A STUDY TO EVALUATE THE SPECIAL EDUCATION DUE PROCESS HEARING REQUIREMENTS IN VIRGINIA:

by

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Dissertation submitted to the Faculty of the Virginia Polytechnic Institute and State University in partial fulfillment of the requirements for the degree of Doctor of Education

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July, 1982

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Lewis D. Romano
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DEDICATION

To my beloved wife and friend,

and children,
ACKNOWLEDGEMENTS

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CHAPTER I
DEVELOPMENT OF THE PROBLEM

Introduction
The passage of Public Law 94-142, the Education for all Handicapped Children Act, is regarded as a major set of requirements which has brought about significant change in the field of special education. Burrello and Sage (1979) suggested that because of these changes, the major dilemma confronting special educators will be that of redefining roles within the total framework of education to ensure a free appropriate public education for all handicapped children.

It is estimated that approximately 4.3 million handicapped school-aged children are receiving some form of special education and related services (United States Department of Education, 1980). Further, there are approximately 328,000 newly identified handicapped children who are receiving special education and related services since the passage of Public Law 94-142 (United States Department of Education, 1980). Although it is assumed that all handicapped children who are now receiving services have been properly identified, evaluated, and placed in appropriate educational settings, often there are disagreements that occur within the special education decision-making process. When disagreements occur, the parent and likewise the local education agency (LEA) have the right to initiate an impartial due process hearing as required under state and federal requirements. These provisions resulted in the establishment of a formalized administrative
procedure that is designed with the intended purpose to ensure fairness, orderliness, and impartiality in the resolution of disputes between two parties.

The use of the impartial due process hearing to resolve disputes in special education has resulted in numerous points of view, both positive and negative related to its utility as a process to achieve its intended purposes (Turnbull and Turnbull, 1978). The impartial hearing process was designed to be the forum whereby two parties to a dispute may have the dispute resolved in a timely and orderly fashion for the ultimate benefit of the child. In reality, however, the hearing process has tended to result in adversarial relationships between parents and the schools (Kotin, 1977a and 1977b; Yoshida and Byrne, 1979; and Selznick, 1980). Not only is this a perplexing problem for the parents and LEAs, but also state education agencies who are responsible for implementing federal requirements if they are to receive funds under Public Law 94-142.

The State Education Agency (SEA) of the Commonwealth of Virginia, as in other states which receive funds under Part B of Public Law 94-142, must provide assurances that parents or guardians are guaranteed procedural safeguards in matters related to the identification, evaluation, and placement, and provisions for a free appropriate public education. These safeguards generally require the following basic minima: 1) prior notice and consent, 2) access to relevant records, 3) an independent evaluation, and 4) the right to an impartial due process hearing (Kotin, 1979). The meaning of these requirements
can "generally be reduced to fair play and parental involvement" (Jones, 1981).

According to Budoff (1979) there is little evidence available to determine whether the procedural safeguards being implemented are achieving their intended purposes. It is reported that during the first year of the implementation of Public Law 94-142 most states focused their attention on issues related to the individualized educational plan (IEP) (United States Office of Education, 1979b). The due process hearing requirements, however, were a major focus of attention during the Act's second year of implementation as a result of experiences with the hearing process. Given this stage of implementation the due process hearing requirements are in need of evaluation studies which seek to determine the degree of successful implementation.

Accordingly, the states of Massachusetts and Illinois have undertaken studies of their due process hearing requirements to determine the level of success in the implementation of these requirements. The results of these studies have enabled those states to provide technical assistance and training of hearing officers, school personnel, and parents of handicapped children. Likewise, the Virginia SEA desired to undertake an evaluative study of their due process hearing requirements to determine what decisions, if any, were necessary for successful implementation of federal as well as their own state due process hearing requirements. This study therefore focused upon the impartial due process hearing requirements as provided in the Commonwealth of Virginia.
In Virginia, mandatory legislation was enacted in 1972 for all handicapped children, ages 2-21. Subsequent revision in 1979 expanded the age range through 21. In addition to mandatory legislation, the Standards of Quality, required by the Virginia Code, set forth standards for education. The Standards related to special education required all local education agencies (LEAs) to provide special education services to handicapped school-aged children. When the Education for All Handicapped Children Act (Public Law 94-142) was enacted during 1975, Virginia had many of the provisions already in its laws and regulations (Micklem, 1978). Subsequent revisions in 1978 and 1979 brought Virginia statutes and regulations in full compliance with federal handicapped laws. The impartial due process hearing requirements, rules, and regulations are found in the Administrative Requirements and Guidelines for Special Education Programs in Virginia (Approved, 1978; Revised, 1979) and the Due Process Hearing Procedures for Local School Divisions in Virginia (1979).

Statement of the Problem

According to Goode (1981), Virginia's due process hearing requirements embody the basic principles of fairness, orderliness, and respect for the rights of the individual. To date an evaluation study of these requirements and procedures had not been undertaken, and whether or not these procedures have been successful in achieving their intended purposes has only been speculative. The problem to be dealt with in this study was the lack of available data that described the implementation of the special education due process hearing requirements
as provided in Virginia's rules and regulations. The specific evaluation questions this study addressed were as follows:

1) Are the required special education due process hearing requirements being implemented?

2) To what extent are these requirements being implemented?

3) What are the attitudes of parents, LEAs, and hearing officers regarding special education due process hearing requirements?

**Significance of the Study**

The impartial due process hearing as it relates to special education decisions was designed to provide a forum to ensure school/parent involvement and fairness in the resolution of differences between parents and the LEAs. The hearing is the result of disputes that have occurred in the identification, evaluation, placement, or provisions for a free appropriate public education for a handicapped child. Hence, the participants in the due process hearing procedure are critical to successfully implement and achieve the intended purposes. Therefore, the level of implementation and relevant attitudes of parents, LEAs, and hearing officers regarding the impartial due process requirements in Virginia SEA will be described in the study.

Because the SEA is the agency responsible to ensure that the intended purposes of federal requirements are being met, mid-course corrections may be needed if it is determined that requirements are not being implemented as required. Also, the results of this study are necessary to assist the SEA in its ongoing efforts to provide needed training or technical assistance to those persons who are
involved or responsible in the delivery of services for handicapped children.

Aside from the training and technical assistance efforts by the SEA, the results of this study may be of major assistance to colleges and universities that have professional preparation programs designed to train perspective teachers or administrative personnel for the administration and supervision of special education.

Finally, this study should be conducted because of the unique hybrid nature of the impartial due process hearing. Although these requirements have been established in both state and federal law with regard to the handicapped, the right to a hearing is a fundamental right specified in the Fifth and Fourteenth Amendments of the United States Constitution. Therefore, fundamental rights which are controlled, conveyed, or made available by the actions and intents of individuals should be subject to scrutiny.

Definition of Terms

The following terms were defined for use in this study:

Administrative Working Days:
Calendar days exclusive of Saturday, Sunday, and official holidays of the local school district.

Dispute:
Any disagreement, complaint, or appeal of a decision relative to the identification, evaluation, placement, or provisions for a free appropriate public education that results in an impartial due process hearing or SEA review.
Hearing:
Procedural requirements that relate to the required duties of hearing officers and procedural safeguards afforded both parents and LEAs during an impartial due process hearing.

Impartial Due Process Hearing:
A requirement under Public Law 94-142, the Education for All Handicapped Children Act and the first step in the formal administrative hearing and review process which involves disputes regarding the identification, evaluation, placement, or provisions for a free appropriate public education of a handicapped learner.

Impartial Hearing Officer:
A person, or a tribunal of persons, from a list maintained by the Virginia Department of Education who is (are) unbiased; not an officer or agent of the LEA or agent of the Virginia Department of Education (SEA).

Implementation Plan:
The plan developed by the local school district/division designed to operationalize the decision of the hearing officer.

Local Education Agency (LEA):
The school district/division responsible for providing educational services to handicapped children.

Mediation:
A method of resolving a dispute between parents and LEAs through informal negotiation.
Parent:
For this study, this includes the biological mother and/or father, legal guardian, or appointed surrogate responsible for the handicapped child who was a participant in an impartial due process hearing at both the local school district level and the SEA review.

Post-Hearing:
Procedural requirements and duties of hearing officers, parents, and LEAs at the completion of an impartial due process hearing.

Pre-Hearing:
Activities and procedural requirements that relate to parents, hearing officers, and LEA in the preparation of the impartial due process hearing.

SEA Review:
The next level of the administrative hearing process which results from an appeal beyond the local level impartial due process hearing and prior to but not necessarily precluding a civil action.
CHAPTER II
REVIEW OF THE LITERATURE

Introduction

The due process hearing requirements are designed to ensure the protection of rights of parents and handicapped children in matters related to special education. In this chapter the constitutional, judicial, and legislative basis of due process will be addressed. The issues and outcomes as a result of the implementation of these requirements in relation to SEAs, parents, LEAs, and hearing officers will also be addressed in this chapter. Virginia due process hearing requirements which served as a basis for this study will be summarized.

Constitutional Basis

The concept of due process was established in the Constitution of the United States by the Fifth and Fourteenth Amendments. The Fifth Amendment has provided that all persons have the right to be protected from actions by the federal government that would not deprive a citizen of "life, liberty, or property without due process of law." Likewise, the Fourteenth Amendment provides protections to citizens from actions by the states. These assurances are as follows:

No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Although the Constitution does not define the parameters of due process, the Supreme Court has interpreted this concept to mean:
Fairness of procedure is due process in the primary sense. . . . Due process cannot be imprisoned within the treacherous limits of any formula . . . due process is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgement. . . . The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished. . . . These are some of the considerations that must enter into judicial judgement. (Joint Anti-Fascist Committee v McGrath, 1951)

Due process has evolved over time with no fixed meaning but it implies that fair and reasonable procedures must be followed before a State can deny certain interests of its citizens (Kirp, Buss, and Kuriloff, 1974). Kotin (1977a) suggested that the purpose and intent of due process is not to prevent the denial of individual interests by the State but to ensure that this denial will only occur after rational criteria are applied in a rational manner. Bersoff (1979) contends that due process is an adaptable process whereby procedures would vary in a given set of circumstances and is dependent upon the nature of the government action as well as the interest that has been affected. Accordingly, Budoff (1979) suggested that facts must be proven through a process guaranteeing the individual an opportunity to be informed of actions being taken against their interests and to have their right to challenge or protest. When an individual is confronted by an imposing action by the state which threatens a fundamental right, the individual has the right to be informed of such an action and to challenge through a hearing. Hence, in relation to special education, due process protections are applicable when the state takes an action that affects the handicapped learners'
1) property interests, or the right to a free appropriate public education and 2) liberty interests, or the loss of personal reputation as a result of discriminatory treatment; abusive classification; and inappropriate educational services (Julka, 1980).

**Judicial Basis**

Safeguarding interests and assuring individual rights has been an American way of life for centuries. According to Abeson, Bolik, and Hass (1977) nowhere has this been so intense as in public education. Through judicial interpretation, questions of rights for public school students have been raised and resolved under the protection of the Due Process and Equal Protection clauses of the Fourteenth Amendment. The courts have evoked these Constitutional protections in cases related to: juvenile incarceration (In re Gault, 387 U.S. 1, 1967); student suspension (Goss v. Lopez, 419 U.S. 565, 1975); student expression (Tinker v. Des Moines, 393 U.S. 503, 1969); student expulsion (Wood v. Strickland, 420 U.S. 308, 1975); and student punishment (Baker v. Owen, 395 F Supp. 294, 423 U.S. 907, 1975). All of these cases have affirmed the right of procedural due process protections when individual liberty or property interests have been affected. It has further enhanced the judicial influence in the administration of public education as a whole.

Another segment of public education that has had to respond to the impact of judicial outcomes as well as recent legislative enactments has been the administration and supervision of special education. Litigation that emerged during the late 1960's and early 1970's served as a harbinger of later landmark cases in the right to education.
movement for handicapped children, and the establishment of comprehensive due process protections when liberty and property interests were threatened or denied.

In Wolf vs. State Legislature of the State of Utah (3rd Jud. Dist. Ct. Utah, 1969, C.A. 182646), an action was brought against the State of Utah on behalf of two trainable mentally retarded youth who were being denied the right to a free public education. The judge interpreted the Utah State Constitution as meaning that all children in the state would be guaranteed the right to an education at public expense. Although this case was applicable to the state of Utah, the application of the equal protection analysis to handicapped education was considered a significant step in the right to education movement. In another case, a class action suit on behalf of a handicapped youth excluded from a public education for medical reasons was brought against the board of school directors of the public schools of Milwaukee, Wisconsin (Marlega v. Milwaukee Board of School Directors, E.D. Wis., C.A. No. 70-C-8, 1970). At issue in Marlega was the denial of a public education and constitutionally guaranteed rights of notice and due process. The court ordered that no child could be excluded from a free public education without a due process hearing. The due process rights and procedures ordered in Marlega were: 1) notice requirements of a change in a child's educational status and 2) extensive due process hearing rights.

The responsibility of ensuring the right to a free appropriate public education and ensuring due process rights towards handicapped children, however, was clearly established in such landmark cases as

The PARC case was brought on behalf of mentally retarded youth who had previously been excluded from public education. After hearing the facts of the case, the federal court ruled as follows:

No child who is mentally retarded or thought to be mentally retarded can be assigned initially or reassigned to either a regular or special education status, or excluded from a public education without a prior recorded hearing before a special hearing officer. (PARC, 1972)

In addition to a formal hearing procedure, the court specified a twenty-three step due process procedure to be implemented when changes were made with regard to the educational status of the child (Brummet and McLaughlin, 1977). In commenting on the due process protections achieved in PARC, Gilhool was quoted as follows:

A mechanism is created to assure that the educational program fits the child. The mere fact of a hearing opportunity on change in assignment and every two years thereafter will of course keep all the field professionals on their toes. There is a new instrument for accountability — to the child, to the parent, to the Secretary of Education, and to the teacher as a professional. (Abeson et al., 1975)

The liberty interests of the handicapped were also recognized in the case Mills vs. D.C. Board of Education (1972). This case was brought before the court on behalf of seven handicapped children who were being excluded from public education and being denied their Due Process and Equal Protection rights guaranteed by the Fifth and Fourteenth Amendment. The court ordered extensive due process safeguards to all classes of handicapped children prior to a child
being assigned, suspended, expelled, or excluded from regular or special education. These basic provisions of due process safeguards ordered in PARC and Mills also were recognized in other states and served as the basis of additional court actions or corrective state legislative enactments to ensure the fundamental rights of the handicapped (Kotin, 1977a and 1977b). However, the major impetus for the application of due process procedures in special education resulted through federal legislative enactments in the mid 1970's.

**Legislative Basis**

In 1974, Congress passed Public Law 93-380, Education Amendments of 1974, and largely increased the basic state grant aid for the handicapped. The assurance of due process procedures was one condition placed upon the states if they were to receive federal monies under this Act (Abeson and Ballard, 1977). These procedures guaranteed that all handicapped children and their parents were assured of procedural safeguards in all decisions regarding identification, evaluation, and placement. The procedural safeguard provisions of Public Law 93-380 were largely drawn from the PARC and Mills decisions.

Congress reacted further to increased parental demands and judicial outcomes regarding the right to education for handicapped children and passed the Education for All Handicapped Children Act, Public Law 94-142 on November 29, 1975 (London and McLaughlin, 1978). This Act included many of the provisions related to due process safeguards found in Public Law 93-380 but it was more pervasive (Jones, 1981). The section of the Act pertaining to procedural safeguards are
found in 20 USC 1415, Sect. 615 (see Appendix D). The regulations to implement the Act were published August 23, 1977 and procedural safeguard provisions are found in "Sub-Part E - Procedural Safeguards" (see Appendix E). Through the Act and ensuing Regulations, Congress had ensured that fundamental rights of all handicapped children were to be protected through the due process protections. Specifically, the due process hearing was the intended forum to resolve disputes between parents and LEAs with regard to the educational status of handicapped learners.

Subsequent to the passage of Public Law 94-142, challenges have been brought before the courts in relation to various aspects of the due process hearing requirements. The courts have dismissed claims for civil actions for failure to exhaust the administrative remedies of the due process hearing provisions required under Public Law 94-142 (H.R. vs. Hornbeck, 3 EHLR 553:139, 1981; Riley vs. Ambach, 3 EHLR 552:410, 1981; and Shannon vs. Ambach, 3 EHLR 553:198, 1981). In Patsel vs. District of Columbia (3 EHLR 553:112, 1981), the court held that parents have the option of filing a due process hearing request at any time and do not need to perform other administrative prerequisites required by the LEA. The role and responsibility of the hearing officer was questioned in Davis vs. District of Columbia (3 EHLR 553:237, 1981). In this case, the court held that the role of the hearing officer in placement issues was to determine the appropriateness of a placement not to recommend a new one. This case also provided guidance to the hearing officer in making a determination of appropriateness in placement issues. The selection of the hearing
officer was one of the major issues in *Hessler vs. State Board of Education of Maryland* (3 EHLR 553:262, 1981). The court held that exclusion of parents from the selection of local and state hearing officers does not violate the due process protections under Public Law 94-142. Timelines were at issue in *McCowen vs. Hahn* (3 EHLR 553, ND IL 1981) and the court held that requiring an SEA to render a decision within 30 days is not a substantive regulation having the force of law; rather it is a rule of "agency organization, procedure, or practice" creating no individual rights.

SEAs and LEAs no longer decide for themselves the parameters of due process when a change of educational status occurs in regard to a handicapped child (Bersoff, 1981). While these parameters have been established by Public Law 94-142, the SEAs have become the responsible agency to ensure all the Act's requirements are to be implemented if they are to receive funds under Part B of the Act.

**Issues and Outcomes**

Experiences with the implementation of the due process hearing procedures under Public Law 94-142 have varied among states and have resulted in various issues and outcomes. This section will present information and the results of recent studies related to the impact of these requirements upon states, parents, LEAs, and hearing officers.

**States.** The federal Office of Special Education, formerly Bureau of Education for the Handicapped, has conducted Program Administrative Reviews (PAR) required by Section 616(a) of Public Law 94-142. The purpose of these activities has been to review and monitor the extent
that state policies, procedures, and practices are consistent with federal regulations under Public Law 94-142. Implementing the procedural safeguard provisions were found to be a major problem in most states (U.S. Office of Education, 1979). According to the results of the PAR's from 1977-1980, the following areas of non-compliance were most typically cited in the due process area: 1) timelines were not being adhered to with regard to the notice and consent requirements, 2) hearing officer's decisions not being rendered within the 45 day limit, 3) states were allowing school board members to be appointed as hearing officers, 4) parents were not being fully informed of their hearing rights, 5) confusion existed among parents and LEAs with regard to procedural requirements, 6) differences were found among hearing officers with regard to the extent of their knowledge of federal and state laws and regulations pertaining to the handicapped, 7) states and LEAs were adopting policies that were inconsistent with federal requirements, and 8) states were adopting mediation steps or other informal methods to resolve disputes that served to delay or impede the required timelines for hearings. According to the most recent Report to Congress by the U.S. Department of Education (1980), all states have begun corrective actions to rectify these problems. However, from the states point of view, the due process hearing requirements have conflicted with previous existing state policies on dispute resolution within governmental agencies.

Parents. According to Silberberg (1979) and Pechter (1979), the hearing procedures have not provided equality to parents because their LEA adversaries have greater access to time, money, and resources in
defending and developing their cases when involved in hearings. In a recent longitudinal study of parents involved in hearings in the state of Massachusetts, Budoff and Orenstein (1981) found that parents had perceived the hearing experience as adversarial and negative. Parents recounted continual disputes with LEAs and the negative impact of the hearing experience had on their families, work, and themselves. In this regard, Jones (1981) has suggested that it is doubtful that when a formal hearing stage is reached that adversarial relationships have not already developed between parents and LEAs.

Having been the legal counsel for numerous school boards involved in hearings, Ekstrand (1979; 1981) has concluded that parents lack a full understanding of their rights when involved in hearings and therefore must rely on legal counsel to assist them in a highly legalistic process. These conclusions support findings by the Florida Department of Education (1980) where parents generally lacked a basic understanding of their rights and also relied heavily upon legal counsel. In addition to the negative and adversarial nature of the hearing process, Mitchell (1977a, 1977b, and 1977c) found that parents were intimidated by the formal nature of the proceedings and that inadequate relationships with LEA personnel continued long after the hearing process had concluded. While parents are confronted with an unfamiliar process when they are involved in hearings, this has often resulted in significant financial and "psychic" costs. In view of the financial stress involved in hearings, this has served to limit parents from exercising the full extent of their hearing rights available under federal and state requirements, and therefore the hearing procedures have been viewed as discriminant in nature (Pechter, 1979).
LEAs. Private school placement issues have been the most frequent and costly issues encountered by LEAs in due process hearings (U.S. Department of Education, 1980). In view of the pendency requirements, whereby a child must remain in his/her current educational placement during the proceedings of a hearing, LEAs have had to encumber major financial stress for the payment of costly tuition payments. According to Ekstrand (1981), an issue in a due process hearing including appeals can last as long as a three to five year period.

