the school to take certain corrective actions. Parents viewed mediation as “a waste of time” and a stall tactic by schools designed to wear down the resolve of parents. Arguably, a mediation agreement could be binding between parents and schools under provisions of contract law. States may wish to include a provision within state policies regarding binding mediation agreements. Such a policy would place mediation on the same standing as hearings and complaints as having an outcome that is enforceable through the SEA.

SEA Follow-up of Complaints, Mediations and Hearings

States need an effective means to ensure compliance with hearing decisions, complaint investigation findings, and mediation agreements. The current practice in Maine of requiring the LEA to submit documentation of compliance to the hearing officer or complaint investigator results in a “desk audit” without independent verification. This has apparently resulted in schools fabricating or creatively developing compliance documentation, correcting compliance issues for the student while maintaining inappropriate district-wide policies, or terminating the corrective action as soon as the district is found to have complied with the directives from the hearing or complaint. At a minimum, the State needs to interview the parent and direct services providers to secure corroboration of the administration’s assertions of compliance. The parental interview would also help to reduce the potential for retaliatory actions by the school against the family, a concern frequently expressed by parents.

SEA Training and Support

Parents reported a need for clear, consistent, “parent friendly” information regarding the various due process procedures. Inconsistent information was provided to parents by SEA staff, parent support providers and legal resources. SEAs need to ensure that accurate information regarding hearings, complaints, and mediations are regularly reviewed, revised and widely disseminated

Limitations

The results of this study should be used with caution. The post-hoc nature of this study may contribute to bias in the responses of the participants. Generalizations of this study beyond the state of Maine should be done with caution, given the differences that exist in state special education policies and procedures. The sample size limited the type of analysis that could be done, particularly within subgroups of the due process types. Access to parents who initiated hearings and complaints has historically been limited because of the prohibition of releasing educational records (34 C.F.R. Part 99). Other states should consider the initiation and support of similar research initiatives in order to contribute to the development of a research base regarding parents and due process.

This research relies heavily upon the recall of parents. While the time delay may have contributed to some loss of information, the delay may also have presented a better assessment of the long-term effects of due process.

Lastly, the responses of the focus group arguably are generalizable to the interview group since significant differences were not found between the parents who were interviewed and the focus group participants along the dimensions of household income, years of residence within the community, satisfaction, and parent representation. However, the potential exists for bias within the focus groups because participants self selected whether or not they would participate. Parents willing to participate may have been more inclined to present a negative opinion about the schools and the Maine Department of Education.

Recommendations For Further Study

This study raises numerous issues for further investigation. A comparison of the costs incurred by parents who initiate hearings, complaints and mediations would be informative to the SEA for advising parents and recommending legislative appropriations for legal services.

The award of attorney fees and the ability of parents to recoup their expenses need further exploration. The assessment of the knowledge of private practice attorneys regarding special education law, hearing, mediation, and complaint procedures, and the availability of fee awards would be useful in developing continuing education opportunities in order to expand the numbers of knowledgeable parent attorneys. The identification of barriers to effective implementation of attorney fee awards and parent's ability to recoup their legal expenses would help to level the playing field and reduce some of the disincentive for parents to use the hearing process.

A replication of this study with special education directors who have been involved in hearings and complaints would provide an interesting perspective to contrast with the parents' perspectives. A similar replication with parents from other states would illuminate the generalizability of this study.

Parents who initiate due process proceedings could be matched with parents of children from the same classroom. Demographics such as disability type, advocacy assistance, and income could be controlled in this type of study. This type of study could be helpful in identifying factors that contribute to the development of parent and school conflict.

Because of the small number of parents (8.3%) who indicated that they became knowledgeable of their due process rights through the parent rights notice, an investigation of the notice would be informative. Issues for further study could include the readability of the notice, an assessment of parental knowledge of their procedural safeguards and an exploration of effective alternatives for informing parents of their rights. This research would be informative to

schools and SEAs in meeting the intent of the IDEA for fully informed and actively involved parents.

The feelings and behaviors discussed by the focus group participants were remarkably similar to the signs and symptoms of post traumatic stress disorder (PTSD). Critical incident stress debriefing is a process that has been developed to assist emergency medical personnel in reducing PTSD. It is possible that a similar debriefing process could be used with parents and school to improve the parent / school relationships that seem to be stressed by the due process system.

Summary

One hundred and nineteen parents initiated hearings and complaints in Maine during 1996. Sixty-seven percent of the parents were married and thirty-three percent were divorced (25%), widowed (3%) or single (5%). These families averaged 2.33 children per household. Their child typically was 11.6 years of age and had been enrolled in the school that was subject to the dispute for an average of 4.4 years prior to the parent's request for a hearing or complaint investigation. Seventy percent of the children were male with sixty-five percent reported to have either a learning disability (38%) or emotional disturbance (27%). The majority of the hearing and complaint requests involved disputes regarding programs (78%) followed by procedural violations (53%), placement disputes (38%) and identification / evaluation disputes (20%). The percentages of disputes exceed one hundred because parents frequently (88%) identified multiple issues within their requests.

This research has found differences between parents who initiate hearings and those who initiate complaint investigations. Parents who initiate a hearing have a higher household income than the complaint group, tend to have more disputes regarding the placement of their children, tend to be represented by an attorney and tend to either withdraw or mediate their dispute. Parents who initiate complaints tend to have lower household income than the hearing group,

tend to not have representation and tend to receive decisions rather than mediate or withdraw their dispute. Both parent who initiated hearings and those who initiated complaints tend to emphasize parent and school communication and relationship as primarily contributing to the development of the conflict with the school. Regulatory compliance was a secondary contributing factor. Hearing parents note that the cost and stress of the hearing are major problems they experienced with the hearing process while complaint parents noted the lack of follow-up to ensure that schools are complying with the corrective action ordered by the complaint investigator.

While the hearing or complaint may address a problem or series of problems that parents have with schools, neither process appears to resolve and may actually exasperate parent / school conflict. For both parents and schools – “even if you win, you lose.”