

Journal of Human Services: Training, Research, and Practice

Volume 4
Issue 1 *Innovation in Educational Setting*

Article 2


February 2019

Independent Educational Evaluations as Issues of Dispute in Special Education Due Process Hearings

William H. Blackwell
Sam Houston State University, whb004@shsu.edu

Mertie Gomez
Sam Houston State University, mxm211@shsu.edu

Follow this and additional works at: <https://scholarworks.sfasu.edu/jhstrp>

 Part of the [Disability and Equity in Education Commons](#), [Educational Assessment, Evaluation, and Research Commons](#), and the [Special Education and Teaching Commons](#)

[Tell us how this article helped you.](#)

Recommended Citation

Blackwell, William H. and Gomez, Mertie (2019) "Independent Educational Evaluations as Issues of Dispute in Special Education Due Process Hearings," *Journal of Human Services: Training, Research, and Practice*: Vol. 4 : Iss. 1 , Article 2.

Available at: <https://scholarworks.sfasu.edu/jhstrp/vol4/iss1/2>

This Article is brought to you for free and open access by SFA ScholarWorks. It has been accepted for inclusion in *Journal of Human Services: Training, Research, and Practice* by an authorized editor of SFA ScholarWorks. For more information, please contact cdsscholarworks@sfasu.edu.

Abstract

This study examined the pertinent details and outcomes of special education due process hearings ($n = 100$) that addressed independent educational evaluations as an issue of dispute in a 14-state sample. Variables related to the frequency of these cases, the characteristics of students involved, the specific types of IEEs requested, and the other related issues and outcomes were coded and analyzed. Psycho-educational evaluations were addressed in the most due process hearings, followed by speech-language evaluations, and neuro-psychological evaluations. Statistically significant associations were identified between states regarding a) the extent to which IEEs are issues of dispute in due process hearings, b) the prevailing parties in these hearings, and c) the types of legal representation used by parents. Recommendations for policy, practice, and additional research related to IEEs and special education due process hearings are discussed.

Keywords: special education, due process hearing, independent educational evaluation

Introduction

The stated purpose of the Individuals with Disabilities Education Act of 2004 (IDEA) is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living” (34 C.F.R. § 300.1). A key component of IDEA is the procedural safeguards requirement designed to ensure that children with disabilities and their parents have their rights and interests protected (Wright & Wright, 2014). The procedural safeguards include guidelines and protections related to written information provided to parents, conflict resolution procedures that include mediation and due process hearings, and the parents’ right to obtain an independent educational evaluation for their child (34 C.F.R. §§ 300.500–300.537). This research study directly addressed two of these procedural safeguards: conflict resolution procedures and independent educational evaluations. Specifically, the study examined the pertinent details and outcomes of special education due process hearings that addressed independent educational evaluations as an issue of dispute.

Independent educational evaluations

Full and individual evaluations are fundamental to special education processes and services (Bateman, 2011). The evaluation procedures set forth in IDEA are used for determining eligibility for services and informing the development of individualized education programs (IEPs). IDEA regulations require school districts to provide evaluations that are conducted by qualified professionals, address all areas related to the suspected disability, utilize multiple assessments and measures, and include information from the parent (34 C.F.R. § 300.304). In situations in which the parents disagree with the results of the school district’s evaluation or feel

that additional evaluations are warranted, they are entitled through the IDEA procedural safeguards to obtain an independent educational evaluation (34 C.F.R. § 300.502).

The primary attribute that differentiates an independent educational evaluation (IEE) from an evaluation conducted by the school district is that an IEE is conducted by a qualified professional who is not employed by the district (Meyer, 2016). Districts are required to assist parents in obtaining an IEE by providing a list of independent educational evaluators and a description of the process for requesting an IEE (34 C.F.R. § 300.502). However, districts may not restrict parents from only selecting evaluators from the district's list, provided that the parent's choice of evaluator has appropriate professional qualifications and uses evaluation techniques that at least meet the standard of those required of school districts under IDEA (Meyer, 2016). IEEs may focus on targeted areas related to the child's disability (e.g., speech evaluation) or may be more comprehensive in addressing multiple domains (e.g., neuropsychological evaluation).