Case studies, however, have indicated that LEAs have begun to take the mandates seriously and are attempting to use alternate methods to resolve disputes in view of the costs involved in hearings (Liasion Bulletin, April 22, 1982). In the Florida and Massachusetts studies, optional methods of resolving disputes were also found desirable and served as a basis for training LEA personnel in the use of effective mediation and conciliation techniques. Efforts to implement mediation in Connecticut were generally successful but LEAs have received major criticisms with regard to the implementation of procedural safeguard rights for parents. According to a report by the Education Advocates Coalition, sponsored by the Childrens Defense Fund (1980), LEAs have used due process safeguards to frustrate parents and violate federal and state timeline requirements. Regarding the incidence of hearings, the report also stated that due to the lack of proactivity by LEAs to involve parents in decision making this has created negative relationships and increased the likelihood of hearings.

The hearing requirements have caused increased time demands among LEA personnel. Jacobs (1979) has argued that the "hidden costs" of
due process hearings have diverted the attention away from the purpose and intent of the law and services to handicapped children. These costs, related to staff time, materials, legal fees, and psychic stress, have encumbered the available dollars and personnel availability for effective educational programs. These factors have contributed in large part to a defensive posture by LEAs and perceived by parents and advocates of handicapped children as negative, insensitive, and adversarial. In this same regard, the issue of time and costs in hearings were studied by Kammerlohr and Henderson (1980) in the state of Illinois. Due process hearings ranged in costs from $2,000 to over $20,000 and resulted in an average of 73 person hours for the prevention, preparation, presentation, and follow up phases of hearings (see Appendix F).

Additional problem areas among LEAs related to the implementation of the hearing requirements have been revealed through the PAR process. Problem areas cited most frequently have been: 1) failure to meet required hearing timelines; 2) providing inaccurate information on rights to parents; 3) lacking understanding of their roles in hearings; 4) adopting policies inconsistent with state and federal requirements; and 5) not consistently implementing hearing officer decisions. Whether due process hearings have improved LEA programs has been questioned by a recent study submitted to the federal Office of Special Education by the Stanford Research Institute (Liasion Bulletin, 1982). This study suggests that the due process hearing at the LEA level is fulfilling program gaps as compared to changes in LEA policy.
Hearing Officers. Among the many issues and outcomes resulting from the implementation of the hearing requirements, the hearing officer has become a central focus of attention. Federal law requires that the hearing officer be impartial, unbiased, and independent of any involvement in relationships with LEAs or parents. Criticism directed to the role of the hearing officer has revolved around selection, training, and overall competencies in the hearing process (Kotin, 1977a, 1977b, 1979; Turnbull and Turnbull, 1978; Turnbull et al., 1980; Kent and Jedlinski, 1979; Julka, 1980; Mitchell, 1977a, 1977b, 1977c; and Budoff and Orenstein, 1981).

Mitchell (1977a) conducted interviews with hearing officers to determine how they perceived their roles in hearings. Two major contrasts were found that tended to influence the mood and atmosphere of a hearing situation. The first set of hearing officers perceived their role as a passive one and the hearings were characterized as a strict and adversarial courtroom proceeding where the role of the hearing officer was to act as a judge and only decide upon the evidence. In this instance, the quality of the presentation of the evidence largely influenced the outcomes. A second set of hearing officers perceived their role as service-oriented in which the hearings were characterized as informal and the hearing officer became actively involved by asking questions, seeking additional information, and evolving a comprehensive hearing record in order to make the decision. These findings suggest the variance of role perceptions among hearing officers as well as the importance of having experienced legal counsel (Budoff and Orenstein, 1981).
Issues surrounding the selection of the hearing officer have emerged rapidly since the requirements have been in effect. Who should serve as hearing officers and the extent of their impartiality continues to be a problem. The states have varied in what groups of individuals have been selected to serve as hearing officers. Some states have chosen a wide range of groups such as public school personnel, university professors, lawyers, retired educators, state or local government agency employees, bankers, housewives, mental health employees and others (Virginia Department of Education, 1981; Turnbull et al., 1981). Some states like Virginia, North Carolina, Florida, and Nebraska have selected only attorneys to serve as hearing officers. Little or no evidence is available regarding the effectiveness of any one class of individuals to serve in the hearing officer role.

Federal requirements have specified that the hearing officer be selected by the SEA or LEA. This appointment procedure has been viewed as a relative imbalance of power between the two parties to a hearing and perceived as contradictory to the principles of fairness and protection of rights intended by federal requirements (Ekstrand, 1981). Bersoff (1979) has maintained that parents be given the opportunity to agree in writing to the selection as well as to be informed of any association the hearing officer has or may have had with the LEA. However, Abeson et al. (1975) have viewed the selection issue as axiomatic in that the greater the distance between the agency and the selection, training, and assignment of hearing officers, the greater the likelihood of preserving neutrality.
The due process hearing procedure is dependent upon the competence of the hearing officer selected (Jones, 1981). In view of the broad differences in backgrounds of persons selected to be hearing officers, it would appear that training needs have differed among states. Hence the issue of training hearing officers centers upon the content of the training to be offered. Without question there are needs specific within states as well as generalized content areas applicable to all. A recent national survey of SEAs conducted by the Virginia Department of Education (1981) found that competencies most preferred in hearing officers were: objectivity; knowledge of federal and state law; skill in making decisions; ability to analyze; and the ability to direct and control hearings. In a similar study, Turnbull et al. (1981) surveyed hearing officers and LEA Superintendents and found that competencies most desired were: 1) expertise related to education in general; 2) expertise in educating handicapped children; and 3) knowledge of general and handicapped legislation. Given the preponderance of issues that confront hearing officers in due process hearings, no clear data base is yet available to determine precise training needs. This problem is further complicated by the lack of a formal system of evaluation of hearing officers in the performance of their duties. Hence, the present state of the art of training is unique to each SEA and subject to much speculation without an ongoing source of information to justify specific training needs.

Due Process Hearing Requirements in Virginia

In Virginia, the authority to administer and regulate the education of handicapped children is provided in the Regulations and
Administrative Requirements for the Operation of Special Education (Approved, 1978; Revised, 1979). The section that relates to "Procedural Safeguards" is located in Chapter Five of the Regulations (Appendix G).

This due process system ensures that in each phase of decision making regarding the educational status of a handicapped child, the child and/or parent are afforded the right to: 1) have prior notice; 2) give consent; 3) have access to confidential records; 4) an independent evaluation; 5) an impartial due process hearing, 6) an appeal to the SEA; and 7) file a formal court action. It is an ongoing system of procedures within the broad context of due process protections that is designed to ensure at least a minimal level of interactions, communications, and involvement between parents and LEAs in: 1) screening; 2) evaluation; 3) identification; 4) eligibility; 5) individualized educational plan development (IEP); and 6) dispute resolution.

With regard to dispute resolution, Virginia Regulations provide that the LEA or parents of a handicapped child shall have the right to initiate a hearing when a disagreement occurs on matters relating to identification, evaluation, or educational placement of the child or the provision of a free appropriate public education. Although not required in Public Law 94-142, but encouraged by most state officials, mediation may be conducted by LEA personnel but the regulations specify only those who were not previously involved in the particular case. The SEA leaves the option to the LEA to formalize the mediation process provided a policy to this effect is established by the LEA.
Mediation attempts, however, shall not extend or delay the hearing timelines required in Virginia beyond forty-five (45) administrative working days.

All requests for a hearing are made to the LEA board of education and the LEA must appoint an impartial hearing officer from a state approved list within five (5) administrative days from the initial request of the hearing. In Virginia, all state approved hearing officers are licensed attorneys and costs for all hearings are shared equally by the SEA and LEA.

Either party to the hearing has the right to legal counsel or an individual who has special knowledge or training with regard to the handicapped. Each have the right to present evidence, cross examine, and counsel the attendance of witnesses. Disclosure of evidence by either party is required to be submitted five (5) administrative working days prior to the hearing. At the conclusion of the hearing each may obtain a written or electronic verbatim record of the hearing and receive a written decision from the hearing officer within forty-five (45) administrative working days from the initial request of the hearing. During the hearing only the parent has the right to an open or closed hearing and the option of having the handicapped child present.

The hearing officer shall submit the written decision to both parties within forty-five (45) administrative working days from the time of the appointment. This decision is final and binding on either party unless either party appeals to the SEA. This must occur within thirty days beyond receipt of the hearing officer's written decision.
The decision rendered by the SEA reviewing officer is final unless either party brings a civil action as a form of higher appeal.

The child's status during any phase of the hearing and appeal process is in the same educational placement the child had at the time of the hearing request. Additionally, the SEA outlines specific responsibilities for parents, LEAs, and hearing officers in the hearing process. These are found in the Special Education Due Process Hearing Procedures for Local School Divisions in Virginia, December, 1979 and the Handbook for Parents of Handicapped Children: Rights and Responsibilities (1981).

In May, 1980 the federal Office of Special Education (1980) conducted the PAR and found Virginia to be in "non-compliance" on certain issues and in particular, "Procedural Safeguards." The recommendation of the monitoring committee was to intensify the SEAs monitoring procedures in the areas cited including the procedural requirements. With regard to due process hearing requirements, these monitoring activities have resulted in a clearer delineation of responsibilities of LEAs, hearing officers, and parents in due process hearing requirements. To date, however, a comprehensive study of these procedures has not been undertaken.

Conclusions

The evolution of due process and its application to special education was described through this review of the literature. A unique feature of the due process protections is the use of the hearing to resolve disputes between parents of handicapped children
and LEAs in matters related to the identification, evaluation, placement, and provisions for a free appropriate public education.

Based upon a review of the pertinent literature related to these requirements, the hearing process is viewed as a means to ensure that a dispute will be resolved within a required procedural framework and time limits. In view of the importance of these procedures to protect the rights of parents, LEAs, and the child, the hearing requirements have emerged over time as an imperfect system and have resulted in issues and outcomes unintended by original design. This review suggests that a wide range of variables, both human and practical, are associated with the successful implementation of these procedures and SEAs have been designated by federal law to ensure these and other requirements are being implemented.

The knowledge of practices and the effects of the hearing requirements are lacking. Available information was found to be largely impressionistic, although helpful and constructive to formulate, perhaps, the ideal due process hearing system. However, the few studies available have provided the justification that additional study is needed to further understand these requirements and the extent they are being implemented.

The implementation of these requirements has affected parents, LEAs, and hearing officers in a variety of ways. Generally, these effects have been negative as was viewed by the various authors from their personal, experiential, or empirical point of view. Hence, the assessment of attitudes regarding these procedures would assist in understanding if these requirements are successful in fulfilling the fundamental objectives of "orderliness and fair play."
Although Virginia's procedural safeguard requirements were found to be in non-compliance with federal regulations, a comprehensive evaluation of their level of success was not evidenced. Therefore, the level of success in the implementation of one major set of requirements, the due process hearing, will be addressed in the remainder of this study.
CHAPTER III
METHODS, MATERIALS, AND PROCEDURES

Introduction

The purpose of this chapter was to describe the methods, materials, and procedures that were used to obtain and analyze the data for use in this study. This chapter describes the evaluation approach, instrumentation, and the respondents used for this study. The procedures, method of data collection, and data analysis will also be presented.

Background

In May, 1981 the Virginia SEA and consultants from Virginia Polytechnic Institute and State University collaborated to undertake an evaluation of the special education due process hearing requirements as provided in Virginia regulations. It was determined that the SEA needed to ascertain the level of success in the implementation of these requirements. Prior to this study, no comprehensive data source was available to make this determination.

As a result of numerous conferences with appropriate SEA officials, specific areas were delineated as needed information to assist the SEA in ongoing monitoring activities and making decisions to enhance or improve the required hearing procedures. It was also decided that the study would be cast as an evaluation effort as opposed to a controlled research study. Variables examined were those that described the due process hearing system, the implementation of the procedures, and relevant attitudes of key participants as a result of their experiences with the hearing system.
Evaluation Approach

Figure 1 describes the due process hearing system in its most global sense. As presented, the process begins with a dispute (1.0) that results from the identification, evaluation, placement, or provisions for a free appropriate public education for a handicapped child. Upon the initiation of a request for a hearing, specific procedural requirements are implemented in each of three phases of the process: pre-hearing (2.0), hearing (3.0) and post-hearing (4.0). The outcome of this process results in the written decision (5.0) of the hearing officer of which either party may appeal (6.0) to the SEA. This model was used to organize and identify the information desired by the SEA.

The SEA desired information related to the following six major categories: 1) the implementation of procedural safeguards, 2) time-line compliance, 3) fairness and impartiality in due process hearings, 4) LEA duties and responsibilities, 5) hearing officer duties and responsibilities, and 6) pre-hearing and hearing activities. For each category, variables were selected that when implemented would occur within each of the three phases of the hearing process. These categories served as the basis for the instrumentation used in this study. The descriptive survey method was used to generate the needed data to describe the implementation of the due process hearing requirements.

Instrumentation

A fifty-two item questionnaire (Appendix B) was developed and designed to obtain information in relation to the six major categories delineated by the SEA. Variables were selected that would be
FIGURE 1

SPECIAL EDUCATION DUE PROCESS HEARING SYSTEM

1.0 Dispute

2.0 Pre-Hearing

3.0 Hearing

4.0 Post-Hearing

5.0 Decision

6.0 Appeal
appropriate in relation to the information desired by the SEA. All variables were excised from three official SEA sources: *Administrative Requirements and Guidelines for Special Education Programs in Virginia Approved, 1978; Revised, 1979*; *Due Process Hearing Procedures for Local School Divisions in Virginia (Approved, 1979)*; and the *Handbook for Parents of Handicapped Children: Rights and Responsibilities (Approved, 1979)*. A panel of experts composed of representatives of the SEA Division of Special Education Administration and Finance and Professors of Special Education Administration and Supervision at Virginia Tech validated the instrument.

The questionnaire was designed in three parts. The first part addressed respondent demographic information. The second part was composed of forty-one (41) items that focused upon the due process hearing system. The third part was composed of eleven (11) items designed to elicit respondent attitudes relating to the due process hearing system as they had experienced it.

**Respondents**

Three respondent groups were selected for this study. They included all Virginia Hearing Officers (N=52) on the approved state list, all Local Education Agencies in Virginia (N=134), and all parents (N=39) who had been through the local level hearing and the SEA appeal process. The three respondent groups were considered to be the three key participants in a due process hearing.

**Procedures**

A separate set of instructions was provided to the respondents to complete each of the three parts of the questionnaire. In the first part,
the respondents were instructed to designate the demographic information that was most applicable to them. In the second part, they were required to complete two different response columns for forty-one (41) items related to the implementation of selected due process hearing requirements. In the first set of responses, "Column I," all respondents were to indicate a "yes" or "no." This was viewed as an indication of whether a particular requirement or procedure was or was not implemented. For the second set of responses, "Column II," all respondents with the exception of parents were instructed to respond to a 1-4 scale delineating the extent to which a particular requirement or procedure was implemented in hearings they had experienced. The ratings were as follows:

1 = Always (Implemented)
2 = Frequently (Implemented)
3 = Seldom (Implemented)
4 = Never (Implemented)

Because parents were unable to make a comparison of experiences in hearings they were unable to complete the second set of responses. This was viewed as a limitation in the analysis of the data. Finally, in the third part, all respondents were required to complete a Likert-type measurement scale of eleven (11) attitude statements. The values of this scale ranged from 1-4. The ratings and their descriptions were as follows:

1 = Strongly Agree
2 = Agree
3 = Disagree
4 = Strongly Disagree
For each item in the questionnaire all respondents were provided a space that enabled them to explain their rating or provide them the opportunity to comment on each item (see Appendix B for questionnaire).

Collection of Data

The coded questionnaire, cover letter and stamped self-addressed envelope were mailed from the SEA to all respondents (N=225) on September 7, 1981. The potential respondents included 39 parents, 134 LEAs, and 52 hearing officers. Each questionnaire was number coded to identify the respondent group. On September 28, 1981, a follow up letter was sent and on October 17, 1981 twenty-one parents (53.8%), 102 LEAs (76.2%), and 34 hearing officers (65.3%) or 157 questionnaires were returned. This resulted in a 69.8% return rate from all respondents. According to SEA officials this was considered an acceptable rate of return.

The usable questionnaires for data analysis were one hundred or 44.4% of the original questionnaire mailing. It was found that fifty-four (54) LEAs had not been involved in hearings; and two hearing officers and one parent questionnaire were incomplete and therefore not usable. The data were analyzed based upon the completed returns of twenty (20) parents, forty-eight (48) LEAs, and thirty-two (32) hearing officers. This represented 44.4% of the total number of respondents. Table 1 presents the totals and percentages by respondent groups who participated in this study.

Evaluation Questions and Data Analysis

The evaluation questions posed for this study were consistent with the information desired by the SEA. Items arranged in the body of the
### TABLE 1

RESPONDENT GROUP TOTALS, RETURN RATES, AND USABLE RETURN RATES

<table>
<thead>
<tr>
<th>Group</th>
<th>N</th>
<th>Return</th>
<th>Return Rate %</th>
<th>Usable Returns</th>
<th>Usable Return Rate %</th>
</tr>
</thead>
<tbody>
<tr>
<td>LEAs</td>
<td>134</td>
<td>102</td>
<td>76.2</td>
<td>48(^1)</td>
<td>35.8</td>
</tr>
<tr>
<td>Parents</td>
<td>39</td>
<td>21</td>
<td>53.8</td>
<td>20(^2)</td>
<td>51.3</td>
</tr>
<tr>
<td>Hearing Officers</td>
<td>52</td>
<td>34</td>
<td>65.3</td>
<td>32(^3)</td>
<td>61.5</td>
</tr>
</tbody>
</table>

\(^1\) Of all LEA returns (N=102), fifty-four (54) reported no hearings

\(^2\) One parent questionnaire was incomplete

\(^3\) Two hearing officer questionnaires were incomplete
questionnaire (Part I and II) were designed to answer the following evaluation questions:

1) Are the required special education due process hearing requirements being implemented? (Part I)

2) To what extent are these requirements being implemented? (Part I)

3) What are the attitudes of parents, LEAs, and hearing officers regarding special education due process hearing requirements? (Part II)

Data generated from Part I were analyzed using percentages to profile the data and to reflect the aggregate percentages of a respondent group's perceptions of the implementation of a given requirement. Comments provided by the respondent groups were provided in the analysis to clarify the reported percentages. The evaluator attempted to present the consensus of opinions expressed by respondent comments. Since the comments were at times negatively based and cursory, the evaluator used reasonable judgment of their utility and meaning as a part of the results of this study.

Data generated from Part II were analyzed using the one-way analysis of variance because data were interval. Hypotheses stated in the null form were used to determine whether there were significant differences between the three respondent groups on the variable being tested. The hypotheses were stated as follows:

1) $H_{01}$ (VAR. 42): There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to the due process hearing procedures ensuring fairness in settling disputes.

2) $H_{02}$ (VAR.43): There are no differences between parents, hearing officers, and LEAs in their
attitudes with regard to the extent having legal counsel will have on the outcome of the hearing.

3) H03 (VAR. 44): There are no differences between parents, hearing officers, and LEAs in their attitudes with regards to the decision outcome of a hearing always benefiting the child.

4) H04 (VAR. 45): There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to the due process hearing providing a way for disputes to be resolved on an impartial basis.

5) H05 (VAR. 46): There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to parents having a better chance of having their position prevail when they are represented by an attorney at the hearing.

6) H06 (VAR. 47): There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to the due process hearing not being adversarial.

7) H07 (VAR. 48): There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to parent/school relationships not being negatively affected as a result of a due process hearing.

8) H08 (VAR. 49): There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to parents having a better chance of their position prevailing when they have assistance from an advocate at a hearing.

9) H09 (VAR. 50): There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to a due process hearing being a worthwhile experience worth repeating.

10) H010 (VAR. 51): There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to the use of mediation in settling disputes that could result in a formal hearing.

11) H011 (VAR. 52): There are no differences between parents, hearing officers, and LEAs in their
attitudes with regard to the use of a pre-hearing conference to clarify the issues of a dispute reducing the need for a formal hearing.

Limitations of the Study

This study was limited to the following: 1) the results of this study were applicable only to LEAs, parents, and hearing officers in the state of Virginia; 2) the study was limited by design and access to a subset of parents who had experienced the local level hearing and the SEA appeal, therefore, generalizations were applicable to parents similarly situated; 3) respondent perceptions were used to determine the level of implementation of a given requirement; and 4) the researcher was limited in obtaining data beyond the information desired by the SEA.

In Chapter IV data obtained from the three respondent groups are presented.
CHAPTER IV
RESULTS AND ANALYSIS OF THE DATA

Introduction

The results of the study to evaluate the due process hearing procedures in Virginia are reported in this chapter in three parts: 1) demographic data for parents, LEAs, and hearing officers, 2) the implementation of due process hearing requirements, and 3) data related to attitudes toward the due process hearing requirements. A seventy-five percent (75%) criterion was established by the SEA as the acceptable level of implementation of the requirements described in Part I of the questionnaire. The percentage of implementation for a requirement was aggregated across each respondent group.

Demographic Data

Parents. The demographic information pertaining to parent respondents in this study is presented in Table 2. Children of parents involved in hearings were in the main learning disabled (45.0%), elementary aged (45.0%), and male (55.0%). Hearings in which parents were involved were most frequently placement (47.6%) and issues related to free appropriate public education (38.1%). Parents were usually represented by an attorney (80.0%) as compared to being assisted by an advocate (25.0%).

Hearing officer decisions were congruent with the LEA positions in hearings, while SEA appeal decisions were reported by parents as favoring the parent position. Twenty-five percent of the parents,
<table>
<thead>
<tr>
<th>Handicapping Condition of Child:</th>
<th>%</th>
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</thead>
<tbody>
<tr>
<td>Educable Mentally Retarded</td>
<td>5.0</td>
</tr>
<tr>
<td>Trainable Mentally Retarded</td>
<td>10.0</td>
</tr>
<tr>
<td>Severely Retarded</td>
<td>20.0</td>
</tr>
<tr>
<td>Emotionally Disturbed</td>
<td>0.0</td>
</tr>
<tr>
<td>Learning Disabled</td>
<td>45.0</td>
</tr>
<tr>
<td>Physically Handicapped</td>
<td>5.0</td>
</tr>
<tr>
<td>Multiple Handicapped</td>
<td>10.0</td>
</tr>
<tr>
<td>Speech Handicapped</td>
<td>5.0</td>
</tr>
<tr>
<td>Visually Handicapped</td>
<td>0.0</td>
</tr>
<tr>
<td>Hearing Impaired</td>
<td>0.0</td>
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</table>

<table>
<thead>
<tr>
<th>Sex of Child:</th>
<th>%</th>
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</thead>
<tbody>
<tr>
<td>Male</td>
<td>55.0</td>
</tr>
<tr>
<td>Female</td>
<td>45.0</td>
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<table>
<thead>
<tr>
<th>Grade Level of Child:</th>
<th>%</th>
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</thead>
<tbody>
<tr>
<td>Elementary</td>
<td>45.0</td>
</tr>
<tr>
<td>Middle School</td>
<td>10.0</td>
</tr>
<tr>
<td>Junior High</td>
<td>15.0</td>
</tr>
<tr>
<td>Senior High</td>
<td>10.0</td>
</tr>
<tr>
<td>Nongraded</td>
<td>20.0</td>
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<table>
<thead>
<tr>
<th>Type of Dispute:</th>
<th>%</th>
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<tbody>
<tr>
<td>Evaluation</td>
<td>0.0</td>
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<tr>
<td>Identification</td>
<td>14.3</td>
</tr>
<tr>
<td>Placement</td>
<td>47.6</td>
</tr>
<tr>
<td>FAPE</td>
<td>38.1</td>
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### TABLE 2 (continued)

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<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>NR&lt;sup&gt;1&lt;/sup&gt;</th>
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<tr>
<td>Legal Representation</td>
<td>80.0</td>
<td>15.0</td>
<td>5.0</td>
</tr>
<tr>
<td>Advocate Assistance</td>
<td>25.0</td>
<td>65.0</td>
<td>10.0</td>
</tr>
<tr>
<td>Local Level Hearing Decided in Parent's Favor</td>
<td>40.0</td>
<td>55.0</td>
<td>5.0</td>
</tr>
<tr>
<td>SEA Appeal Decided in Parent's Favor</td>
<td>40.0</td>
<td>35.0</td>
<td>25.0</td>
</tr>
<tr>
<td>Involved in Other Due Process Hearings</td>
<td>15.0</td>
<td>75.0</td>
<td>10.0</td>
</tr>
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**Occupational Status:**

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Frequency</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>Professional</td>
<td>17</td>
<td>45.9</td>
</tr>
<tr>
<td>Homemaker</td>
<td>9</td>
<td>24.4</td>
</tr>
<tr>
<td>Skilled</td>
<td>7</td>
<td>18.9</td>
</tr>
<tr>
<td>Semi-Skilled</td>
<td>2</td>
<td>5.4</td>
</tr>
<tr>
<td>Technical</td>
<td>1</td>
<td>2.7</td>
</tr>
<tr>
<td>Retired</td>
<td>1</td>
<td>2.7</td>
</tr>
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</table>

<sup>1</sup> This column was for non-respondents
however, did not respond to the item relating to the SEA decision outcomes. Seventy-five percent of the parents reported they had not been involved in additional hearings beyond the hearing they had experienced.

With regard to occupational status, parent respondents were largely in professional occupations (45.9%) while 43.3% were reported as homemakers or in skilled occupations.

**Hearing Officers.** The percentages and frequencies of the number of hearings, hearings in the same LEAs, and decision outcomes reported by hearing officers are presented in Table 3. A review of the table indicates that 64.2% of all hearing officers were involved in either 2-5 or 6-10 hearings. Nineteen or 67.9% of the hearing officers reported having held hearings in the same LEA and reported a total of 84 cases being held.

Decision outcomes reported by hearing officers in hearings they had conducted showed LEAs (65.4%) were favored over parents (34.6%). Where hearings were held in the same LEAs more than once, LEAs were favored over parents 73.6% of the time.

Frequencies and percentages of due process hearings by issue area as reported by hearing officers are found in Table 4. Hearings where placement was the issue was reported in 34.0% of the cases. Free appropriate public education issues were reported in 25.0% of the cases while 34% of the cases involved issues of identification and evaluation.

As indicated in Table 5, the majority of hearing officers in Virginia have specialized in Civil Law (53.1%). Other areas frequently indicated were Administrative Law (37.5%), Family Law (37.5%), Contract
TABLE 3
PERCENTAGES AND FREQUENCIES OF NUMBER OF HEARINGS, HEARINGS IN THE SAME LEA, AND DECISION OUTCOMES

<table>
<thead>
<tr>
<th>Number of Hearings:</th>
<th>f</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
<td>3</td>
<td>10.8</td>
</tr>
<tr>
<td>2-5</td>
<td>9</td>
<td>32.1</td>
</tr>
<tr>
<td>6-10</td>
<td>9</td>
<td>32.1</td>
</tr>
<tr>
<td>Ten or more</td>
<td>7</td>
<td>25.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Hearings in the Same LEA:</th>
<th>f</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>19</td>
<td>67.9</td>
</tr>
<tr>
<td>No</td>
<td>8</td>
<td>28.5</td>
</tr>
<tr>
<td>NR</td>
<td>1</td>
<td>3.5</td>
</tr>
<tr>
<td>How many</td>
<td>84</td>
<td>---</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Decision Outcomes:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Parents</td>
<td>34.6</td>
</tr>
<tr>
<td>LEAs</td>
<td>65.4</td>
</tr>
</tbody>
</table>
TABLE 4
FREQUENCIES AND PERCENTAGES OF DUE PROCESS HEARINGS
BY ISSUE AREA AS REPORTED BY HEARING OFFICERS

<table>
<thead>
<tr>
<th>Issue</th>
<th>f</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identification</td>
<td>11</td>
<td>18.0</td>
</tr>
<tr>
<td>Evaluation</td>
<td>10</td>
<td>16.0</td>
</tr>
<tr>
<td>Placement</td>
<td>21</td>
<td>34.0</td>
</tr>
<tr>
<td>FAPE&lt;sup&gt;1&lt;/sup&gt;</td>
<td>15</td>
<td>25.0</td>
</tr>
<tr>
<td>Combination&lt;sup&gt;2&lt;/sup&gt;</td>
<td>4</td>
<td>7.0</td>
</tr>
</tbody>
</table>

<sup>1</sup> Free Appropriate Public Education

<sup>2</sup> A combination of Identification, Evaluation, Placement, or FAPE
### TABLE 5

FREQUENCIES AND PERCENTAGES OF PROFESSIONAL SPECIALIZATION AS REPORTED BY HEARING OFFICERS

<table>
<thead>
<tr>
<th>Area of Specialization</th>
<th>f</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Law</td>
<td>12</td>
<td>37.5</td>
</tr>
<tr>
<td>School Law</td>
<td>3</td>
<td>9.4</td>
</tr>
<tr>
<td>Civil Law</td>
<td>17</td>
<td>53.1</td>
</tr>
<tr>
<td>Contract Law</td>
<td>11</td>
<td>34.4</td>
</tr>
<tr>
<td>Criminal Law</td>
<td>10</td>
<td>31.2</td>
</tr>
<tr>
<td>Family Law</td>
<td>12</td>
<td>37.5</td>
</tr>
<tr>
<td>Tax Law</td>
<td>2</td>
<td>6.2</td>
</tr>
<tr>
<td>Other(^1)</td>
<td>9</td>
<td>28.1</td>
</tr>
</tbody>
</table>

\(^1\) Includes trial, personal injury, civil rights, and corporate law
Law (34.4%), and Criminal Law (31.2%). School Law (9.4%) was reported as an area of specialization among three hearing officers.

Hearing officers were requested to rate the training received by the SEA and the adequacy of their rate of payment. These data are presented in Table 6. A four point rating scale was used by the respondents to rate their training as follows: 1=excellent, 2=good, 3=fair, and 4=poor. Respondents were instructed to indicate a "5" if no training had been received.

Training received by the SEA was perceived as being excellent (6.3%) or good (40.6%) while 37.5% rated their training from fair (28.1%) to poor (9.4%). Five hearing officers received no formal training. The mean rating for training conducted by the SEA was 2.48 which indicated a fair to good rating. Of those hearing officers who reported not having training (15.6%) from the SEA, two conducted 2-5 hearings, two conducted 6-10 hearings, and one conducted ten or more.

Comments from hearing officers regarding their training were in a majority of cases positive. Respondents indicated the desire to have annual training sessions that would provide general information on federal and state regulations; training in the conduct of hearings; and sessions that would focus upon the substantive issues of placement, evaluation, identification, and free appropriate public education. Hearing officers also recommended that training seminars should include sessions on decision summaries in dispute areas and decision writing.

Hearing officers (90.3%) indicated their present rate of payment was inadequate as presented in Table 6. The reported mean rate of payment was $44 per hour while the most frequently specified amounts
TABLE 6
RATINGS REGARDING TRAINING AND ADEQUACY OF
RATE OF PAYMENT FOR HEARING OFFICERS

<table>
<thead>
<tr>
<th>Training: 1</th>
<th>f</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excellent</td>
<td>2</td>
<td>6.3</td>
</tr>
<tr>
<td>Good</td>
<td>13</td>
<td>40.6</td>
</tr>
<tr>
<td>Fair</td>
<td>9</td>
<td>28.1</td>
</tr>
<tr>
<td>Poor</td>
<td>3</td>
<td>9.4</td>
</tr>
<tr>
<td>No Training</td>
<td>5</td>
<td>15.6</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate of Payment:</th>
<th>f</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>3</td>
<td>9.7</td>
</tr>
<tr>
<td>No</td>
<td>28</td>
<td>90.3</td>
</tr>
</tbody>
</table>

Recommended Rate:

- **Range** = $10 to $85 per hour
- **Mode** = $50 and $40 per hour
- **Mean** = $44 per hour

---

1 The reported mean was 2.48 based on a 4 point rating scale: 1=Excellent, 2=Good, 3=Fair, and 4=Poor
were $40 and $50 per hour. At the time of this study, the rate of payment for Virginia hearing officers was $20 per hour.

LEAs. LEA respondents by student enrollment, geographical location, and handicapped child count are presented in Table 7. The majority of LEAs (53.5%) involved in due process hearings were districts with student enrollments between 1000-4999, rural (66.3%), and a handicapped child count (56.4%) between 100-499.

The number of hearings held, areas of disputes, and decision outcomes are presented in Table 8. The majority of LEAs (60.4%) reported having been involved in only one hearing. Of the hearings held, 51.6% were reported involving placement disputes and issues related to free appropriate public education was reported in 19.4% of the hearings. Decision outcomes generally favored LEAs (64.7%) over parents (35.3%).

Information regarding the learner involved in the hearing as cited by LEAs is set forth in Table 9. LEAs, like parents, reported hearings generally involved male (66.0%), elementary aged (53.6%), learning disabled (51.8%) school aged children.

Implementation of the Due Process Hearing Procedures

Data pertaining to the implementation of due process hearings found in Part I of the questionnaire are delineated in Table 10. All groups were consistently favorable in indicating that parents were being notified of procedural safeguard rights prior to the hearing (#20). In certain instances, however, parents reported when this was done it was very legalistic and difficult to understand. Comments provided by
TABLE 7
LEAs BY STUDENT ENROLLMENT, GEOGRAPHICAL LOCATION, AND HANDICAPPED CHILD COUNT INVOLVED IN VIRGINIA DUE PROCESS HEARINGS

<table>
<thead>
<tr>
<th>Enrollment:</th>
<th>Size</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 999</td>
<td>11.9</td>
<td></td>
</tr>
<tr>
<td>1,000 - 4,999</td>
<td>53.5</td>
<td></td>
</tr>
<tr>
<td>5,000 - 9,999</td>
<td>17.8</td>
<td></td>
</tr>
<tr>
<td>10,000 - 24,999</td>
<td>10.9</td>
<td></td>
</tr>
<tr>
<td>25,000 or more</td>
<td>5.9</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Geographical Location:</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>20.8</td>
</tr>
<tr>
<td>Suburban</td>
<td>12.9</td>
</tr>
<tr>
<td>Rural</td>
<td>66.3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Handicapped Child Count:</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 99</td>
<td>4.9</td>
</tr>
<tr>
<td>100 - 499</td>
<td>56.4</td>
</tr>
<tr>
<td>500 - 999</td>
<td>22.9</td>
</tr>
<tr>
<td>1,000 - 2,499</td>
<td>9.9</td>
</tr>
<tr>
<td>2,500 or more</td>
<td>5.9</td>
</tr>
</tbody>
</table>
# Table 8

**Percentages of LEAs Regarding the Number of Hearings, Areas of Disputes, and Decision Outcomes in Virginia Due Process Hearings**

<table>
<thead>
<tr>
<th>Number of Hearings:</th>
<th>f</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
<td>29</td>
<td>60.4</td>
</tr>
<tr>
<td>2-5</td>
<td>14</td>
<td>29.2</td>
</tr>
<tr>
<td>6-10</td>
<td>2</td>
<td>4.1</td>
</tr>
<tr>
<td>10 or more</td>
<td>3</td>
<td>6.3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Area of Dispute:</th>
<th>f</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identification</td>
<td>2</td>
<td>3.2</td>
</tr>
<tr>
<td>Evaluation</td>
<td>6</td>
<td>8.1</td>
</tr>
<tr>
<td>Placement</td>
<td>32</td>
<td>51.6</td>
</tr>
<tr>
<td>FAPE</td>
<td>12</td>
<td>19.4</td>
</tr>
<tr>
<td>Combination</td>
<td>11</td>
<td>17.7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Decision Outcomes:</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parents</td>
<td>35.3</td>
</tr>
<tr>
<td>LEAs</td>
<td>64.7</td>
</tr>
</tbody>
</table>

1. Includes the frequency a dispute area was indicated

2. Percentages reflect an average of the reported percentages by LEAs
### TABLE 9

REPORTED PERCENTAGES OF CHILD'S SEX, GRADE LEVEL, AND HANDICAPPING CONDITION WHO WERE REPORTED BY LEAs INVOLVED IN VIRGINIA DUE PROCESS HEARINGS

<table>
<thead>
<tr>
<th>Child's Sex:</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>66.0</td>
</tr>
<tr>
<td>Female</td>
<td>44.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Grade Level:</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elementary</td>
<td>53.6</td>
</tr>
<tr>
<td>Middle School</td>
<td>14.3</td>
</tr>
<tr>
<td>Junior High</td>
<td>10.7</td>
</tr>
<tr>
<td>Senior High</td>
<td>21.4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Handicapping Condition:</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Educable Mentally Retarded</td>
<td>3.4</td>
</tr>
<tr>
<td>Trainable Mentally Retarded</td>
<td>0.0</td>
</tr>
<tr>
<td>Severely Mentally Retarded</td>
<td>0.0</td>
</tr>
<tr>
<td>Emotionally Disturbed</td>
<td>27.6</td>
</tr>
<tr>
<td>Learning Disabled</td>
<td>51.8</td>
</tr>
<tr>
<td>Physically Handicapped</td>
<td>0.0</td>
</tr>
<tr>
<td>Multiple Handicapped</td>
<td>6.9</td>
</tr>
<tr>
<td>Speech Handicapped</td>
<td>0.0</td>
</tr>
<tr>
<td>Visually Handicapped</td>
<td>3.4</td>
</tr>
<tr>
<td>Hearing Handicapped</td>
<td>6.9</td>
</tr>
<tr>
<td>VARIABLE</td>
<td>PARENTS (N=20)</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td></td>
<td>Y</td>
</tr>
<tr>
<td>(20) Parent Notified Of Rights</td>
<td>85.0</td>
</tr>
<tr>
<td>(40) Parent Access To Records</td>
<td>85.0</td>
</tr>
<tr>
<td>(13) Appeal Rights Given</td>
<td>80.0</td>
</tr>
<tr>
<td>(24) Procedures Explained</td>
<td>45.0</td>
</tr>
<tr>
<td>(4) Open/Closed Hearing</td>
<td>50.0</td>
</tr>
<tr>
<td>(22) Informed of Independent Evaluation</td>
<td>45.0</td>
</tr>
<tr>
<td>(23) Informed of Legal Aid</td>
<td>55.0</td>
</tr>
<tr>
<td>(26) Evidence Agreed By Both</td>
<td>40.0</td>
</tr>
<tr>
<td>(14) Parents Provided Transcript</td>
<td>45.0</td>
</tr>
<tr>
<td>(16) Records Cost Reasonable</td>
<td>45.0</td>
</tr>
</tbody>
</table>

1 Column response key: Y=Yes, N=No, DK=Don't Know, NR=No Response

2 Mean refers to the extent a variable was implemented based on a 4 point scale: 1=Always, 2=Frequently, 3=Seldom, and 4=Never
few hearing officers indicated notification was not usually necessary as parents were usually represented by counsel.

With regard to parents being provided access to confidential records (#40), all groups were in agreement that this procedure was implemented. In only two instances did parents indicate the LEA denied access or made it difficult to have access to their child's records.

LEAs and parents were largely supportive of the hearing officer informing each of them about their right to appeal the local level decision within the required time limits (#13). Since no comments were provided by either group regarding the implementation of this procedure, it would appear that isolated incidents had occurred as some parents (20.0%) and LEAs (16.6%) indicated they were not informed of this right.

The data indicated that although parents were being notified of their rights prior to a hearing, the extent to which they were being explained (#24) would appear to be another matter. Most parents (50.5%) indicated these rights were not being explained while LEAs and hearing officers largely agreed they were. LEAs and hearing officers commented that because parents were usually represented by legal counsel, it was assumed their rights were fully explained. Parents indicated that LEAs provided them with sections of Public Law 94-142 referencing procedural rights, a form letter informing them of their rights, or appropriate sections of the state regulations.

Parents were evenly distributed in being given the option of a closed or open hearing as fifty percent reported each "yes" and "no" (#4). LEAs and hearing officers reported that in their experience the hearing officer never gave the parents this option while one hearing
officer indicated this option was frequently given. Comments from some parents revealed they had no knowledge this option was available, it was never mentioned by either the LEA or hearing officer, or it was never explained by their own attorney. In this regard, one hearing officer reported that the question of an open or closed hearing never arose.