The IDEA regulations address the issue of financial responsibility for an IEE (34 C.F.R. § 300.502). If a district is in agreement that an IEE is appropriate, the district is responsible for payment. If the district disagrees, then the district must file a due process complaint with the appropriate state agency seeking a hearing officer decision regarding payment responsibility. Districts must file this request in a timely manner and may not delay the process unnecessarily (34 C.F.R. § 300.502). If the hearing officer rules in favor of the parent, the IEE must be provided at public expense and the results of the IEE must be considered during the educational planning process. If the hearing officer rules in favor of the district, then the district-led evaluations form the basis for educational planning.

In some instances, school districts and parents have appealed the hearing office decisions to the United States (US) court system. Zirkel (2009) examined US court decisions that addressed the extent to which districts are responsible for paying for IEEs. To guide the analysis, the author examined four components that are involved when parents and districts disagree on payment responsibility for an IEE: 1) the parent disagreed with the results of the original evaluation conducted by the district; 2) the district filed a due process hearing request in timely fashion; 3) the district demonstrated that its original evaluation adequately met the standards outlined in federal special education law; and 4) the district demonstrated that the IEE was not necessary or appropriate (Zirkel, 2009).

Regarding the parental disagreement component, court decisions held that parents could provide written notification of their disagreement with the original school district evaluation *after* they had actually obtained an IEE. In order to qualify for districts paying for the IEE, parents were *not* required to notify the district of their disagreement *before* seeking an IEE. That is, parents could obtain an IEE prior to formally notifying the district of their disagreement with the results of the original district-conducted evaluation. Additionally, the notification provided by the parent was not required to outline the rationale and details of their disagreement with the original evaluation. In summary, parents who were seeking a district-funded IEE could provide a brief written notification either before or after obtaining the IEE.

For the component requiring districts to file a due process hearing request in a timely fashion, Zirkel (2009) found that court decisions did not necessarily hold districts to this standard. The author identified multiple court decisions in which districts were not required to pay for IEEs solely because they did not file a formal hearing request to adjudicate the issue. However, court decisions did consider the timeliness of district responses to parental requests for

IEEs. Although an absolute timeline was not established, districts were expected to respond to parent requests for IEEs and/or file for a due process hearing within a reasonable timeframe. If districts did not respond in a reasonable timeframe, parents were able to file the request for a hearing officer determination.

For the third component, which requires the district to demonstrate that its original evaluation was adequate, court decisions have examined the extent to which districts a) assessed all areas related to the suspected disability, and b) included qualified evaluators with knowledge of the student and the suspected disability. Districts that met these standards were more successful in their court cases. However, the court decisions did rule for parents in some instances. In these cases, the parents' IEE demonstrated disability-related needs that had not been identified in the original district evaluation. Thus, the IEE was used as a tool in determining that the district evaluation was not adequate.

The fourth and final component of Zirkel's framework (2009) required the district to demonstrate that the IEE was not necessary or appropriate. In the court cases reviewed, districts challenged both the qualifications of the independent evaluators and the methodologies used in conducting the IEE. In these instances, court decisions held that independent evaluators must have qualifications that were at least equal to those held by district-based evaluators. Additionally, the processes and procedures used by independent evaluators must have met acceptable professional standards but did *not* have to be methodologically identical to those used by the district. While districts were allowed to create lists of recommended independent evaluators, they were not able to restrict parents to *only* using evaluators from that list provided that the parent-identified evaluators met the criteria described above.