The parents were evenly distributed in being informed of their right to an independent evaluation if they disagreed with the evaluation conducted by the LEA (#22). In this regard, 45.0% reported "yes" and 45.0% reported "no." LEAs (91.6%) and hearing officers (75.0%) indicated parents were being informed of this procedural right. Of the remaining hearing officer respondents, 17.8% reported they did not know if parents were being informed of this or not. With regard to the extent this was being accomplished, hearing officers were less certain than LEAs this was always being done. Comments offered by respondents were largely provided by hearing officers who, in a majority of cases, indicated they simply were unaware if parents were being informed of this right. One hearing officer reported this was now the case, but not so in the past. LEA comments indicated that where parents had already obtained an independent evaluation, informing parents of this right was unnecessary. In only one case was it reported by a parent that the LEA did not inform them of this right.

With regard to being advised of free, low cost legal aid (#23), parents (55.0%) indicated they were being informed while 45.0% reported they were not. LEAs were more certain this right was being conveyed as compared to 28.5% of the hearing officers who reported they did not know.
Both LEA and hearing officer respondents were similar in that both groups reported this right was not conveyed on a consistent basis. Comments from the three groups revealed a clearer understanding of the ratings. LEAs indicated either free, low cost legal aid was not requested by parents or parents usually had already retained their own attorney and informing them of legal aid was unnecessary. Hearing officer's comments ranged from either assuming parents were informed by LEAs where to obtain legal aid or they had no basis to know if parents were informed or not. In one instance, a parent respondent reported the LEA gave them telephone numbers but were not provided names of persons to contact.

Because respondents were largely negative with regard to new evidence being agreed to by both parties at a hearing (#26), the percentages for this item were viewed with caution. Based upon comments of all respondents, new evidence presented after a hearing had begun does not frequently take place. Therefore a "no" response is an indication that new evidence was not presented as opposed to this procedure not being consistently implemented. Likewise, comparisons between LEAs and hearing officers were more of an indication of the extent new evidence was presented or, as was the case with hearing officers, the extent which evidence was presented and was agreed to by both parties. In specific hearings, however, LEAs commented that when new evidence was presented by parents, the hearing officer always allowed it rationalizing that all information would serve to benefit the child. Parent comments did reflect isolated instances where evidence was allowed by the hearing officer even under objection. One hearing officer commented that when agreement of new evidence was
a problem, the hearing was suspended for five days thereby allowing both sides to exercise the five day limit of disclosure of evidence.

In the implementation of procedural requirements parents have the right to receive a written verbatim record of the local hearing transcript (#14). Data indicated that there was variability in how this was perceived. However, based on comments provided by respondents, the hearing transcript was typically not requested except when an SEA appeal was filed. Because parents in this study were those who had been through the appeal process, the data were more representative of the extent that hearing transcripts were requested as opposed to the transcripts being provided as specified in the procedural statement. Parents reported instances where they were unaware they could obtain a hearing transcript, they were denied a hearing transcript, the transcript was edited, provided only to their attorney, or informed it would be too costly. LEA comments generally indicated that transcripts were usually not requested. Almost half of the hearing officer respondents also indicated that no transcripts were requested; they did not know, or did not respond to the item.

The data reported with regard to the reasonable costs of hearing transcripts (#16) were unclear. The percentages reflected the extent to which the transcripts were requested as compared to being provided at reasonable costs. Therefore, according to those parents who received hearing transcripts, it was provided at reasonable costs. Forty-five percent of the parents reported this was the case. The percentage of hearing officers (39.3%) who indicated a "yes" response generally reflected their knowledge of a hearing record being provided
but not necessarily at reasonable costs. Hearing officers (42.9%) reported they had no knowledge if transcripts were provided at reasonable costs or not. Comments provided by the respondents revealed a higher incidence of electronic tapes being furnished as a record of the hearings as opposed to the written verbatim record. Both LEAs and hearing officers reported providing the hearing record to parents when requested.

The seventy-five percent (75.0%) criterion level was applied to the variables in this category. Noting the exceptions for items #26, #14, and #16, parents: 1) did not perceive acceptable levels of implementation with regard to the due process procedures being fully explained (#24), 2) being informed by LEAs of the right to an independent evaluation if they disagreed with the evaluation conducted by the school (#22), 3) the hearing officer giving parents the option of an open or closed hearing (#4), and 4) being informed by LEAs where they could obtain free, low cost legal aid and other services when a hearing was requested (#23). LEAs reported acceptable levels of implementation in all areas withstanding the exceptions noted for items #14 and #16. Hearing officers did not report an acceptable level of implementation with regard to parents being informed by LEAs where free, low cost legal aid could be obtained (#23). As the table indicates, ratings by hearing officers were influenced by their lack of knowledge of the implementation of the following requirements: 1) parents being provided access to records (#40), 2) parents being informed by LEAs of their right to an independent evaluation (#22), 3) parents being informed by LEAs where free, low cost legal aid could be obtained (#23), 4) LEAs
providing local hearing transcripts to parents when requested (#14).

and 5) the copy of the local hearing transcript being provided at
reasonable costs (#16).

Timeline Compliance

As indicated in Table 11, acceptable levels of implementation of
disclosing evidence within the five day limit (#19) were reported by
all the groups. LEAs and hearing officers were alike in reporting
this was done so on a less than consistent basis. Comments provided
by LEAs and hearing officers revealed the parents' inability to submit
their evidence within the five days as compared to LEAs. LEAs
reported instances where hearings were delayed for parents to have
additional time to provide evidence. Further, LEAs reported that some
hearing officers allowed evidence to be used at hearings without it
being disclosed to them. Two parent respondents, however, cited
instances where the hearing officer allowed LEAs to submit evidence
without disclosure. Hearing officers indicated this requirement was
usually implemented or waived on mutual agreement of both parties.

The appointment of the hearing officer from the approved list
within the five day limit (#1) was more consistently implemented
according to LEAs (97.9%) as compared to hearing officers (82.1%).
Parents were less certain this procedure was followed as 65.0% reported
"yes" while 30.0% reported "no." The mean responses of LEAs and hearing
officers differed with regard to the extent this was done. Hearing
officer's ratings revealed their appointment within the five day period
was not always implemented. LEAs commented that due to mediation
attempts this often caused the five day requirement not to be met.
TABLE 11

PERCENTAGES¹ AND MEAN RESPONSES OF RESPONDENT GROUPS REGARDING TIMELINE COMPLIANCE

<table>
<thead>
<tr>
<th>VARIABLE</th>
<th>PARENTS (N=20)</th>
<th>LEAs (N=48)</th>
<th>H.O.'s (N=32)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Y</td>
<td>N</td>
<td>DK</td>
</tr>
<tr>
<td>(19) Evidence Submitted In Five Days</td>
<td>75.0</td>
<td>20.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(1) H.O. Appointed In Five Days</td>
<td>65.0</td>
<td>30.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(3) Hearing Arranged By H.O. Within Five Days</td>
<td>55.0</td>
<td>35.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(11) H.O. Decision Submitted In Forty-Five Days</td>
<td>50.0</td>
<td>45.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

¹ Column response key: Y=Yes, N=No, DK=Don't Know, NR=No Response

² Mean refers to the extent a variable was implemented based on a 4 point scale: 1=Always, 2=Frequently, 3=Seldom, and 4=Never
One hearing officer, having held more than one hearing, commented that where LEAs are involved in hearings for the first time they are usually unfamiliar with the timeline requirements. Parents, however, reported instances where the hearing officer was appointed almost a month after the request for the hearing. A majority of parents indicated they were unaware a list of approved hearing officers was available or a required time limit existed for the appointment of the hearing officer.

Parents, LEAs, and hearing officers generally agreed that the hearing officer arranged the hearing within the five day required limit. However, some hearing officers commented that the LEAs usually assumed this responsibility. LEAs commented that conflicting schedules among attorneys resulted in the difficulty in arranging the time, date, and location of the hearing. Hearing officers also indicated this was a problem and usually resulted in not meeting the required five day requirement. Parents reported specific instances where as much as thirty and forty-nine days had elapsed until a hearing was scheduled.

Receiving the hearing officer's written decision was perceived by the majority of respondents being rendered within the forty-five (45) day requirement (#11). Although hearing officers (93.7%) reported this was done, it was done so with varying degrees of consistency. Hearing officers commented that the time limit was unrealistic due to extensions granted for additional evidence, evaluation information, and delays in their appointment by LEAs. LEAs reported some decisions were rendered thirty or sixty days late and as long as six months after the deadline. Parents concurred with LEAs in reporting late decisions.

The seventy-five percent (75.0%) criterion level was applied to the variables in this category. As shown in the table, parents reported
unacceptable levels of implementation with regard to: 1) LEAs appointing the hearing officer within the five day required limit (#1), 2) the hearing officer arranging the hearing within five days of appointment by the LEA (#3), and 3) the hearing officer submitting the written decision within the forty-five day requirement (#11). LEAs agreed with parents and reported an unacceptable level of implementation on item #11. Hearing officers did not report unacceptable levels of implementation in the timeline compliance category.

**Fairness and Impartiality in Due Process Hearings**

Data with regard to items associated with fairness and impartiality in due process hearings are delineated in Table 12. Items #38 and #35 were similar in their intent to assess fairness in allowing ample time for either party to present their case in a hearing. The reported percentages indicated a high degree of implementation of ample time being given to both parents and LEAs in this regard.

Hearing officers were supported by parents (80.0%) and LEAs (97.9%) in their efforts to protect the due process rights of all parties during hearings (#9). Parents in certain instances, however, commented that hearing officers did not explain the hearing procedures well enough to be understood and if the hearing officer had questions during the hearing, all were addressed to LEA staff although the requested information was available from the parents attorney. LEAs commented that hearing officers were more conscious of protecting the due process rights of parents.

Hearing officers (96.4%) and LEAs (97.9%) reported that hearing officers maintained an atmosphere promoting fairness during hearings (#10).
<table>
<thead>
<tr>
<th>VARIABLE</th>
<th>PARENTS (N=20)</th>
<th>LEAs (N=48)</th>
<th>H.O.'s (N=32)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Y</td>
<td>N</td>
<td>DK</td>
</tr>
<tr>
<td>(38) Ample Time Allowed</td>
<td>100.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>LEAs to Present</td>
<td>Case</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(35) Ample Time Allowed</td>
<td>95.0</td>
<td>5.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Parents to Present</td>
<td>Case</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(9) H.O. Protected</td>
<td>80.0</td>
<td>15.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Rights of Parties</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(10) H.O. Promoted</td>
<td>70.0</td>
<td>30.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Fairness During Hearing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(39) H.O.'s Were</td>
<td>60.0</td>
<td>35.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Impartial</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(6) Extensions Did</td>
<td>80.0</td>
<td>15.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Not Deprive Rights</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(21) Handbook Provided</td>
<td>60.0</td>
<td>35.0</td>
<td>0.0</td>
</tr>
<tr>
<td>to Parents</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 Column response key: Y=Yes, N=No, DK=Don't Know, NR=No Response

2 Mean refers to the extent a variable was implemented based on a 4 point scale: 1=Always, 2=Frequently, 3=Seldom, and 4=Never
Parents were less supportive in that 70.0% reported this was the case. Slight differences were noted between LEAs and hearing officers with regard to the extent this was implemented. LEAs who experienced ten or more hearings commented that much variability existed among hearing officers in being excessively fair towards parents as to LEAs. Parents reported instances where hearing officers argued with LEA staff and witnesses. In other hearings, parents commented the hearing officer exhibited clear bias toward LEAs by shortening witness testimony and being overly familiar with LEA personnel. Hearing officers indicated that fairness was a very important element of the hearing process and they attempted to implement this to the best of their ability.

Hearing officers, LEAs, and to a lesser extent parents agreed that hearing officers were impartial in the conduct of hearings (#39). While 95.8% of LEAs agreed with parents, the extent to which this was implemented was more varied as compared to hearing officers. LEAs commented that hearing officers were perceived as often being influenced by the emotional appeals of the hearing participants, tended to be biased towards parents, and were overly conscious of ensuring that parental rights were protected. One parent respondent also indicated that the hearing officer appeared to protect the parent more so than the LEA. Instances were reported by parents where they perceived too much familiarity with LEA personnel during the hearings and feared this influenced the outcome of the decision.

Granting extensions and not depriving either party of their rights (#6) was perceived as being favorably implemented by all respondent groups. Based upon comments and the reported percentage data, this
item tended to reflect the incidence of the extent to which extensions were granted as compared to whether the hearing officer deprived either party of their rights when it occurred. Therefore mean ratings of hearing officers and LEAs were an indication of the extent to which extensions were granted but not necessarily an indication of rights being denied. LEA respondents who had been involved in ten or more hearings reported that hearing officers granted too many extensions to parents which often served to jeopardize the forty-five (45) day limitation. Hearing officers agreed with LEAs by indicating that extensions when granted did pose problems in meeting the required time limits. Parents commented however that when requested, the hearing officer was fair in granting the extension.

Providing parents with a copy of the parent handbook (#21) was characterized with considerable confusion on the part of LEAs and a lack of knowledge by hearing officers. Although 72.9% of the LEAs reported this was not implemented, the comments tended to reflect uncertainty whether this was a requirement upon the LEA. LEA comments ranged from not having knowledge the handbook existed or it was unavailable for their use. Since the handbook was designed to provide an overview of parents rights and responsibilities in due process issues, LEAs reported providing parents with copies of state regulations pertaining to due process rights or handbook materials developed by the LEA. Likewise, hearing officers either had no knowledge of the handbook or assumed the LEA furnished this to parents. It was indicated by certain hearing officers that the handbook if available should be stressed. Fifty percent of the hearing officers did not know this
handbook was available to parents. Parents reported receiving information but were uncertain if it was the specified handbook.

The seventy-five percent (75.0%) criterion level was applied to the variables in this category. As shown in the table, parents reported unacceptable levels of implementation with regard to hearing officers promoting fairness during hearings (#10) and being impartial in the conduct of hearings (#39). With the exceptions reported for items #6 and #21, all groups reported less than the acceptable level of implementation with regard to the parent handbook (#21).

Hearing Officer Duties and Responsibilities

Data related to hearing officer duties and responsibilities are presented in Table 13. Controlling the mood and temperament of the hearing by hearing officers (#41) was perceived by all three groups as being favorably implemented. Both LEAs and parents, however, cited instances where the attorneys for either party were more effective in controlling the hearing than the hearing officer. Some parents and LEAs commented that the hearing officer became angry at witnesses and handled the hearing like a courtroom procedure. LEAs were more critical of the level of implementation than hearing officers.

Providing timely communications and information by the hearing officer prior to the hearing was perceived by LEAs and parents as being favorably implemented (#30). In only two instances did parents report they had received no information from the hearing officer or that it was submitted on less than a timely basis. Many LEAs commented that the LEA attorney or staff persons handled all pre-hearing communications
<table>
<thead>
<tr>
<th>VARIABLE</th>
<th>PARENTS (N=20)</th>
<th>LEAs (N=48)</th>
<th>H.O.'s (N=32)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Y</td>
<td>N</td>
<td>DK</td>
</tr>
<tr>
<td>(41) Controlled Mood and Temperament of Hearing</td>
<td>80.0</td>
<td>20.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(30) Timely Communications</td>
<td>75.0</td>
<td>20.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(17) Protected Confidentiality of Either Party</td>
<td>65.0</td>
<td>15.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(25) Obligations of Either Party in Written Decision</td>
<td>75.0</td>
<td>20.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(29) Decision was Understandable</td>
<td>60.0</td>
<td>30.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(36) Knew Virginia Laws and Regulations</td>
<td>60.0</td>
<td>30.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(28) Decision Based Solely on Evidence</td>
<td>60.0</td>
<td>40.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(34) Knew Federal Laws and Regulations</td>
<td>55.0</td>
<td>35.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(15) Encouraged Mediation</td>
<td>25.0</td>
<td>70.0</td>
<td>0.0</td>
</tr>
<tr>
<td>(5) Scheduled a Pre-Hearing Conference</td>
<td>10.0</td>
<td>90.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

1 Column response key: Y=Yes, N=No, DK=Don't Know, NR=No Response

2 Mean refers to the extent a variable was implemented based on a 4 point scale: 1=Always, 2=Frequently, 3=Seldom, and 4=Never
and arrangements as this has not been the responsibility of the hearing officer when hearings took place in their divisions.

Protecting the confidentiality of either party to a hearing (#17) was largely supported by LEAs (93.7%). Although 65.0% of the parents reported the hearing officer did protect their confidentiality, 20% did not respond to this item and commented they had no basis to know if it was or was not protected. LEAs were less certain than were hearing officers that confidentiality was protected as indicated by the mean rating of the level of implementation.

With regard to the final written decision of the hearing officer delineating the obligations of either party (#25), all respondents reported this was favorably implemented. No comments were offered by the various respondent groups.

The hearing officers' written decisions were generally understood (#29) more by LEA (91.6%) than parents (60.0%). According to LEAs, the quality of the decision varies with the hearing officer. Parents on the other hand indicated that decisions were written too legalistically and vague. As 85.6% of the hearing officers felt their decisions were understandable, comments revealed they had no means to know if it was understood by either party as they received no feedback either way.

Data reported with regard to the hearing officer's knowledge of Virginia (#36) and federal (#34) laws regarding handicapped children were almost identical for each item. However, the data and comments indicated that hearing officers have a greater understanding of state than federal laws. LEAs commented that the hearing officers'
understanding of both were improving but felt that basic knowledge of federal and state laws was questionable and sometimes inaccurate. Parents and LEAs agreed that hearing officers had greater knowledge of state (60.0%) than federal laws (55.0%). Although not considered a major percentage difference, the data show that hearing officers likewise perceived themselves as having more knowledge of state (96.4%) than federal (92.8%) laws regarding handicapped children.

Sixty percent of the parents felt that hearing officers based their decision solely upon the evidence and testimony presented during the hearing (#28), while 40.0% reported this was not the case. LEAs were less certain the decision was based solely upon the evidence presented. Seven parent respondents indicated the hearing officer's decision was not consistent with the evidence presented. In one hearing, parents reported that their attorney had made corrections in the decision and brought this to the attention of the hearing officer who in turn made immediate corrections. Certain respondents reported that the final decision contained too much opinion and personal bias by the hearing officer and this alone served as the rationale for one parent to file an appeal. LEAs involved in ten or more hearings reported that hearing officers tended to be influenced by emotional appeals during the hearings as opposed to the factual evidence. Two LEA respondents indicated that when they had received their final decisions, the hearing officer had based the decisions on one witness' testimony and did not mention the testimony of other equally competent witnesses.

Encouraging the use of mediation (#15) to resolve a dispute would appear to be negatively perceived by parents (75.0%) and LEAs (29.2%).
Data for this item were interpreted as an indication of the extent which mediation was encouraged by the hearing officer. Hearing officers indicated it was used on less than a frequent basis. Parents commented that mediation was not really encouraged as it was not feasible to do so. Few LEA respondents tended to agree with parents as they indicated mediation was not necessarily an alternate solution due to the polarized nature of the situation.

Although optional, hearing officers would not appear to be scheduling pre-hearing conferences (#5) with any degree of regularity. In a few cases, parents indicated that when this conference was held, it was usually attended by their attorney. Hearing officers commented that a pre-hearing conference should be encouraged but none are usually requested. Likewise LEAs indicated pre-hearing conferences were seldom held.

The seventy-five percent (75.0%) criterion level was applied to the variables in this category. With the exception of the optional requirements referenced by #15 and #5, the table indicates that parents reported unacceptable levels of implementation with regard to: 1) hearing officers knowing and understanding Virginia (#36) and federal laws (#34) regarding handicapped children, 2) protecting confidentiality of either party (#17), and 3) the decision of the hearing officer being understandably written (#29) and based solely upon the evidence and testimony presented at the hearing (#28). LEAs and hearing officers indicated all items in this category were within the level of accepted implementation withstanding the exceptions noted for #15 and #5.
LEA Duties and Responsibilities

The percentages of respondent groups ratings with regard to selected duties and responsibilities of LEAs in the due process hearing procedure as defined in the state regulations are delineated in Table 14. These items were performance indicators of LEAs as they carried out certain duties in the process.

Parents (70.0%) felt the LEA appointed the hearing officer in such a manner as to protect the confidentiality of the parent and/or child involved in the hearing (#2). Hearing officers (92.8%) and LEAs (95.8%) were in almost identical agreement with regard to the requirement being implemented and the extent to which it has been done. Fifteen percent of the parent respondents did not respond to this item. Parents cited specific instances where the hearing was announced to the public at a school board meeting. Another commented the nature of their case was released to the news media prior to the hearing. Hearing officers stated that ensuring confidentiality was difficult to implement because the identities of the parties must be disclosed and information released to allow the hearing officer to determine if there are any conflicts of interest. One hearing officer commented that it depended upon the degree of confidentiality that the LEA or parent would want to achieve if it is at all protected. Some LEA respondents commented that hearing officers were given all identifiable information as necessary.

Items #12, #27, and #18 were selected to assess the extent to which LEAs completed the implementation plan. As the development of this plan is required in Virginia state regulations, the reported data and comments from the respondents revealed confusion as to the nature and meaning of this requirement.
<table>
<thead>
<tr>
<th>VARIABLE</th>
<th>PARENTS (N=20)</th>
<th>LEAs (N=48)&lt;sup&gt;2&lt;/sup&gt;</th>
<th>H.O.'s (N=32)&lt;sup&gt;2&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Y  N  DK  NR</td>
<td>Y  N  DK  NR  X</td>
<td>Y  N  DK  NR  X</td>
</tr>
<tr>
<td>(2) LEA Protected Confidentiality of Parent/Child</td>
<td>70.0 15.0 0.0 15.0</td>
<td>95.8 4.2 0.0 0.0 1.1</td>
<td>92.8 0.0 3.6 3.6 1.2</td>
</tr>
<tr>
<td>(12) Implementation Plan Provided to Parents</td>
<td>35.0 55.0 0.0 10.0</td>
<td>68.8 20.8 0.0 0.0 10.4 1.5</td>
<td>42.9 17.8 32.1 7.2 2.0</td>
</tr>
<tr>
<td>(27) LEA Implementation Plan Based on H.O. Decision</td>
<td>20.0 60.0 0.0 20.0</td>
<td>77.1 12.5 0.0 0.0 10.4 1.2</td>
<td>39.2 7.2 46.4 7.2 2.0</td>
</tr>
<tr>
<td>(18) Implementation Plan Provided to H.O.</td>
<td>25.0 55.0 0.0 20.0</td>
<td>54.2 31.2 0.0 0.0 14.6 2.0</td>
<td>39.2 46.4 7.2 7.2 3.1</td>
</tr>
</tbody>
</table>

<sup>1</sup> Column response key: Y=Yes, N=No, DK=Don't Know, NR=No Response

<sup>2</sup> Mean refers to the extent a variable was implemented based on a 4 point scale: 1=Always, 2=Frequently, 3=Seldom, and 4=Never
LEAs (77.1%) reported developing the implementation plan (#27). However, 60.0% of the parent respondents reported no plan was ever developed while two or twenty percent indicated this was done. Hearing officers (46.4%) did not know this plan was required while 39.3% indicated the plan was developed but 46.4% reported they had never received a copy (#18). Since 55.0% of the parent groups reported hearing officers did not receive a copy of this plan, it was more of an indication of their lack of knowledge of the plan requirement. LEAs (54.2%) indicated hearing officers received copies. Likewise 68.8% of the LEAs reported giving copies to parents and 55.0% of the parents indicated this was not the case. Although 42.9% of the hearing officers felt parents received a copy, 59.9% either did not know or reported parents did not receive a copy. Comments by the respondents were found to be most helpful in explaining the percentages found in the table. Most LEAs commented they were unaware an implementation plan was required. Further, LEAs indicated that the plan would be unnecessary if the decision was found to be in their favor. LEAs referred to the individualized educational plan (IEP) as being synonymous with the implementation plan. Generally, hearing officers expressed the point of view that although these plans should be developed they did not know if it was completed or it was assumed to be done. Few hearing officers were aware of this requirement and indicated they had brought this to the attention of the LEA of their responsibility to complete it. Few hearing officers stated that, in effect, their decision was assumed to constitute the plan required to be developed by the LEA; while others stated the plan was not requested by the hearing officer.
Parents perceived this requirement with as much doubtful confusion as hearing officers and LEAs. Parents indicated they were not aware this was a requirement and equated the plan with the IEP as was the case with LEAs.

The seventy-five percent (75.0%) criterion level was applied to the variables in this category. LEA duties and responsibilities reported by all groups as less than the acceptable level of implementation were:

1) LEAs providing the implementation plan to parents (#12) and
2) providing the implementation plan to hearing officers (#18). Only parents and hearing officers reported less than an acceptable level of implementation with regard to the plan developed by the LEA being based on the hearing officer's decision (#27). Exceptions were noted however with regard to this particular item.

Pre-Hearing and Hearing Activities

The percentages of respondent groups ratings with regard to selected pre-hearing and hearing activities are presented in Table 15. These items were selected to assess the various technical procedures that were implemented when a hearing was requested.

Scheduling due process hearings at mutually agreeable times (#31) was perceived as being favorably implemented. Parents, however, were less certain as 20.0% reported this was not the case. Comments from six parents revealed that hearings were scheduled during school hours thereby causing time lost from their jobs or businesses. Hearing officers commented that scheduling a hearing was difficult because of many conflicting schedules.
### TABLE 15

PERCENTAGES AND MEANS OF RESPONDENT GROUPS REGARDING PRE-HEARING AND HEARING ACTIVITIES

<table>
<thead>
<tr>
<th>VARIABLE</th>
<th>PARENTS (N=20)</th>
<th>LEAs (N=48)</th>
<th>H.O.'s (N=32)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Y  N  DK  NR</td>
<td>Y  N  DK  NR</td>
<td>Y  N  DK  NR</td>
</tr>
<tr>
<td>(31) Hearings Scheduled At Mutually Agreeable Times</td>
<td>80.0 20.0 0.0 0.0</td>
<td>100.0 0.0 0.0 0.0</td>
<td>96.4 0.0 0.0 3.6</td>
</tr>
<tr>
<td>(33) Locations of Hearing Were Convenient</td>
<td>80.0 20.0 0.0 0.0</td>
<td>95.8 2.1 0.0 2.1</td>
<td>89.2 0.0 7.2 3.6</td>
</tr>
<tr>
<td>(7) Electronic Recording Equipment Used At Hearings</td>
<td>80.0 20.0 0.0 0.0</td>
<td>83.3 16.7 0.0 0.0</td>
<td>92.8 3.6 0.0 3.6</td>
</tr>
<tr>
<td>(32) Pre-Hearing Activities Allowed for Dialogue</td>
<td>35.0 55.0 0.0 10.0</td>
<td>81.2 18.8 0.0 0.0</td>
<td>75.0 3.6 17.8 3.6</td>
</tr>
<tr>
<td>(8) Stenographer Used At Hearings</td>
<td>45.0 55.0 0.0 0.0</td>
<td>60.4 39.6 0.0 0.0</td>
<td>67.9 28.5 0.0 3.6</td>
</tr>
<tr>
<td>(37) Mediation When Attempted Was Successful</td>
<td>20.0 80.0 0.0 0.0</td>
<td>47.9 39.6 0.0 12.5</td>
<td>50.0 35.7 10.7 3.6</td>
</tr>
</tbody>
</table>

1 Column response key: Y=Yes, N=No, DK=Don't Know, NR=No Response

2 Mean refers to the extent a variable was implemented based on a 4 point scale: 1=Always, 2=Frequently, 3=Seldom, and 4=Never
With regard to locations chosen for the hearing (#33), all respondent groups indicated this was done with a high degree of consistency. Two parents reported unusual circumstances where hearings were held in conference rooms and noise from other meetings in different rooms distracted from the proceedings.

Electronic tape recording equipment (#7) was more highly favored than the use of a stenographer (#8) during hearings. LEAs indicated the use of a stenographer was too costly as compared to that of the tape recorder. Hearing officers commented that a stenographer, although costly was more preferable due to the accuracy of the hearing record. Respondents in all three groups cited occasions where tape recording equipment became defective during hearings which distorted the dialogue of the proceedings and limited their access to a verbatim record of the hearing.

Although negative responses were reported by parents (55.0%) with regard to activities at the pre-hearing stage allowing for dialogue (#32), parent comments revealed this item was equated with a pre-hearing conference. Hence, the percentages shown in the table were an indication of the extent pre-hearing conferences were held. LEAs and hearing officers were similar to parents in this regard. However LEAs did indicate that attorneys usually handled all pre-hearing matters.

As a pre-hearing activity, there were varied opinions from all respondent groups with regard to mediation, when attempted, being successful in settling disputes (#37). As the table shows, the percentages were more of an indicator of the extent mediation was not attempted as compared to an indication of its success in settling disputes.
In this regard, parents negative ratings reflected the extent to which mediation was attempted in hearings involving them. When respondents indicated that mediation was attempted, it was handled by the attorneys. LEAs would appear to be attempting mediation but in small numbers as indicated by the table. Informal methods were reported as being more effective as opposed to a formal mediation procedure. LEAs which had been involved in ten or more hearings have used mediation as a process in their school divisions and it has diverted the need to complete the hearing procedure. Hearing officer ratings were in reality an indicator of their lack of knowledge of mediation being attempted as they had no basis of knowing. Comments by hearing officers supported the use of mediation by LEAs but indicated that mediation is ineffective when both parties were polarized in their opinions of the issues.

The seventy-five percent (75.0%) criterion of the acceptable level of implementation was not applicable in view of the exceptions noted for items #32 and #37. Since the use of a stenographer is a preference over a tape recorder, the criterion was also not applicable.

Attitudes Regarding Due Process Hearing Procedures

Part II of the questionnaire developed for this study (see Appendix B) focused upon attitudes of the respondents regarding the due process hearing procedures. Eleven items were selected that related to the hearing process.

Hypothesis testing, stated in the null form, was required for each of the items and the one-way analysis of variance was used to determine significant mean differences. The Scheffé post hoc test was applied
where significant F ratios were found. The results of the statistical treatment of the data are found in Table 16.

Hypothesis 1: There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to the due process hearing procedures ensuring fairness in settling disputes.

There were significant mean differences between the three respondent groups with regard to the due process hearing procedures ensuring fairness in settling disputes (#42). The Scheffé post hoc test revealed that parents were significantly different from hearing officers and LEAs in their attitudes. LEAs were found to be significantly different from hearing officers. Therefore, the null hypothesis was rejected.

LEAs commented that the intent of the due process hearing system was good but was influenced by many uncontrollable variables. They indicated that hearing officers lack the necessary educational background to render educational decisions and that much variability existed with regard to the ability of hearing officers to implement the hearing procedures in an equitable manner. Although LEAs felt the hearing procedures provided a mechanism to resolve disputes, it was possible to be abused by parents who have not always represented the best interest of the child. Hearing officers reported that the hearing procedures ensure fairness only when either party is represented by legal counsel or an advocate since the hearing procedure has evolved into a "courtroom" procedure. Although the hearing procedures have become adversarial proceedings, hearing officers indicated that all parties, legal counsel, witnesses, and hearing officers must perform properly to ensure fairness in the process. It was also reported that because the LEA has selected the hearing officer this cannot be assumed as a fair procedure.
### TABLE 16

**MEANS, STANDARD DEVIATIONS, AND F RATIOS OF RESPONDENT GROUPS ATTITUDES REGARDING DUE PROCESS HEARING REQUIREMENTS**

<table>
<thead>
<tr>
<th>Variable 2</th>
<th>Parents</th>
<th>LEAs</th>
<th>H.O.'s</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>X</td>
<td>SD</td>
<td>N</td>
</tr>
<tr>
<td>(42) Fairness</td>
<td>20</td>
<td>3.15</td>
<td>.93</td>
<td>48</td>
</tr>
<tr>
<td>(43) Counsel Impact</td>
<td>20</td>
<td>3.05</td>
<td>1.15</td>
<td>45</td>
</tr>
<tr>
<td>(44) Child Benefit</td>
<td>20</td>
<td>3.75</td>
<td>.55</td>
<td>48</td>
</tr>
<tr>
<td>(45) Impartial</td>
<td>20</td>
<td>2.90</td>
<td>1.02</td>
<td>47</td>
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<tr>
<td>(46) Legal Representation</td>
<td>20</td>
<td>1.85</td>
<td>.93</td>
<td>48</td>
</tr>
<tr>
<td>(47) Not Adversarial</td>
<td>20</td>
<td>3.30</td>
<td>.92</td>
<td>48</td>
</tr>
<tr>
<td>(48) Parent/School Relationships</td>
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<td>3.25</td>
<td>.72</td>
<td>46</td>
</tr>
<tr>
<td>(49) Help of Advocate</td>
<td>20</td>
<td>2.05</td>
<td>1.05</td>
<td>46</td>
</tr>
<tr>
<td>(50) Worth the Experience</td>
<td>20</td>
<td>2.90</td>
<td>1.12</td>
<td>48</td>
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<tr>
<td>(51) Mediation</td>
<td>19</td>
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</tr>
<tr>
<td>(52) Pre-Hearing Conference</td>
<td>20</td>
<td>2.05</td>
<td>.76</td>
<td>47</td>
</tr>
</tbody>
</table>

1. Means based on 4 point rating scale: 1=Strongly Agree, 2=Agree, 3=Disagree, and 4=Strongly Disagree

2. See Appendix for detailed explanation of variable

* P ≤ .05

** P ≤ .01
Parents criticized this procedure as a system that favored the LEAs as they had no say in the selection of the hearing officer. It also was reported that parents were not equipped to have access to financial and material resources, as was the case with LEAs, to have increased their chances of winning decisions.

Hypothesis 2: There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to the extent having legal counsel will have impact on the outcome of the hearing.

As shown in the table there were no significant mean differences between the three respondent groups with regard to legal counsel having an impact on the outcome of a hearing (#43). Therefore, the null hypothesis was not rejected.

Comments from LEAs indicated that legal representation has enhanced the adversarial nature of the hearing proceedings but counsel was needed for both sides. They also indicated that legal counsel has increased the costs of hearings and the attorney's skills and ethics were critical for a successful decision outcome. Hearing officers reported that because due process hearings have become so technical, legal counsel was essential. According to hearing officers, attorneys were necessary when issues were complicated and needed clear and organized presentation. One hearing officer reported that by both parties having legal counsel, it has detracted from giving assistance to a party during the hearing, thereby enhancing the hearing officer's impartiality. Parents indicated that legal counsel was critical as a means to equalize the imbalance between LEAs and parents in the hearing process. One parent reported that having legal counsel ensured their rights were always protected and made a difference in how the case was presented to the hearing officer.
Hypothesis 3: There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to the decision outcome of a hearing always benefiting the child.

There were significant mean differences between the three respondent groups with regard to the decision outcomes of a due process hearing benefiting the child (#44). The Scheffé post hoc test revealed that parents were significantly different from hearing officers and LEAs in their attitudes. LEAs were found to be significantly different from hearing officers. Therefore, the null hypothesis was rejected.

Four LEAs commented that in various hearings they had experienced, the child was in the middle of the antagonism between parents and LEAs and the needs of the child were not always met. Most LEAs indicated that the decision outcome will generally benefit the child. Hearing officers commented that benefitting the child was the desired goal but determining if a decision was beneficial was most difficult. One hearing officer reported that in view of the fact that a hearing is a technical process, the evidence may have been inadequate and hence the hearing officer's decision could have been wrong. Parent comments generally supported their negative attitudes. Instances were cited where attitudes of school personnel towards the child changed as a result of the decision outcome. One parent indicated the child never benefits when the hearing officer's decision is received late.

Hypothesis 4: There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to the due process hearing providing a way for disputes to be resolved on an impartial basis.

There were significant mean differences between the three respondent groups with regard to the due process hearing providing a way for
disputes to be resolved on an impartial basis (#45). The Scheffé post hoc test revealed that parents were significantly different from LEAs and hearing officers in their attitudes. LEAs were found to be significantly different from hearing officers. Therefore, the null hypothesis was rejected.

Parents were more varied in their opinions with regard to impartiality and as a group they tended to disagree that hearings resolved disputes on an impartial basis. LEAs viewed the hearing process as more legal than impartial and the success of the process depended too much on the hearing officer. Hearing officers as a group more strongly agreed the hearing process settled disputes on an impartial basis.

Hypothesis 5: There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to parents having a better chance of having their position prevail when they are represented by an attorney at the hearing.

There were no significant mean differences between the three respondent groups with regard to parents having a better chance of having their position prevail when represented by legal counsel at a hearing (#46). Therefore, the null hypothesis was not rejected. All groups agreed that having legal counsel does increase the parents chances for success in hearings. No comments were offered by respondents on this item.

Hypothesis 6: There are no differences between parents, hearing officers, and LEAs in their attitudes toward the due process hearing not being adversarial.

There were no significant mean differences between the three respondent groups with regard to the adversarial nature of due process hearings (#46). Therefore the null hypothesis was not rejected.
As indicated by the table all groups viewed the due process hearing as an adversarial process. Comments by LEAs indicated that the legalistic nature of the hearing enhances the negativism in hearings. This was supported by parents and hearing officers.

Hypothesis 7: There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to parent/school relationships not being negatively affected as a result of a due process hearing.

There were significant mean differences observed among the three groups. The Scheffe post hoc test revealed that parents were significantly different from LEAs and hearing officers in their attitudes with regard to the effect of a due process hearing on parent/school relationships (#47). LEAs were found to be different from hearing officers. Therefore the null hypothesis was rejected.

Parents indicated that relationships became strained with LEAs and that they were seemingly avoided long after the hearing was over. LEAs agreed that relationships were negatively affected as a result of the hearing process. It was also indicated that relationships with parents beyond the hearing were seldom supportive. Hearing officers commented that the nature of the hearing process enhanced negative relationships and the mere fact of requesting a hearing has impaired relationships between parents and LEAs.

Hypothesis 8: There are no differences between parents, hearing officers, and LEAs in their attitudes with regard to parents having a better chance of their position prevailing when they have assistance from an advocate at a hearing.

There were no significant mean differences observed among the three respondent groups. Therefore the null hypothesis was not rejected. All groups agreed that assistance from an advocate would increase a parent's
chance of success in hearings (#48). Comments provided by all three groups indicated the expertise of the advocate would largely influence their success.

Hypothesis 9: There are no differences between parents, hearing officers, and LEAs in their attitudes toward a due process hearing being a worthwhile experience worth repeating.

There were significant mean differences between the three respondent groups' attitudes with regard to a due process hearing being an experience worth repeating (#49). The Scheffé test revealed that parents were significantly different from LEAs and hearing officers. LEAs differed significantly from hearing officers and parents. Therefore the null hypothesis was rejected.

Hearing officers were unclear as to their understanding of this item as this lack of understanding may account for 25.8% non-respondents. Those hearing officers who responded however agreed that the experience was worth repeating. Parents and LEAs disagreed that the hearing was an experience worth repeating. LEAs viewed the hearing experience as frustrating, tense, and time consuming. Parents commented the hearing experience was a difficult and overwhelming process.

Hypothesis 10: There are no differences between parents, hearing officers, and LEAs in their attitudes toward the use of mediation in settling disputes that could result in a formal hearing.

There were significant mean differences between the three respondent groups with regard to mediation settling disputes that could result in a formal hearing (#50). The Scheffé post hoc test revealed that parents were significantly different than LEAs in their attitudes toward mediation. Although parents agreed that mediation could settle disputes,
they were less positive than LEAs and hearing officers. Significant mean differences were also found between LEAs and hearing officers. LEAs more strongly agreed than hearing officers that mediation would be more useful in settling disputes that could result in a formal hearing. Therefore the null hypothesis was rejected.

Comments by LEAs indicated that informal mediation was desirable and without attorneys present. Further, they stated issues could be resolved in pre-hearing conferences if parents were willing to communicate. Parents like LEAs felt mediation was worth attempting except when positions were polarized. Hearing officers indicated that mediation is desired and should be attempted more as the function of the pre-hearing conference between the two parties.

Hypothesis 11: There are no differences between parents, hearing officers, and LEAs in their attitudes towards the use of a pre-hearing conference to clarify the issues of a dispute reducing the need for a formal hearing.

There were no significant differences among the three respondent groups. All three groups agreed that a pre-hearing conference could reduce the need for a formal hearing (#51). Therefore the null hypothesis was not rejected.