Special education due process hearings

The previous section referenced the role of due process hearings in determining who is responsible for paying for an IEE. However, an IEE is only one issue that may be addressed in a due process hearing. A special education due process hearing is a formal mechanism for resolving disputes between parents and school districts (34 C.F.R. § 300.511). When disagreements arise regarding special education evaluation, planning, and/or services, parents and districts typically go through a series of conflict resolution activities that can include IEP meeting facilitation, third-party consultation, and mediation (Mueller, 2009). In situations in which these mechanisms are unsuccessful, a due process hearing is the next step. These hearings are formal procedures presided over by a trained hearing officer whose written decision is legally binding. Due process hearings often include the review of written evidence submitted by both parties, witness testimony, and legal representation (Blackwell & Blackwell, 2015; Zirkel & McGuire, 2010).

Recent research on due process hearings has focused on a variety of domains, including the disability categories of students, the issues addressed in the hearings, and the outcomes and prevailing parties. Regarding disability categories, students with autism, emotional-behavioral disorders, other health impairment, and/or specific learning disabilities were most frequently involved (Blackwell & Blackwell, 2015; Mueller & Carranza, 2011; Schanding, Cherie, Hyatt, Praytor, & Yellen, 2017). Across multiple studies, the most common issues at dispute in due process hearings were IEP development and implementation, evaluation, procedural safeguards, and program placement (Blackwell & Blackwell, 2015; Cope-Kasten, 2013; Mueller & Carranza, 2011; Schanding, et al., 2017). Finally, research in Texas (Schanding, et al., 2017)

and Massachusetts (Blackwell & Blackwell, 2015) found that school districts prevail on the majority of issues and are much more likely to have attorney representation than parents are.

Purpose of the study and research questions

While the studies referenced above examined important aspects of due process hearings, none of the studies directly examined details related to IEEs as issues of dispute. The identified issues of procedural safeguards and evaluation are related, but the studies did not specifically examine IEEs as a unit of analysis. This study seeks to build on Zirkel's work (2009) that examined IEEs in US court cases by providing a more recent analysis that focused specifically on a national sample of special education due process hearings. Since a comparatively small number of disputes end up in the court system (Wright & Wright, 2014), the authors contend that researching IEE issues within due process hearings would result in a larger volume of cases that are more indicative of what is happening between parents and districts in regards to this important IDEA procedural safeguard. The following research questions were developed to guide the study.

For special education due process hearings that addressed independent educational evaluations as an issue of dispute:

- 1) What was the frequency and percent of these hearings within the sample states?
- 2) What were the characteristics of students involved?
- 3) What types of independent educational evaluations were issues of dispute?
- 4) What were the other issues of dispute and which party prevailed in each issue?
- 5) To what extent was legal representation utilized by school districts and parents?

The authors wanted to identify a sample of states from across the US that were viewed as having appropriate dispute resolution practices regarding the use of special education due

process hearings. Previous studies on the frequency of due process hearings (Zirkel, 2014; Zirkel & Gischlar, 2008) have found that there are marked discrepancies among states regarding how due process hearings are utilized as a form of dispute resolution. The states and territories with the highest rates of due process hearings – California, New York, Pennsylvania, Washington, D.C., and Puerto Rico – may be utilizing hearings more frequently than the IDEA regulations intended (Zirkel, 2014; Zirkel & Gischlar, 2008). These states and territories have a culture of adjudication that results in a large number of disputes being resolved in hearings and courts decisions as opposed to less adversarial conflict resolution methods that are more reflective of the level of disagreement between the parties (Zirkel, 2014; Zirkel & Gischlar, 2008). For the current study, the authors wanted to identify instances in which the level of disagreement regarding an IEE was such that utilizing due process was an appropriate response according the intention of the IDEA regulations (34 C.F.R. § 300.511).