Although a minor difference, LEAs more strongly agreed than parents or hearing officers. One LEA, having been in ten or more hearings, stated that the pre-hearing conference has served to limit the extraneous issues that emerged during hearings. Parents indicated that, like mediation, the pre-hearing conference could be a time for open communications without attorneys present. Hearing officers were in general agreement that the conference should be a standard procedure with the exception of cases that have been polarized.
Summary of Hypothesis Testing

Parents were observed to have had stronger negative attitudes with regard to the extent a hearing decision outcome would benefit the child (#44) and the effect of a due process hearing on parent/school relationships (#48). Significant negative differences were also observed in how parents viewed the due process hearing procedures as a means to ensure fairness (#42) and resolve disputes on an impartial basis (#45).

LEAs were observed to have had more positive attitudes with regard to mediation as an alternative to settling disputes that could result in a hearing (#51).

Hearing officers were observed to have had more positive attitudes with regard to the extent due process hearings were a worthwhile experience worth repeating (#50). The findings on this variable are to be viewed with caution, however, due to the large percentage of non-responses and the extent the understanding of this item was not clear by this group.

All three respondent groups were observed to be in consistent agreement that parents enhance their chance of success in hearings when they are represented by an attorney (#46) and an advocate (#49). In this regard, all groups were in strong disagreement that legal counsel will have little impact on the hearing outcome (#43). No differences were observed with regard to the negative attitudes relating to the adversarial nature of a due process hearing (#47). Likewise, all groups were consistent in their agreement that a pre-hearing conference could reduce the need for a formal hearing (#52).
Respondent Comments

Comments offered by the respondents in this study were useful in clarifying many of the reported ratings. These comments are provided in Appendix I and were arranged according to the various areas which they were intended to address. Where similar comments were provided by three or more respondents, one statement was provided.
CHAPTER V
DISCUSSION, FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

The Virginia due process hearing requirements were evaluated in this study from the perspective of parents, LEAs, and hearing officers. A discussion of the major findings will be addressed in this chapter. Subsequent to the discussion of the major findings, conclusions and recommendations for further study will be provided.

Discussion

Implementation of the Due Process Hearing Requirements. Parents were consistently more negative with regard to the implementation of due process hearing procedures and requirements than were LEAs and hearing officers. These observations supported the earlier findings reported by Budoff and Orenstein (1981), and Mitchell (1977a, 1977b, and 1977c). The data suggest that the due process hearing is an overwhelming experience for parents and perceived as adversarial, technical, and legalistic. Parents have assumed that being represented by legal counsel or an advocate would increase their chances in hearings and equalize the advantages perceived to exist with their LEA opponents. These same issues were addressed in opinions by Ekstrand (1981); Silberberg (1979); and Pechter (1979). The most effective representation was the individual who had an understanding of the technical procedures of a hearing, the issues, and the laws pertaining to the education of the handicapped.

Although parents were notified of their rights in relation to the hearing procedure, LEAs were found to vary in the manner in which this
was done. The data indicated that LEAs were not fully aware of the existence of the parent handbook and therefore information provided to parents varied in the degree of scope and comprehensiveness. Parents would appear then to rely heavily upon legal counsel to understand the meaning of their rights and responsibilities. These findings were consistent with results of Program Annual Reviews conducted by the federal Office of Special Education (1981). LEAs and hearing officers have largely assumed that parents understand the full scope and meaning of their rights, however, the data suggest this may not be the case. The findings also revealed that some hearing officers did not possess a full understanding of the rights and responsibilities of parents or LEAs in hearings that were conducted.

Meeting timelines as required in state rules and regulations varied considerably across all three groups. All groups were found to lack consistency in meeting their respective obligations. As perceived by these respondents, parents were found to cause delays in the coordination and organization of evidence needed for their case. LEAs were found to vary in the appointment of the hearing officer within the five day limit. Hearing officers were found to be inconsistent in meeting timelines with regard to the arrangement of hearings and submitting the written decision within the required limits. These data suggest the timelines may be unrealistic to meet in view of the many intervening variables similarly identified by Jacobs (1979) and Kammerlohr and Henderson (1980). Hence, schedule conflicts, the need for additional information, and attempts by either party to resolve a costly hearing process are practical issues and must be resolved to preserve the
fundamental concept of a timely hearing. LEAs have assumed pre-hearing planning and coordinating responsibilities that are required to be performed by hearing officers. Timelines, therefore, are influenced by the lack of coordination and communications between LEAs, parents, and hearing officers in getting the hearing underway within the required time limits. Aside from the circumstances that accounted for some of the variability in meeting the required timelines, the data suggest that some parents, LEAs, and hearing officers have simply not conformed to the regulation. By design, Public Law 94-142 has ensured reasonable limits to resolve an issue, and the lack of adherence to the timeline requirements, in effect, endangers the protections of fundamental rights.

Parents were, in the main, negative with regard to the hearing officer and the extent fairness and impartiality were conveyed during hearings which they experienced. The selection process of the hearing officer, hearing officer's attitudes, knowledge of the requirements, and personal conduct during the hearing influenced the perceived level of fairness and impartiality of the hearing process as a whole. In hearings reported in this study, there were hearing officers who were perceived to enhance the negative and adversarial nature of the hearing. Differences were found with regard to the management and conduct of hearings, knowledge of parent and LEA responsibilities, knowledge of state and federal laws, and the technical aspects of decision making. These findings were supported by hearing officer's own comments as to their perceived training needs. These data suggest areas for training as well as a method to provide the hearing officer ongoing feedback with regard to his/her performance. Similar conclusions have been reached by Mitchell (1977a), Budoff and Orenstein (1981), and Turnbull et al. (1980).
In relation to LEA duties and responsibilities, it was found that LEAs were not consistent in developing the implementation plan upon the receipt of the hearing officers' written decision. It was found that parents and likewise hearing officers were not aware of the requirement and LEAs interpreted this requirement to mean the IEP. These data suggest considerable confusion and uncertainty with regard to this responsibility.

Obtaining an accurate verbatim transcript of a hearing was found to be a concern of all three respondent groups. The data revealed preferences for the less expensive electronic tape recording device as compared to a stenographer. The electronic method was found to be subject to mechanical failures and distortions. In view of these concerns, the question arises, then, upon what basis do parents, LEAs, and hearing officers receive an accurate verbatim account of a hearing. The data suggest an accurate verbatim transcript may be less obtainable through the use of electronic devices as compared to the use of a stenographer.

**Attitudes Regarding Due Process Hearing Procedures.** Parents had stronger negative attitudes with regard to the due process hearing procedures than LEAs or hearing officers. Significant negative differences were found with regard to the due process hearing as a means to resolve disputes fairly and on an impartial basis. Significant negative attitudes also were found among parents with regard to the extent a hearing decision outcome would benefit the child and the effect of a hearing on relationships between parent and the school. The data suggest that these attitudes may be attributed to the general adversarial
and negative nature of the proceedings. Although the due process hearing procedures were designed to provide a means for parents and LEAs to resolve differences regarding the education of a handicapped child, these findings suggest the procedures may in effect be counter-productive and alternate methods of resolving disputes should be considered. These conclusions were supported in earlier works of Mitchell (1977b, 1977c); Yoshida and Byrne (1979); and Budoff and Orenstein (1981).

Significant differences in attitudes were found among LEAs with regard to mediation as an alternative to resolving disputes that could result in a formal hearing. Alternate methods of resolving disputes were desirable but were conditional upon the willingness of either party to a dispute to openly communicate and negotiate their differences. The data also revealed that alternate methods of resolving disputes were less successful if either party had polarized their position on the issue. These findings suggest that mediation or a pre-hearing conference should be strongly encouraged throughout the process when the resolution of differences is possible but not at the expense of timeline delays in the hearing process.

The data indicate that having legal counsel and/or advocate representation will enhance the parents chances for success in due process hearings. Between the two types of representation, legal counsel was found to have the most potential for impact on the decision outcome in view of the technical and legal nature of the hearing procedure. These findings suggest that an unfair disadvantage would exist among parties to a dispute who were unable to secure legal representation. Further, these data raise the issue that the hearing procedures may have
evolved a discriminate quality that serves to the disadvantage of less resourceful parents or LEAs.

During the time period this study was being conducted, the due process hearing requirements and other major provisions of Public Law 94-142 were targeted for possible deregulation by the Reagan administration. According to a briefing paper filed by the federal Office of Special Education (1981), due process requirements were selected for possible deregulation because of the wide diversity of comment from SEA and LEA officials and concerned organizations. The concerns expressed have resulted in the possibility of: 1) the relaxation or revocation of the timeline requirements; and 2) a desire for a formal endorsement of mediation procedures. Although pertinent to Virginia, the findings of the current study suggest the timeline requirements may warrant possible revision in view of the many intervening variables. These data would also support the endorsement of mediation procedures aimed at reducing the frequency of formal and costly hearings.

Summary of Major Findings

The major findings as a result of this study to evaluate the due process hearing requirements in Virginia were as follows:

1) LEAs varied in the degree and extent which they notify parents of their procedural rights in relation to due process hearings.

2) Parents lacked a full understanding of their rights and responsibilities in relation to hearings and relied heavily upon legal representation.

3) Hearing officers varied with regard to: a) understanding the full extent of LEA and parent rights
and responsibilities in hearings; and b) performance of their duties and responsibilities in relation to the hearing requirements.

4) Parents, LEAs, and hearing officers were inconsistent in meeting their respective timeline responsibilities.

5) Negative attitudes in relation to fairness and impartiality were influenced by: a) the selection process of the hearing officer; b) attitudes of LEAs, parents, and hearing officers throughout the hearing process; and c) hearing officer knowledge of mandated requirements and competencies in the exercise of required duties.

6) LEAs were inconsistent in the development of the required implementation plan.

7) Parents, LEAs, and hearing officers support the use of alternate methods (i.e., pre-hearing conferences or mediation) to resolve disputes and to reduce the incidence and/or need for formal hearings.

8) Training needs were found to exist for LEAs, hearing officers, and parents in relation to the due process hearing requirements.

Conclusions

This study was conducted because of the lack of available data to determine the level of success in the implementation of Virginia's due process hearing requirement. The following general conclusions were drawn in relation to the evaluation questions originally posed for this study.

1) Are the required special education due process hearing requirements being implemented?

Full implementation of Virginia's due process hearing requirements were not evidenced in this study. However, based upon the SEA seventy-five percent criterion level of implementation, the requirements were reasonably implemented but areas of needed improvement were noted in all categories as follows:
a. Implementation of procedural safeguards
b. Timeline compliance
c. Impartiality in due process hearings
d. Hearing officer duties and responsibilities
e. LEA duties and responsibilities
f. Pre-hearing and hearing activities

2) To what extent are these requirements being implemented?

The extent to which the due process hearing requirements were implemented varied across parents, hearing officers, and LEAs. This variation was accounted for by extraneous circumstances, lack of respondent knowledge, awareness, and understanding of a requirement or responsibility, and in some instances, simply not implementing a requirement as stated. Hence, training needs exist to improve the performance of persons involved in due process hearings.

3) What are the attitudes of parents, LEAs, and hearing officers regarding special education due process hearing requirements?

The due process hearing is an adversarial process which enhances negative attitudes due to its formal and legalistic nature.

Negative attitudes toward fairness and impartiality in due process hearings are influenced by the hearing officer selection process, attitude, knowledge of requirements, and personal conduct during hearings.

As an outcome, the due process hearing enhances negative parent/school relationships. Although not possible in all cases, alternate methods to resolve disputes may reduce the need for formal hearings.

Recommendations

Based upon the findings and conclusions resulting from this study, the following recommendations were offered for the SEA's consideration:
1) The SEA should conduct training sessions with LEAs and hearing officers for the purpose of clarifying specific duties and responsibilities in relation to due process hearing requirements.

2) The SEA should ensure that all hearing officers be required to participate in the formal SEA training program prior to being placed on the approved list to conduct due process hearings. Further, intermittent seminars should be required within a twelve month period to remain on the list. Training sessions should include but not be limited to the following: federal/state legal updates, simulation training in the conduct of hearings, decision making techniques, hearing management, information related to substantive issues of placement, identification, and free appropriate public education.

3) The SEA should review the duties and responsibilities in relation to pre-hearing planning and coordination activities with LEAs and hearing officers. This should serve to clarify the responsibilities of either group and ensure compliance with current regulations.

4) The SEA should attempt to assess the manner by which parents are being notified of due process hearing rights and consider developing a standardized form to ensure parents are being consistently informed and made aware of their rights.

5) The SEA should review the Handbook for Parents of Handicapped Children: Rights and Responsibilities with LEAs and ensure its availability to parents of handicapped children.

6) The SEA should enforce a stricter standard of timeline compliance among parents, LEAs, and hearing officers.

7) The SEA should review the implementation plan requirement with LEAs and hearing officers and employ a more rigid compliance standard in its development and implementation. In this regard, the SEA may consider extending the authority of the hearing officer beyond the submission of the written decision to the point the implementation plan is completed by the LEA. This would ensure the plan has been written and within the context of the hearing officer's decision.

8) The SEA should encourage LEAs in the use of a stenographer or a professional recording service
to obtain an accurate verbatim record of hearings.

9) The SEA should continue to strongly encourage the use of informal mediation without attorneys as an alternate means to resolve disputes between LEAs and parents. This should not serve to delay a hearing or extend the required timelines. In this regard, the SEA should consider an ongoing in-service program for LEAs in conflict management, human relations training, and other methods that would assist in resolving disputes.

10) The SEA should consider requiring a pre-hearing conference with parents and LEAs to assist the hearing officer in the clarification of issues prior to the formal hearing. This could reduce the need for a formal hearing if resolution is possible.

11) The selection process of the hearing officer should be reviewed in view of the findings in this study. The SEA should consider the merits of moving the responsibility of the selection of the hearing officer from the LEA to the SEA.

12) The SEA should review the remuneration schedule for hearing officers and consider increasing the current level of pay for services rendered. In this regard, the SEA should consider the development of an evaluation system for hearing officers to provide a formal method of feedback relative to their performance, training, and removal.

Recommendations for Further Study

Based on an analysis of data from the current study, this researcher recommends consideration of several areas for future study. They are as follows:

1) There are LEAs which have not been involved in due process hearings and this phenomena should be investigated. The researcher would need to determine if there is a relationship between a proactive or reactive LEA and the incidence of conflicts that result in due process hearings. Research questions in this regard could be: a) what is a proactive LEA? reactive LEA? b) how are conflicts resolved? c) what is the leadership style of the local special education administrator in a proactive LEA? reactive LEA?
2) There are dynamics in hearing proceedings that largely produce negative, adversarial attitudes. Naturalistic studies should be undertaken to evolve a body of knowledge with regard to the "ecology" of hearings to determine the prohibitors and facilitators of positive and negative attitudes that occur within the hearing experience.

3) Longitudinal studies are needed to assess the ultimate impact of the hearing decision on the education and training of handicapped children, their parents, and the school. These studies should attempt to assess the positive and negative benefits derived as a result of these decisions through a case study approach.

4) Research is needed to determine the competencies necessary to be an effective hearing officer. Information is now available to allow the researcher to know the type of individual who is serving in this role but little is known of their effectiveness and how they arrive at their decisions.

5) Informal methods of resolving disputes will not preclude the need for a formal due process hearing in all cases. Research is needed, however, to determine the informal methods that are being used and the kinds of issues which are being resolved. The researcher should determine the relative benefits between an adversarial or negotiation based model to resolve conflicts.

6) The hearing process should be studied through naturalistic methods. Descriptive methods are helpful to describe the state of the art but lack the intimate quality of naturalistic inquiry. Case studies should be undertaken to study parents, LEAs, and the hearing officer from the initial request for a hearing and continue through the process to its completion.

7) The most predominant impression left from this study was the importance of parent/school relationships and the incidence of hearings. At what point in a dispute is there the need to resort to a formal hearing? Can the theories of "shared ownership" and "demotivation" contribute to understanding why parents or LEAs decide to request a hearing. Studies are needed to examine the parent/school decision making and communication processes. These studies would reveal needed information that would focus the attention of the practical professional from "reactivity" to "proactivity."
Appendix A

LETTER REQUESTING PARTICIPATION IN THE STUDY
August 31, 1981

Dear

For the past several months, Department of Education staff members and representatives from V.P.I. & S.U., Department of Special Education Administration and Supervision, have cooperated to undertake a study to evaluate the special education due process hearing procedures for local school divisions. Information will be solicited from parents, school division personnel and hearing officers who have actually participated in both local hearings and State reviews.

The enclosed questionnaire has been developed for your use in this study and your responses will be most useful and valuable in determining the extent these requirements are being implemented as they presently exist. Through your participation in this study, the Department will be better able to examine the present process and make necessary changes to ensure that appropriate services will be provided handicapped children.

I am requesting that you complete this form and use the pre-addressed envelope made available for your convenience. Please return by September 10 to ensure that your responses will be included in the final results of this study.

Thank you for your attention and if you have any questions or comments regarding this study, please direct them to , Associate Director, Division of Special Education Administration and Finance, at

Sincerely,

Administrative Director
for Special and Compensatory Education

NGT:oml

Enclosure
TO: All Division Superintendents

FROM: Administrative Director
Office of Special and Compensatory Education

SUBJECT: Special Education Due Process Hearing Procedures Questionnaire

For the past several months, Department of Education staff members and representatives from V.P.I. & S.U., Department of Special Education Administration and Supervision, have cooperated to undertake a study to evaluate the special education due process hearing procedures for local school divisions. Information will be solicited from parents, school division personnel and hearing officers who have actually participated in both local hearings and State reviews.

The enclosed questionnaire has been developed for your use in this study. It is anticipated that the results will provide useful and important information to assist Department of Education personnel in providing continued technical assistance and/or training related to this critical area of State and federal requirements.

Please have this questionnaire completed by the staff member in your division who is responsible for the implementation of the due process hearing procedures. For your convenience a pre-addressed envelope is enclosed.

Please return the completed form by September 10 to:

Thank you for your assistance. If you desire a copy of the results of this study, it will be made available upon request after November 30, 1981.

NGT:oml
Enclosure
cc:
TO: All Hearing Officers

FROM: Administrative Director
Office of Special and Compensatory Education

SUBJECT: Special Education Due Process Hearing Procedures Questionnaire

For the past several months, Department of Education staff members and representatives from V.P.I. & S.U., Department of Special Education Administration and Supervision, have cooperated to undertake a study to evaluate the special education due process hearing procedures for local school divisions as they have been implemented throughout the Commonwealth. Information will be solicited from parents, school division personnel and hearing officers who have actually participated in both local hearings and State reviews.

The enclosed questionnaire has been developed for your use in this study. It is anticipated that the results will provide useful and important information to assist Department of Education personnel in providing continued training and/or technical assistance related to this critical area of State and federal requirements. For your convenience, a pre-addressed envelope is enclosed.

I am requesting that you complete the questionnaire and return the same by September 10 to:

Thank you for your assistance. If you desire a copy of the results of this study, it will be made available upon request after November 30, 1981.

NGT:oml
Enclosure
cc:
Appendix B

RESEARCH QUESTIONNAIRE
SPECIAL EDUCATION DUE PROCESS HEARING QUESTIONNAIRE
August 31, 1981

Dear Respondent:

State Education Agencies (SEAs) throughout the nation are responsible to ensure that State and Federal mandates are carried out on the behalf of handicapped children. In the Commonwealth of Virginia, these mandates serve as the basis for the education of handicapped children and are reflected in the Code of Virginia and the State Board of Education approved Rules and Regulations. The ultimate purpose of these requirements is to provide a free appropriate public education for all handicapped children.

The attached questionnaire, developed as a part of a doctoral research program, is designed to obtain your responses related to one important area of these requirements: the due process hearing procedures. Based upon your experience with these procedures, your participation in this study is most valuable. Your responses will also assist the Department of Education, Division of Special Education Administration and Finance, to be responsive to questions and concerns relative to these requirements and enable assistance to persons involved in this important area. All responses will be held confidential.

Thank you for your attention and assistance. If you have any questions or comments regarding this study, please contact Director of Administration and Finance, at ... or , Associate, Administrative Director Office of Special and Compensatory Education
PARENTS

PLEASE COMPLETE THE FOLLOWING INFORMATION:

1) Please indicate the handicapping condition of your child:
   01_Educable Mentally Retarded
   02_Trainable Mentally Retarded
   03_Severely Retarded
   04_Emotionally Disturbed
   05_Learning Disabled
   06_Physically Handicapped
   07_Multiple Handicapped
   08_Speech Handicapped
   09_Visually Handicapped
   10_Hearing Impaired

2) Is your child: 01_Male 02_Female

3) Grade level of your child:
   01_Elementary 02_Middle School 03_Junior High 04_Senior High

4) Please indicate the type of dispute that resulted in the hearing:
   01_Evaluation 02_Identification 03_Placement 04_Free Appropriate Public Education

   Briefly, describe the central issue:

----------------------------------

5) Did you have legal representation: 01_Yes 02_No
6) Did you have assistance from an advocate? 01_Yes 02_No
7) Was the local level hearing decided in your favor? 01_Yes 02_No
8) Was the State Education Agency (SEA) administrative review decided in your favor? 01_Yes 02_No
9) Have you been involved in any other due process hearings since the SEA administrative review? 01_Yes 02_No

10) Please state your occupation:
   Father ____________________________
   Mother ____________________________
HEARING OFFICERS

PLEASE COMPLETE THE FOLLOWING INFORMATION:

1) Please indicate the number of hearings you have held since October 1, 1981:
   01__ (one)  02__(2-5)  03__(6-10)  04__(more than ten)

2) Have you held local hearings in the same LEA more than once?
   01_Yes     02_No      03_If yes, how many? __

3) Please indicate the percent of cases in the following areas:
   01__ a) Identification
   02__ b) Evaluation
   03__ c) Placement
   04__ d) Free Appropriate Public Education
   05__ e) Combination of a-d (Please specify) ___________

4) What percent of your hearings were decided in favor of:
   01__ Parents     02__ LEAs

5) How would you describe your professional specialization?
   01__ Administrative Law     05__ Criminal Law
   02__ School Law             06__ Family Law
   03__ Civil Law              07__ Tax Law
   04__ Contract Law           08__ Other (please specify) ___________

6) Please rate specific training received from the State Education Agency relative to the conduct of a special education due process hearing:
   Excellent    Good    Fair    Poor    No Training Received
   1           2        3       4       5
   Comment: ____________________________________________
            ____________________________________________

7) Is the present rate of payment adequate for hearing officer services?
   01_Yes     02_No

8) If no, what rate should be paid? __________
LOCAL EDUCATION AGENCIES

PLEASE COMPLETE THE FOLLOWING INFORMATION:

1) What is the enrollment in your school division?
   01 (0-999)  
   02 (1000-4999)  
   03 (5000-9999)  
   04 (10,000-24,999)  
   05 (more than 25,000)  

2) Is your school division: 01 Urban 02 Suburban 03 Rural

3) What was your handicapped child count on December 1, 1980?
   01 (0-99)  
   02 (100-499)  
   03 (500-999)  
   04 (1000-2499)  
   05 (more than 2,500)

4) How many due process hearings have you had since October 1, 1978?
   01 (one) 02 (2-5) 03 (6-10) 04 (more than 10)

5) Please indicate the percent of hearings held in your division that pertain to the following areas:
   a) Identification  
   b) Evaluation  
   c) Placement  
   d) Free Appropriate Public Education  
   e) Combination of a-d. (Please specify)

6) What percent of the hearings held in your district were decided in favor of:
   01 Parents 02 School Division

7) What was the percent of hearings held in your division with regards to:
   Child: 01 % Male 02 % Female
   Grade Level: 01 % Elementary 02 % Middle School
   03 % Junior High 04 % Senior High

   Handicapping Condition:
   % Educable Mentally Retarded
   % Trainable Mentally Retarded
   % Severely Retarded
   % Emotionally Disturbed
   % Learning Disabled
   % Physically Handicapped
   % Multiple Handicapped
   % Speech Handicapped
   % Visually Handicapped
   % Hearing Handicapped

8) Please specify your job title: (check only one)
   Coordinator
   Director
   Supervisor
   Assistant Superintendent
   Superintendent
   Other

ii
Part I
IMPLEMENTATION OF DUE PROCESS HEARING PROCEDURES

Instructions
This part contains forty-one (41) procedural statements that relate to the implementation of the due process hearing requirements in Virginia. The purpose of this part is to obtain your perceptions of the extent these procedures are being implemented in actual practice based upon your experience with one or more due process hearings.

"Column I" is provided for you to indicate whether you felt the procedure was implemented as stated. In this regard, a "Yes" would indicate the procedure was followed while a "No" would indicate it was not. This column should be completed by all respondents. Respondents who have been involved in only one local level hearing should complete this column only as you have no basis for comparison to complete Column II.

"Column II" is provided for you to indicate the extent to which you felt the procedure was implemented as stated in hearings with which you have been associated. This column should be completed by respondents who have been involved in more than one hearing.

A "Comment" space has been provided to all respondents to encourage you to explain your rating or offer additional information.

Example:

<table>
<thead>
<tr>
<th>Column I</th>
<th>Column II</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Yes) No 01. Each party to a hearing compels the attendance of witnesses.</td>
<td>1(2) 3 4</td>
</tr>
</tbody>
</table>

Comment: __________________________________________

In the above example, a "Yes" response in Column I indicated that in hearings you have been involved, parties to a hearing (parents and local education agencies) do compel the attendance of witnesses. In Column II, however, it is indicated that this takes place only "Frequently".

*****************************************************************************

PLEASE DO NOT OMIT ANY ITEMS
Respond as follows:

<table>
<thead>
<tr>
<th>Column I</th>
<th>Column II</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes  No</td>
<td>1 2 3 4</td>
</tr>
</tbody>
</table>

1. The LEA (Local Education Agency) appointed a hearing officer from the approved list maintained by the Virginia Department of Education within five (5) administrative working days of the request for a hearing.

Comment: ____________________________________________

2. The LEA appointed the hearing officer in such a manner as to protect the confidentiality of the parent(s) and/or child.

Comment: ____________________________________________

3. The hearing officer arranged a time, date, and location for the hearing(s) within five (5) administrative working days of appointment.

Comment: ____________________________________________

4. The hearing officer gave parents the option of an open or closed hearing.

Comment: ____________________________________________

5. Although optional, the hearing officer scheduled a pre-hearing conference.

Comment: ____________________________________________

6. The hearing officer granted extensions of the hearing(s) that did not deprive either party of their rights.

Comment: ____________________________________________

7. Electronic recording equipment was provided during the hearing(s).

Comment: ____________________________________________

8. A stenographer was provided during the hearing(s).

Comment: ____________________________________________

9. The hearing officer protected the due process rights of all parties during the hearing(s).

Comment: ____________________________________________
<table>
<thead>
<tr>
<th>Column I</th>
<th>Column II</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Comment:</strong></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Comment:</strong></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
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<tr>
<td><strong>Comment:</strong></td>
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<tr>
<td>Yes</td>
<td>No</td>
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<td><strong>Comment:</strong></td>
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<tr>
<td>Yes</td>
<td>No</td>
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<td><strong>Comment:</strong></td>
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<tr>
<td>Yes</td>
<td>No</td>
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<tr>
<td><strong>Comment:</strong></td>
<td></td>
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<tr>
<td>Yes</td>
<td>No</td>
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<td><strong>Comment:</strong></td>
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<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Comment:</strong></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Comment:</strong></td>
<td></td>
</tr>
</tbody>
</table>

Scale: 1 - Always  
2 - Frequently  
3 - Seldom  
4 - Never
Respond as follows:

<table>
<thead>
<tr>
<th>Column I</th>
<th>Column II</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes No 19. Evidence used at the hearing(s) was submitted at least five (5) days prior to the hearing.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Yes No 20. Parents were notified of their procedural safeguard rights prior to the hearing(s).</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Yes No 21. Parents received a copy of the Handbook for Parents of Handicapped Children: Rights and Responsibilities when the hearing(s) was requested.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Yes No 22. Parents were informed by LEAs of their right to request an independent evaluation if they disagreed with the evaluation conducted by the school.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Yes No 23. Parents were informed by LEAs where they could obtain free, low cost legal aid and other services when a hearing was requested.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Yes No 24. Due process procedures (e.g. rights at pre-hearing and hearing) were fully explained to parents.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Yes No 25. The obligations of either party were indicated in the final written decision of the hearing officer.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Yes No 26. If it occurred, new evidence allowed by the hearing officer during the hearing(s) was agreed to by both parties.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Yes No 27. The LEAs implementation plan was developed and based upon the written decision of the hearing officer.</td>
<td>1 2 3 4</td>
</tr>
</tbody>
</table>

Comment: __________________________

Scale: 1 - Always
2 - Frequently
3 - Seldom
4 - Never
<table>
<thead>
<tr>
<th>Column I</th>
<th>Column II</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes No 28. The written decision of the hearing officer was based solely upon the evidence and testimony presented during the hearing(s).</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment: _</td>
<td></td>
</tr>
<tr>
<td>Yes No 29. The written decision of the hearing officer was understandable.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment: _</td>
<td></td>
</tr>
<tr>
<td>Yes No 30. Prior to the hearing, communications and information were provided to each party by the hearing officer on a timely basis.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment: _</td>
<td></td>
</tr>
<tr>
<td>Yes No 31. Due process hearings were scheduled at mutually agreeable times.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment: _</td>
<td></td>
</tr>
<tr>
<td>Yes No 32. Activities at the pre-hearing stage allowed for dialogue between parents and LEAs.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment: _</td>
<td></td>
</tr>
<tr>
<td>Yes No 33. Locations chosen for the hearings were convenient to both parties.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment: _</td>
<td></td>
</tr>
<tr>
<td>Yes No 34. Hearing officers knew federal laws regarding handicapped children.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment: _</td>
<td></td>
</tr>
<tr>
<td>Yes No 35. Ample time was allowed for parents to present their case in a hearing.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment: _</td>
<td></td>
</tr>
<tr>
<td>Yes No 36. Hearing officers knew Virginia laws and regulations regarding handicapped children.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment: _</td>
<td></td>
</tr>
<tr>
<td>Yes No 37. Mediation, when attempted, was successful in settling disputes.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment: _</td>
<td></td>
</tr>
</tbody>
</table>
Respond as follows:
Column I - one hearing only
Column I & II - two or more hearings

<table>
<thead>
<tr>
<th>Column I</th>
<th>Column II</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes No 38. Ample time was allowed LEAs to present their case in a hearing.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment:</td>
<td></td>
</tr>
<tr>
<td>Yes No 39. Hearing officers were impartial in the conduct of hearings.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment:</td>
<td></td>
</tr>
<tr>
<td>Yes No 40. Parents were provided access to their child’s confidential records.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment:</td>
<td></td>
</tr>
<tr>
<td>Yes No 41. Hearing officers controlled the mood and temperament of the hearing.</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Comment:</td>
<td></td>
</tr>
</tbody>
</table>

**********************************************************************************************************

Part II

ATTITUDES REGARDING THE DUE PROCESS HEARING PROCEDURES

Instructions

Listed below are statements that are intended to obtain your opinions regarding the hearing process. Please circle the number that best describes your opinion. A "Comment" space has been provided to encourage you to further explain your rating. Please answer each item regardless of how many hearings you have experienced.

Example:

Scale: 1 - Strongly Agree
2 - Agree
3 - Disagree
4 - Strongly Disagree

01. I like apple pie.  (1) 2 3 4

Page 6 of 7
Scale: 1 - Strongly Agree
2 - Agree
3 - Disagree
4 - Strongly Disagree

42. The current due process hearing procedures ensure fairness in settling disputes. 1 2 3 4
   Comment: 

43. Having legal counsel will have little impact on the outcome of a hearing. 1 2 3 4
   Comment: 

44. The decision outcome of a due process hearing will always benefit the child. 1 2 3 4
   Comment: 

45. The due process hearing provides a way for disputes to be resolved on an impartial basis. 1 2 3 4
   Comment: 

46. Parents have a better chance of having their position prevail when they have an attorney representing them at a hearing. 1 2 3 4
   Comment: 

47. A due process hearing is not adversarial. 1 2 3 4
   Comment: 

48. Parent/school relationships are not negatively affected as a result of a due process hearing. 1 2 3 4
   Comment: 

49. Parents have a better chance of having their position prevail when they have assistance from an advocate at a hearing. 1 2 3 4
   Comment: 

50. A due process hearing is an experience worth repeating. 1 2 3 4
   Comment: 

51. Mediation could be successful in settling disputes that could result in a formal hearing. 1 2 3 4
   Comment: 

52. A pre-hearing conference when conducted with both parties to clarify the issues of a dispute could reduce the need for a formal hearing. 1 2 3 4
   Comment: 

Page 7 of 7
Appendix C

FOLLOW-UP LETTER
A questionnaire was recently mailed to you for the purpose of obtaining your responses related to one important area of State and federal special education requirements: The Due Process Hearing Procedures.

Since the original mailing of the questionnaire, a number of responses have already been received. In this regard, I wish to encourage you to complete and return your questionnaire to ensure that your responses will be included in the final results of the study.

To ensure the maximum rate of return, the original deadline of September 10 has now been extended. Please complete and return your questionnaire to this office on or before September 30, 1981. (If you have already returned your questionnaire, please accept our gratitude for taking the time to assist us in this effort.)

If there are questions concerning this matter, please contact

, Associate Director for Administration, at

NGT:oml

cc:
Appendix D

"PROCEDURAL SAFEGUARDS"
Excerpt from Public Law 94-142, November 29, 1975
"(f) Notwithstanding the provisions of subsection (u)(2)(H)(iii), any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

**PROCEDURAL SAFEGUARDS**

"Sec. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

"(b) (1) The procedures required by this section shall include, but shall not be limited to--

"(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

"(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

"(C) written prior notice to the parents or guardian of the child whenever such agency or unit--

"(i) proposes to initiate or change, or

"(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

"(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

"(E) an opportunity to present complaints 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 to such child.

(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

89 Stat. 788
"(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

"(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

"(e) (1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (e) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

"(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (e), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

"(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

"WITHHOLDING AND JUDICIAL REVIEW

"SEC. 516. (a) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds--

"(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or
Appendix E

SUBPART E - PROCEDURAL SAFEGUARDS

Excerpt from Public Law 94-142 Rules and Regulations
Federal Register, Vol. 42, No. 163, Tuesday, August 23, 1977
TUESDAY, AUGUST 23, 1977
PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF EDUCATION

EDUCATION OF HANDICAPPED CHILDREN

Implementation of Part B of the Education of the Handicapped Act
children, on a basis comparable to that used in providing for the participation under this part of handicapped children enrolled in public schools.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.454 Service arrangements.

Services to private school handicapped children may be provided through such arrangements as dual enrollment, educational radio and television, and the provision of mobile educational services and equipment.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.455 Differences in services to private school handicapped children.

A local educational agency may provide educational and related services to private school handicapped children which are different from those provided in public education and related services it provides to public school children, if:

(a) The differences are necessary to meet the special needs of the private school handicapped children,

(b) The special education and related services are comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equal importance.


§ 121a.456 Personnel.

(a) Public school personnel may be made available in other than public school facilities only to the extent necessary to provide services required by the handicapped children for whose needs those services were designed, and only when those services are not normally provided by the private school.

(b) Each State or local educational agency providing services under Part B of the Act and property derived from those funds may not interfere to the benefit of any private school.


§ 121a.457 Equipment.

(a) Equipment acquired with funds under Part B of the Act may be placed on public school premises for a limited period of time, but the title to and administrative control over all equipment must be retained and exercised by a public agency.

(b) In exercising administrative control, the public agency shall keep records of equipment and, shall insure that the equipment is used for the purposes of the program or project, and remove the equipment from the public school premises if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.458 Prohibition of segregation.

Programs or projects carried out in public facilities, and involving joint participation by eligible handicapped children enrolled in private schools and handicapped children enrolled in public schools, may not include classes that are separated on the basis of school enrollment or the religious affiliations of the children.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.459 Funds and property not to benefit private school.

Funds provided under Part B of the Act and property derived from those funds may not be used for the benefit of any private school.

(20 U.S.C. 1414(a)(4)(A).)

§ 121a.460 Existing level of instruction.

Provisions for serving private school handicapped children may not include the financing of the existing level of instruction in the private school.

(20 U.S.C. 1414(a)(4)(A).)

Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURE FOR PARENTS AND CHILDREN

§ 121a.500 Definitions of “consent,” “evaluation,” and “personally identifiable.”

As used in this part: “Consent” means that: (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released to whom; and (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

“Evaluation” means procedures used in accordance with §§ 121a.310—121a.350 to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

“Personally identifiable” means that information includes:

(a) The name of the child, the child’s parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child’s social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(20 U.S.C. 1414, 1417 (c).)

§ 121a.501 General responsibility of public agencies.

Each State educational agency shall ensure that each public agency establishes and implements procedural safeguards which meet the requirements of §§ 121a.500—121a.514.

(20 U.S.C. 1414(a).)

§ 121a.502 Opportunity to examine records.

The parents of a handicapped child shall be afforded, in accordance with the procedures in §§ 121a.505—121a.509 an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child;

(b) The provision of a free appropriate public education to the child;

(20 U.S.C. 1414(b)(1)(A).)

§ 121a.503 Independent educational evaluation.

(a) General. (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(b) For the purposes of this part:

(1) “Independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(2) “Public expense” means that the public agency either pays for the full cost of the evaluation or reimburses the evaluator for the cost of the evaluation at a rate that is no cost to the parent, consistent with § 121a.301 of this part.

(c) Parent right to evaluation of public expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 121a.504 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(d) Parent right to request evaluation at private expense. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and

(2) May be presented as evidence at a hearing under this subpart regarding that child.
(e) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(c) Agency consent. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

§ 121a.504 Prior notice; parent consent.

(a) Notice. Written notice which meets the requirements under § 121a.504 must be given to the parents of a handicapped child a reasonable time before the public agency

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(b) Consent. (Parental consent must be obtained before:

(1) Conducting a preplacement evaluation;

(2) Initial placement of a handicapped child in a program providing special education and related services.

(c) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

(d) Procedure when consent is refused. (1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, the State procedures in paragraphs (c) (1) and (2) of this section must be followed.

(2) (i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the State procedures in paragraphs (c) (1) and (2) of this section must be followed to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upheld the agency, the agency may evaluate or initially provide special education and related services without parental consent, but subject to the parent’s right under § 121a.310—121a.313.

(iii) The agency shall provide written notice of the evaluation or services to the parent, subject to the parent’s right under § 121a.310—121a.313.

(3) The parent or the agency initiates a hearing under this section.

§ 121a.505 Impartial process hearing.

(a) A parent of a public educational agency may initiate a hearing on any of the matters described in § 121a.504(a) (1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under the State educational agency, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any new or low-cost legal and other relevant services available in the area;

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

§ 121a.506 Hearing rights.

(a) Any party to a hearing has the rights to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

(3) Be represented by counsel at the public expense which is paid by the agency; and

(4) Obtain a written or oral statement of the evidence and the legal contentions of each party in the hearing, and the agency’s decision and the reasons therefor.

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under the State educational agency, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any new or low-cost legal and other relevant services available in the area;

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

§ 121a.507 Hearing decision; appeal.

A decision made in a hearing conducted under this subpart is final unless
a party to the hearing appeals the decision under § 121a.510 or § 121a.511.

20 U.S.C. 1411(c)(1).

§ 121a.510 Administrative appeal; limited review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency. If there is no appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 121a.508 apply;

(4) Accord the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(b) Make an independent decision on completion of the review; and

(c) Give a copy of written findings and the decision to the parties.

§ 121a.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 121a.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under § 121a.510 has the right to bring a civil action under section 121a.508, relating to hearings, also apply.

§ 121a.512 Timeliness and convenience of hearings and reviews.

(a) The public agency shall insure that not later than 45 days after the receipt of a request for a hearing; and

(1) A final decision is reached in the hearing; and

(c) A copy of the decision is mailed to each of the parties.

(b) The State educational agency shall insure that not later than 30 days after the receipt of a request for a review.

1. A final decision is reached in the review; and

2. A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.


§ 121a.513 Child’s status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

20 U.S.C. 1414(c)(3).

Comment. The State educational agency may receive directly or through another State agency acting on its behalf. However, the State educational agency remains responsible for the final decision on review.

§ 121a.514 Surrogate parents.

(a) General. Each public agency shall insure that the role of a child are protected when:

(1) No parent (as defined in § 121a.10) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State, under the laws of that State.

(b) Duty of public agency. The duty of a public agency (as defined in paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) Criteria for selection of surrogates.

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall insure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that insure adequate representation of the child.

(d) Non-employee requirement; compensation.

(1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (c) and (d) of this subpart, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) Responsibilities. The surrogate parent may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placement of the child, and

(2) The provision of a free appropriate public education to the child.