Method

Data source

Given that the states mentioned above might be over-using due process hearings and could have dispute resolution processes that are different than those in most other states, the authors decided to identify a sample of states that a) hold a reasonably high volume of due process hearings annually that are publicly available for analysis, and b) based on their annual rate of hearings, the states are viewed as appropriately utilizing due process hearings as a method of dispute resolution as intended by the IDEA regulations (Zirkel, 2014). After consulting the most recent longitudinal study on the frequency of due process hearings (Zirkel, 2014), the authors identified 19 states that held at least five due process hearings annually but had not been previously identified as potentially over-using due process hearings as a form of dispute

resolution (Zirkel, 2014; Zirkel & Gischlar, 2008). Of those 19 states, three states (Alaska, Indiana, New Mexico) were removed because their due process hearings were not available publicly on the state agency website and contained such a high level of redaction when requested that no usable information could be acquired. An additional two states (Michigan, New Hampshire) were removed because none of the due process hearings conducted in those states addressed IEEs as an issue of dispute. The resulting data set for this study was all published due process hearing decisions that addressed IEEs as an issue of dispute over a three-year period from January 1, 2014 – December 31, 2016 in a 14-state sample: Arizona, Connecticut, Florida, Georgia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Ohio, Rhode Island, Texas, Virginia, and Washington.

Data collection and analysis

The 14 states in this study all published written hearing decisions on their respective websites. The authors downloaded all hearing decisions published between January 1, 2014 – December 31, 2016 and created an database to manage data collection and analysis. The first round of data collection focused on identifying hearings that addressed IEEs. The authors examined each written hearing decision to identify which cases addressed IEEs. Any hearings that had an IEE as a stated issue of dispute were coded and included in the data set.

Once the data set was identified, the authors used a set of starter codes from previous studies on due process hearings (Blackwell & Blackwell, 2015; Cope-Kasten, 2013; Schanding, et al., 2017) to guide an initial attempt at coding the hearing decisions. The two authors separately coded the same 15 hearing decisions and met to further develop and refine the codebook. The authors then coded another 15 hearing decisions and determined that the codebook could be finalized. The final codebook included the following categories: State, case

identification number, date of final decision, filing party, legal representation, student grade level, student disability(ies), IEEs conducted and/or requested, other issues in dispute, and prevailing party for each issue.

As a measure of inter-coder reliability, the authors coded a final set of 15 hearing decisions and re-coded the first 30 cases that had been previously reviewed. In total, 45 cases (45.0%) were included in the final inter-coder reliability calculation using a straightforward formula from Miles and Huberman (1994): *Reliability = (Number of agreements divided by the total number of agreements/disagreements) multiplied by 100*. The inter-coder reliability results for each category are as follows: State (100%), case identification number (100%), date of final decision (100%), filing party (100%), legal representation (98.6%), student grade level (97.2%), student disability(ies) (95.1%), IEEs conducted and/or requested (96.8%), other issues in dispute (97.4%), and prevailing party for each issue (95.3%). Descriptive statistics were the primary means of analysis, as the purpose of this study was to present the pertinent details and outcomes of special education due process hearings that addressed independent educational evaluations as an issue of dispute. Chi-square tests were used for comparative analyses across states in order to identify the statistical relationships between the variables of interest. This approach was recommended by Vogt (2007) for use with categorical variables and was used previously in a similar study on special education due process hearings (Mueller & Carranza, 2011).

Results

Special education due process hearings that addressed IEEs

A total of 526 due process hearings were identified as being held between January 1, 2014 – December 31, 2016. Of these hearings, there were 100 (19.0%) that addressed IEEs as issues of dispute. These 100 hearing decisions comprised the cases used in this study. As

presented in Table 1, there was a wide discrepancy in the frequency and percent of special education due process hearings that addressed IEEs as an issue of dispute. The number of due process hearings ranged from 1 (Rhode Island) to 22 (Texas). The percent of hearings that addressed IEEs ranged from 4.7% (Hawaii) to 45.2% (Washington). A statistically significant association was identified between states and whether or not due process hearings addressed IEEs as an issue of dispute ($\chi^2(13) = 48.529, p < .05$). Illinois, Texas, and Washington were more likely to have due process hearings that addressed IEEs, while Hawaii and Massachusetts were less likely to have due process hearings that addressed IEEs.