§ 121a.515 Children with limited English proficiency.

(a) Each State educational agency shall ensure that each public agency establishes and implements procedures which meet the requirements of § 121a.520.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

20 U.S.C. 1412(b) (c).

§ 121a.516 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a handicapped child in a special education program, a full and individual evaluation of the child’s educational needs must be conducted in accordance with the requirements of § 121a.532.

20 U.S.C. 1414(c)(5).

§ 121a.517 Evaluation procedures.

(a) State and local educational agencies shall insure, at a minimum, that:

(1) Tests and other evaluation materials:

(i) Are provided and administered in the native language or other mode of communication, unless it is clearly not feasible to do so;

(ii) Have been validated for the specific purpose for which they are used; and

(iii) Are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those that are tailored to the specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(3) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child’s aptitude or achievement level or whatever other factors the test is designed to measure, rather than reflecting the child’s impaired sensory, manual, or speaking skills (except where the
Appendix F

ILLINOIS STUDY - "PERSON HOURS IN DUE PROCESS HEARINGS"
PERSON HOURS IN DUE PROCESS HEARINGS

**Prevention Phase**

- Parent conferences (4 hrs.)
- Parent phone calls (1 hr.)
- Coordination of recommendations with home district (1 hr.)
- Correspondence and record keeping (2 hrs.)
- Clerical/secretarial (1 hr.)

**Preparation Phase**

- Review of documents (3½ hrs.)
- Preparation of documents for hearing officer packet (8½ hrs.)
- Staff meetings to plan presentation (15 hrs.)
- Coordination of staff activities (1 hr.)
- Preparation of testimony (6 hrs.)

**Presentation Phase**

- Due process hearing (18 hrs.)
- Debriefing conference (3 hrs.)

**Follow-Up Phase**

- Review of hearing officer's decision (1 hr.)
- Follow-up activities in re to hearing officer's recommendations (2 hrs.)

**Miscellaneous**

- Phone calls, conferences resulting from emotional impact of the hearing on staff

**Total Per Due Process Hearing**

- 73 person hours
Appendix G

VIRGINIA DEPARTMENT OF EDUCATION REGULATIONS
AND ADMINISTRATIVE REQUIREMENTS FOR THE
OPERATION OF SPECIAL EDUCATION PROGRAMS
IN VIRGINIA

"CHAPTER FIVE - PROCEDURAL SAFEGUARDS"
REGULATIONS AND ADMINISTRATIVE REQUIREMENTS FOR THE OPERATION OF SPECIAL EDUCATION PROGRAMS IN VIRGINIA

EFFECTIVE SEPTEMBER 1, 1978

APPROVED BY
BOARD OF EDUCATION
JUNE 23, 1978

REVISED 1979

Division of Special Education Support Services
Department of Education • Commonwealth of Virginia
Richmond, VA 23216
CHAPTER FIVE
PROCEDURAL SAFEGUARDS

Ila. A. Due Process Procedures for Parents and Children

121a.501
Each LEA shall establish and implement procedural safeguards which meet the following requirements:

1. The parent of a handicapped child shall be afforded an opportunity to inspect and review all education records with respect to:
   a) The identification, evaluation, and educational placement of the child; and
   b) The provision of a free appropriate public education to the child. *(See also Confidentiality of Information, pp. 53 -60).

2. The parent of a handicapped child shall be provided, on request, information about where an independent educational evaluation (See definition - Appendix A) may be obtained.

3. The parent of a handicapped child shall have the right to obtain an independent educational evaluation of the child:
   a) At public expense (See definition - Appendix A) if the parent disagrees with an evaluation by the LEA. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the LEA uses when it initiates an evaluation.

* Approved by the Board of Education on September 28, 1979.
b) Not at public expense when the evaluation by the LEA is determined appropriate following a hearing held in accordance with this Chapter.

The results of the independent evaluation:
(1) must be considered by the LEA in any decision made with respect to the provision of a free appropriate public education to the child; and
(2) may be presented as evidence at a hearing under this Chapter regarding that child.

IIa. 4. The parent of a handicapped child shall be given written notice within a reasonable time before the LEA:
   a) proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child, or
   b) Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

IIa. 5. The notice shall include:
   a) A full explanation of all of the procedural safeguards available to the parents;
   b) A description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description
of any options the LEA considered and the reasons why those options were rejected;
c) A description of each evaluation procedure, test, record or report the LEA uses as a basis for the proposal or refusal; and
d) A description of any other factors which are relevant to the LEA's proposal or refusal.

6. Information contained in the notice shall be:
   a) Written in language understandable to the general public; and
   b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
   c) If the native language or other mode of communication of the parent is not a written language, the LEA shall take steps to ensure:
      (1) that the notice is translated orally or by other means to the parent in his or her native language, or other mode of communication;
      (2) that the parent understands the content of the notice; and
      (3) that there is documentation that the requirements have been met.
Ila. 121a.504

7. Parental consent shall be obtained before:
   a) Conducting a preplacement evaluation;
   b) Initial placement of a handicapped child in a program providing special education and related services;
   c) Reevaluation; and
   d) Any changes in the identification, evaluation or educational placement of a handicapped child.

Ila. 121a.504

8. The LEA may initiate due process to appeal parent refusals for evaluation or provision of special education and related services.

I. B. Impartial Due Process Hearing
22-10.4 Each LEA or the parent of a handicapped child shall have
IIa. 121a.506 the right to initiate a hearing when a disagreement occurs on matters relating to identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

CHAPTER FIVE, Item 9, deleted,
Approved by the Board of Education on September 28, 1979.
The regulations do not preclude the use of mediation in the resolution of differences, but mediation shall not be used to deny or delay a parent’s rights. Such mediation may be conducted by LEA personnel who were not previously involved in the particular case. Should the LEA choose to formalize the mediation process, as an intervening step, policy shall be established by the LEA. However, such mediation may not extend the procedure beyond the forty-five (45) administrative working day period.

1. Request for a hearing shall be made to the local school board.

2. The LEA shall inform the parent of any free or low-cost legal and other relevant services available in the area when:
   a) The parent requests the information; or
   b) The parent or the LEA initiates a hearing.

3. The hearing shall be conducted by an independent hearing officer (See definition - Appendix A) who shall be appointed by the local school board from a list maintained by the SEA. Costs for such hearings shall be shared equally by the LEA and the SEA.

* Approved by the Board of Education on September 28, 1979.
4. Any party to a hearing shall have the right to:
   a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;
   b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
   c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) administrative working days before the hearing.
   d) Obtain a written or electronic verbatim record of the hearing;
   e) Obtain written findings of fact and decisions.
      (The LEA shall transmit those findings and decisions to the SEA).

5. The parent involved in a hearing must be given the right to:
   a) Have the child who is the subject of the hearing present; and
   b) Open the hearing to the public.

6. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

* Approved by the Board of Education on September 28, 1979.
7. The hearing officer shall submit written findings of fact and decision(s) to both parties to the appeal, the local school division superintendent and to the Division of Special Education and Support Services, Virginia Department of Education, in the manner prescribed.

8. A decision made by the hearing officer is final unless a party to the hearing appeals. The appeals process for any party aggrieved by the findings and decision in the hearing is as follows:

a) If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) examine the entire hearing record;

(2) ensure that the procedures at the hearing were consistent with the requirements of due process;

(3) seek additional evidence, if necessary.

If a hearing is held to receive additional evidence, all hearing rights as specified in this Chapter apply;

(4) afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

* Approved by the Board of Education on September 28, 1979.
(5) advise all parties of their right to continue to be represented by counsel whether or not the reviewing official determines that a further hearing is necessary;

(6) make an independent decision upon completion of the review; and

(7) give a copy of written findings and the decision to the parties.

b) The decision made by the reviewing official is final, unless a party brings a civil action.

9. Any party aggrieved by the findings and decisions made during the administrative review may bring a civil action in the circuit court for the jurisdiction in which the school division is located. In any such action, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

10. Timelines for hearings and reviews are as follows:

a) The local school board shall ensure that not later than forty-five (45) administrative working days after the receipt of a request for a hearing:

(1) a final decision is reached in the hearing; and

(2) a copy of the decision is mailed to each of the parties.

* Approved by the Board of Education on September 28, 1979.
b) The SEA shall ensure that not later than thirty (30) administrative working days after the receipt of a request for a review:
   (1) a final decision is reached in the review; and
   (2) a copy of the decision is mailed to each of the parties.

c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs a) and b) of this section at the request of either party.

d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parent and child involved.

IIa. 11. The child's status during proceedings shall be as follows:

   a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the LEA and the parent of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement. While the placement may not be changed, this does not preclude using normal procedures for dealing with children who are endangering themselves or others.

* Approved by the Board of Education on September 28, 1979.
b) If the complaint involves an application for initial admission to public school, the child, with consent of the parent, must be placed in the public school program until the completion of all the proceedings.

12. Procedures shall be established by each LEA for the assignment of a surrogate parent to an eligible handicapped child according to the following provisions:

a) Each LEA shall ensure the rights of a child are protected when:

   (1) no parent, (See definitions - Appendix A), can be identified;

   (2) the LEA, after reasonable efforts, cannot discover the whereabouts of a parent; or

   (3) the child is a ward of the State, (See definitions - Appendix A). (The rights of a child may be protected when there is an identified case manager continuously monitoring progress of the child).

b) Each LEA shall establish and implement procedures for the assignment of an individual to act as a surrogate for the parent, including a method for each of the following:

   (1) for determining whether a child needs a surrogate parent;

   (2) for assigning a surrogate parent to the child;

* Approved by the Board of Education on September 28, 1979.
(3) for changing the assignment of a surrogate parent; and

(4) for terminating the assignment of a surrogate parent to the child.

c) Each LEA shall select a surrogate parent from the list provided by the SEA.

d) Each LEA shall ensure that a person selected as a surrogate:

(1) has no interest that conflicts with the interest of the child he or she represents;

(2) has knowledge and skills that ensure adequate representation of the child; and

(3) is not an employee of a public agency which is involved in the education or care of the child. (A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent).

e) The surrogate parent may represent the child in all matters relating to:

(1) the identification, evaluation, and educational placement of the child; and

(2) the provision of a free appropriate public education to the child.
Appendix H

DUE PROCESS HEARING TIMELINES FOR VIRGINIA
LEA receives written request for hearing from parent(s) or authorized school division personnel

Hearing officer appointed by LEA

Request for hearing by parents or LEA submitted to hearing officer

Hearing scheduled by hearing officer at convenience of parent(s) and LEA

Hearing officer renders findings of fact and decision and transmits report to both parties and SEA (See Appendix F)

Either party may appeal

Approval by both parties

Reviewing officer conducts impartial review

Decision rendered - copies to both parties, SEA and local hearing officer

Either party may appeal

Approval by both parties

Issue is resolved

Implementation plan developed

Either party may bring civil action

Issue is resolved

Implementation plan developed
Appendix I

RESPONDENT COMMENTS
Due Process (General)

"Four hours is a long time to defend a little boy and we wouldn't hesitate to do it again." (P)

"No parent should go to due process without at least the help of an advocate." (P)

"The due process hearing was worthwhile in the sense we were able to fight for our son--I see the due process hearing system as a compromise situation with benefits to the child." (P)

"The due process hearing becomes a win or lose situation." (P)

"This type of hearing with lawyers trying to understand educational issues is like a 'jackhammer operator' trying to do a heart transplant." (P)

"The current due process hearing system is insensitive, inhuman, inappropriate, and insufficient." (P)

"The adversarial nature of due process is destructive to families and the child." (P)

"When weighed against the strain on the family, the negative relationships that develop between parents and LEA, and the negative impact on the child, the LEA knows most parents won't go through it again (due process hearing)." (P)

"I believe the LEA should pay all costs if they lose the hearing--it may make them a little more willing to better deal with parent complaints." (P)

"Can you imagine what it would be like if every 'normal' child had to fight to get their education as our handicapped children do." (P)

"Lawyers fees are exorbitant yet without one due process would really be a farce." (P)

"The due process hearing was a very frustrating experience but was worth it." (P)

"The laws and regulations are good but they must be implemented fully--LEAs and hearing officers both scoff at these procedures." (P)

"Due process hearings are too costly." (LEA)

"Any parent who has a child in an inappropriate educational situation should enjoy due process." (LEA)
General (continued)

"In spite of its faults, the system appears to be doing the job--few cases appear to be going to court." (HO)

"The due process hearing has become perhaps an arena for the expert." (HO)

"The due process hearing has in effect become a trial with all the emotion and complexity accorded therein--the stakes are often very high." (HO)

"Much variation exists in the quality of attorneys and expert witnesses. A lawyer presents the best case." (HO)

"Witnesses for parents who work for the LEA don't state their true conviction." (HO)

"Hearing officers should always emphasize the need for both parties to view each other in non-adversarial terms." (HO)

"More cooperation is needed between parents and LEAs to serve the needs of the child." (HO)

"Use of a court reporter should be required by the state as this provides a good quality verbatim record of the hearing." (HO)

"A court reporter to record the hearing transcript is relatively low cost and replaces the need for a transcript." (HO)

"The LEA can use relentless resources to overwhelm a parent--if parents compete with this they will have to spend a great deal of money." (HO)

"Although critical of the process, P.L. 94-142 and state law have made great advances. The small percentage who need the assistance of due process hearing procedures, however, are not getting it (a selective system)." (HO)

"Basic distrust of LEAs by parents causes issues to go to due process/the addition of an attorney adds to the distrust and clouds the issue." (LEA)

"The efficiency of a due process hearing boils down to the attorney with which you have representing you." (LEA)

"Parents are guided to mistrust the schools and not work towards the welfare of the child." (LEA)

"A hearing takes away supervisor and staff time from a great many other students." (LEA)

"Due process hearings create bad feelings which take years to eradicate." (LEA).
"Have experienced that advocates are not as informed about federal and state law as they should be." (LEA)

"Parents refuse to admit they may be wrong and the schools may be right--some parents delight in legal procedures." (LEA)

"The LEA's position thru the whole process is viewed as suspect and not looking to the child's best interest." (LEA)

Fairness

"The school system delays the hearing process as long as possible and does not attempt to mediate." (P)

"After the hearing a school official contacted my attorney requesting I drop the case (my attorney advised me of this)." (P)

"The procedures are designed to support the LEAs totally." (P)

"Many parents are at a major disadvantage in not being able to hire counsel with knowledge in handicapped laws. It decreases their chances of being successful." (P)

"Many parents who have had just as meritorious cases as ours have had to give up because they absolutely could not afford to complete the fight." (P)

"The LEA attempts to take the 'full court approach' against parents in due process hearings. The fact they have access to so many resources and the parents who can't shoulder the financial burden, ultimately wears the parent down." (P)

"The hearing was unfair as the hearing officer appeared to have a pre-determined decision." (P)

"Attorneys victimize parents and give them false hopes as they are unfamiliar or unconcerned about educational practices." (LEA)

"Students definitely need someone to represent their best interest; I sometimes question whether parents truly represent their interests. Students need advocates, is this possible?" (LEA)

"Due process is weighed in favor of the parents--they can't lose." (LEA)

"The due process procedure is a right exercised by only the few who can afford it. This is discriminatory in nature." (LEA)
Timelines

"A substantial period of time elapses beyond the five day limit for the appointment of a hearing officer." (HO)

"Scheduling parties to a hearing cause timelines not to be met (attorneys schedules are the source of conflict)." (HO)

"Meeting timelines are problematic with attorneys serving as hearing officers--current timelines impose problems with attorneys schedules." (HO)

"The five day requirement for evidence is an unfair burden to a parent who has no counsel--they simply don't know what to do." (HO)

"Compliance of the 45 day requirement is difficult if not impossible: 1) LEA schedules due process hearings well into 45 day period, 2) Compensation is not adequate for practicing lawyers, 3) Hearings are continued and therefore leaving fewer days to render a decision, and 4) Independent evaluation takes much time to be completed." (HO)

"Timeline requirements are not being followed. I requested a hearing 1½ years ago. The LEA purposely delays things by writing for clarification." (P)

"The hearing officer in my case finally rendered the decision after repeated phone calls, certified letters, and my own counsel threatening a suit." (P)

"Civil rights of parents were denied as our decision was not rendered in 45 days (6 months late)." (P)

"LEAs are given the responsibility to see that these are being followed but have no power or control to ensure that it happens." (LEA)

Mediation

"The LEA made no attempt to mediate prior to going to appeal--I was willing." (P)

"Pre-hearing mediation is advisable so problems and issues may be worked out without legal hassles or hostility." (P)

"Mediation between LEA and parents resulted in the negative." (P)

"Intermediate steps are needed (pre-hearing meetings or mediation) as this will help to maintain order." (LEA)

"The state should put more emphasis on mediation." (LEA)

"A mediation process needs to be developed for parents to use before going to due process." (LEA)
Mediation (continued)

"If mediation does not work and the due process hearing is the next step, the parent should not be without a lawyer." (P)

"More effort should be made to pursue pre-hearing conferences and mediation. Both are successful in setting potential hearings and reducing the number of issues before hearings." (HO)

Hearing Officer Training

"Each prospective hearing officer should be required to take special training in the form of oral seminars or a study of written materials that include: manuals, articles, treatises and take courses on hearing and decision techniques." (HO)

"More formal training for the hearing officer is needed because this is a relatively new area of law and court precedents are few." (HO)

"The SEA needs to develop a manual of decision summaries to LEAs and hearing officers which may avoid unnecessary hearings." (HO)

"Due process hearing officers are poorly trained in Virginia. They lack essential competencies." (LEA)

"A hearing officer should have an introductory course in child psychology." (HO)

"SEA does not provide decision summaries of federal and state decisions of special education." (HO)

"Annual training seminars are a must to maintain competency in this area." (HO)

"A hearing officer should have substantial experience in trying a hearing and deciding formal administrative law cases." (HO)

"Meetings for hearing officers should provide materials of prior decisions of hearing officers." (HO)

"The hearing officer in our experience was not impartial; inconsiderate; and lacked knowledge of child development." (P)

"Our hearing officer was not competent to run a hearing as awareness of federal and state laws was lacking." (P)

"The hearing officer didn't know enough about learning disabilities to understand the evidence being presented." (P)
Hearing Officer Selection

"In our case the hearing officer was chosen by the LEA and met with him without us." (P)

"I think the parents should have a hand in choosing the hearing officer." (P)

"If a hearing officer is chosen by the LEA and you don't like him you still have to go before him--you had no say in the matter." (P)

"LEA cannot choose the hearing officer if due process procedures are to be used." (HO)

"LEAs should not select the hearing officer (they avoid the hearing officer who previously ruled against them)." (HO)

"Appointment of the hearing officer should be made by the state SEA from its own maintained list. Permitting the LEA to do this is unfair. It's the same as letting one party in a lawsuit choose the judge." (HO)

"The hearing officer's title should be changed to administrative law judge." (HO)
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A STUDY TO EVALUATE THE DUE PROCESS
HEARING PROCEDURES IN VIRGINIA

by

Lewis D. Romano

(ABSTRACT)

The procedural safeguard requirements of P.L. 94-142, the Education for All Handicapped Act of 1975 are designed to ensure the rights of parents and children in matters related to provisions of special education and related services. Provisions within the law provide for dispute resolution between parents and LEA through an impartial due process hearing. State education agencies are responsible to ensure these and other requirements in the law are fulfilled to receive federal monies under the Act.

The literature suggests the due process hearing requirements have resulted in issues and outcomes that were unintended by the original design of these procedures to protect fundamental rights, and to ensure a fair and timely hearing. Information was obtained from the key participants in the process: LEAs, parents, and hearing officers.

Through the administration of a survey instrument to 225 LEAs, parents, and hearing officers in Virginia, the following research questions were addressed: a) are the Virginia special education due process hearing requirements being implemented? b) to what extent are they being implemented? and c) what attitudes exist regarding these requirements from the respondents?
The results of the study indicate that Virginia's hearing requirements are not being fully implemented and areas of needed improvement were cited in: a) timeline compliance, b) impartiality in due process hearings, c) LEA and hearing officer responsibilities, and d) consistency in the implementation of procedural safeguards. Negative attitudes towards the hearing procedures were influenced by the hearing officer's selection process, attitude and personal conduct of hearings, and knowledge of his duties and responsibilities. Informal methods of resolving disputes were considered desirable as compared to the formal adversarial hearing.

This study has provided recommendations to the Virginia SEA for needed improvement in the implementation of the due process hearing requirements and suggestion for further research.