Table 1. Frequency and percent of special education due process hearings that addressed individual educational evaluations (IEEs) as an issue of dispute from Jan. 1, 2014 – Dec. 31, 2016. (n = 526 hearings)

State	Hearings	Hearings Addressing IEEs	
		Total	%
Arizona	17	4	23.5
Connecticut	38	8	21.1
Florida	41	8	19.5
Georgia	26	6	23.1
Hawaii	43	2	4.7
Illinois	51	15	29.4
Maine	9	1	11.1
Maryland	45	5	11.1
Massachusetts	58	3	5.2
Ohio	45	4	8.9
Rhode Island	15	1	6.7
Texas	76	22	29.0
Virginia	20	2	10.0
Washington	42	19	45.2
Total	526	100	19.0

Student characteristics

Data was collected on the grade level and disability(ies) for each student involved in the 100 due process hearing decisions that addressed IEEs as an issue of dispute in the sample states. For grade level, this information was available in 62 cases. The information was redacted by the states for 38 students for confidentiality and privacy purposes. All 22 cases in Texas and all eight cases in Florida had grade level information redacted. For the 62 cases that had grade level

information, the students were relatively evenly distributed across grade levels. Grades pre-kindergarten – 2 had 16 students (25.8%), grades 3 – 5 had 11 students (17.7%), grades 6 – 8 had 18 students (29.0%), and grades 9 – 12 had 17 students (27.4%). There were no statistically significant associations between states and grade levels.

There were 83 hearings that included information of the disability category(ies) of the student involved. Of these 83 hearings, 44 cases (53.0%) involved students with one identified disability, 27 cases (32.5%) involved students with two identified disabilities, and 12 cases (14.5%) involved students with three identified disabilities. As presented in Table 2, the most prevalent disability categories were speech or language impairment (32.5%, $n = 27$), other health impairment (31.3%, $n = 26$), autism spectrum disorder (28.9%, $n = 24$), emotional disturbance (28.9%, $n = 24$), and specific learning disability (20.5%, $n = 17$). There were no statistically significant associations between states and disability categories.

Table 2. Disability categories of students involved in special education due process hearings that addressed individual educational evaluations (IEEs) as an issue of dispute from Jan. 1, 2014 – Dec. 31, 2016. ($n = 83$ hearings)

Disability category	n^*	%
Autism spectrum disorder	24	28.9
Developmental delay	5	6.0
Emotional disturbance	24	28.9
Hearing impairment	2	2.4
Intellectual disability	8	9.6
Other health impairment	26	31.3
Orthopedic impairment	1	1.2
Specific learning disability	17	20.5
Speech or language impairment	27	32.5
Traumatic brain injury	1	1.2
Vision impairment	1	1.2

*Note: This column totals more than $n = 83$ due to the fact some students had multiple disability categories assigned to them.

Types of IEEs addressed as issues of dispute

The types of IEEs addressed as issues of dispute in the due process hearings were recorded for 96 out of the 100 total cases in the sample (96.0%). There were four hearings that

did not specify the type of IEE being disputed. There were 65 cases (67.7%) that addressed one type of IEE. An additional 16 cases (16.7%) addressed two types of IEEs and 15 cases (15.6%) addressed three or more types of IEEs. Psycho-educational evaluations were addressed in the most due process hearings (52.1%, $n = 50$). Speech-language evaluations (25.0%, $n = 24$), neuropsychological evaluations (22.9%, $n = 22$), psychological/emotional evaluations (15.6%, $n = 15$), occupational therapy evaluations (14.6%, $n = 14$), and functional behavior evaluations (13.5%, $n = 13$) were the next most frequently addressed IEEs. Evaluations focused on assistive technology needs (8.3%, $n = 8$), physical therapy (4.2%, $n = 4$), transition/vocational needs (4.2%, $n = 4$), and home-based parent training supports (1.0%, $n = 1$) were also addressed in the due process hearings. There were no statistically significant associations between states and types of IEEs addressed in the hearings.

Other issues of dispute and prevailing parties

There were a total of 329 issues at dispute in the 100 due process hearings included in this study. Each of the 100 hearings addressed IEEs as an issue of dispute, representing 30.4% of the total number of issues decided by hearing officers. Of these 100 due process hearings, there were 15 cases in which an IEE was the only issue of dispute. The other 85 cases had multiple issues decided by a hearing officer. As presented in Table 3, issues related to IEP development and implementation (25.5%, $n = 84$) were the next most frequently occurring issue, followed by non-IEE issues related to special education evaluation (14.9%, $n = 49$), placement for special education services (10.6%, $n = 35$), and implementation of procedural safeguards (7.9%, $n = 26$). There were no statistically significant associations between states and types of issues addressed in hearings that involved IEEs as issues of dispute.

Overall, school districts were the prevailing party on 209 issues (63.5%) and parents prevailed on 120 issues (36.5%). For IEEs as the issue of dispute, school districts prevailed in 67 out of the 100 hearings that addressed IEEs (67.0%) and the parents prevailed in 33 hearings (33.0%). The results were similar for the other issues decided in the hearings (Table 3). School districts prevailed in the majority of decisions for all issues, ranging from placement (57.1%, $n = 20$) to transition (100.0%, $n = 2$). There were no statistically significant associations between states and which parties prevailed on specific issues. However, there were statistically significant associations identified between certain states and which parties prevailed on issues when taken as a whole and not parsed into specific issue categories ($\chi^2(13) = 61.065$, $p < .05$). School districts were more likely to prevail on issues in Arizona (87.5%, $n = 21$ issues) and Texas (78.8%, $n = 63$), and parents were comparatively more likely to prevail on issues in Georgia (68.8%, $n = 16$), Illinois (60.0%, $n = 33$), and Massachusetts (83.3%, $n = 5$).

Table 3. Other issues of dispute and prevailing parties in special education due process hearings that addressed individual educational evaluations (IEEs) from Jan. 1, 2014 – Dec. 31, 2016. ($n = 329$ issues)

	<i>n</i> (%)*	Prevailing party (%)**	
		School district	Parent
Total issues	329	209 (63.5%)	120 (36.5%)
Issue			
Independent educational evaluation (IEE)	100 (30.4%)	67 (67.0%)	33 (33.0%)
Evaluation (not IEE)	49 (14.9%)	33 (67.3%)	16 (32.7%)
Extended school year services	4 (1.2%)	3 (75.0%)	1 (25.0%)
Identification	13 (4.0%)	8 (61.5%)	5 (38.5%)
IEP	84 (25.5%)	49 (58.3%)	35 (41.7%)
Placement	35 (10.6%)	20 (57.1%)	15 (42.9%)

Procedural safeguards	26 (7.9%)	15 (57.7%)	11 (42.3%)
Related services	11 (3.3%)	9 (81.8%)	2 (18.2%)
Suspension/ expulsion	5 (1.5%)	3 (60.0%)	2 (40.0%)
Transition	2 (0.6%)	2 (100.0%)	0 (0.0%)

*Percentages calculated within column.

**Percentages calculated within rows.

Legal representation utilized by school districts and parents

Of the 100 due process hearings included in the sample, information on legal representation was available in 98 cases (98.0%). School districts had attorney representation in 97 out of the 98 cases (99.0%). Parents had attorney representation in 63 cases (64.3%). There were statistically significant associations identified between two states and whether or not parents had attorney representation ($\chi^2(26) = 86.841, p < .05$). Parents in Florida and Washington were comparatively less likely to have attorney representation than in the other states. In Florida, parents had attorney representation in one case (12.5%) and parents in Washington had attorney representation in seven cases (36.8%).

Examining the outcome for each issue based on attorney representation showed that parents with attorney representation prevailed in 99 issues out of the 329 issues decided (30.1%). Parents without attorney representation prevailed in 21 issues (6.4%). For the outcomes of issues directly addressing IEEs, parents with attorney representation prevailed in 24 out of the 100 issues regarding IEEs (24.0%). Parents without attorney representation prevailed on nine IEE issues (9.0%). There were no statistically significant associations identified between states and parent outcomes based on attorney representation.

Discussion

Before engaging in the discussion, it is important to note limitations to this study. There are three limitations that should be acknowledged. First, the study is only a sampling of states in the US. While the findings provide information that we contend can be used by all state and federal special education policy makers, the fact remains that this study examined due process hearings that addressed IEEs as issues of disputes in 14 states. As noted in the discussion below, there may be differences in practices across states that make generalizability of the findings problematic. Second, this study only examined due process hearing over a three-year period (January 1, 2014 – December 31, 2016). We felt that this time period was sufficient to identify a large number of cases and to account for potential fluctuations in the data that might occur if only one year had been used. However, it would strengthen the study to include additional years of data. Finally, the quality of the data was limited by the extent to which states redacted the written hearing decisions. For the most part, all of the data that we sought to collect were available in the published decisions. In Texas and Florida, both states redacted information related to student disability characteristics and grade level in many instances. It would improve the study to have the same level of information available from all states and cases included in the data set.

The first research question examined the frequency and percent of special education due process hearings that addressed IEEs as issues of dispute. Although previous studies had examined issues of dispute in due process hearings (Blackwell & Blackwell, 2015; Cope-Kasten, 2013; Mueller & Carranza, 2011; Schanding, et al., 2017), the studies had not specifically identified the extent to which IEEs were issues of dispute. These studies had only identified “evaluation” as a general issue category, which might have included IEEs but also addressed

evaluation issues related to timelines, qualifications of personnel, and the appropriateness of the evaluation methodologies. Within this study, there was a wide-range of frequency and percent of IEEs as issues in due process hearings across the states. Illinois, Texas, and Washington were statistically more likely to have due process hearings that addressed IEEs, and Hawaii and Massachusetts were statistically less likely to have due process hearings that address IEEs. These differences could result from variations in state policies and practices related to independent educational evaluations. While all states are responsible for meeting the standard of federal special education law and regulation, states are permitted to have additional laws and regulations that guide practice within each state (Wright & Wright, 2014). A future research project could examine state-level policies and practices related to IEEs to identify similarities and differences across states. These findings could be used to inform federal regulations for the next time that IDEA is reauthorized.

Regarding the characteristics of students involved in due process hearings that addressed IEEs, the students were relatively evenly distributed across grade levels and there were no significant differences between states. This finding was consistent with a previous study that focused exclusively on Massachusetts (Blackwell & Blackwell, 2015). It appears that IEEs are issues of disagreement between school districts and parents across all grade levels.

For student disability category, there was a notable finding. Similar to previous research on special education due process hearings that addressed a variety of issues (Blackwell & Blackwell, 2015; Mueller & Carranza, 2011; Schanding, et al., 2017), the present study focused on IEEs identified autism spectrum disorder (28.9%), emotional disturbance (28.9%), other health impairment (31.3%), and specific learning disability (20.5%) as commonly occurring disability categories in due process hearings. However, this study identified a much higher

percentage of students with speech or language impairments (32.5%) than the previous research: 1.2% in Massachusetts (Blackwell & Blackwell, 2015); 2.9% in Texas (Schanding, et al., 2017); and 4.9% in a one-year sample from 41 states (Mueller & Carranza, 2011). This result was consistent across the states included in the sample, with no statistically significant differences among states. Based on this finding, it appears that students with speech or language impairments may be more likely to be involved in disputes regarding independent education evaluations than in other types of special education disagreements.

This finding connects to the types of IEEs addressed as issues of dispute in the due process hearings included in the sample. Independent speech-language evaluations were issues in 25.0% ($n = 24$) of the cases. This was the second most frequently disputed type of IEE. Within these cases, school districts and parents disagreed over a) the quality and results of district-conducted speech-language evaluations, b) the appropriateness/necessity of speech-language evaluations for students, and c) the qualifications of independent evaluators to conduct speech-language evaluations. This information can be useful for special education administrators and state education officials responsible for developing regulations and guidelines on evaluating students for speech or language impairments. There is a potential need for improved communication, information and/or practice related to IEEs and students with speech or language impairments. Additional research is needed to better understand the nature of the disputes and the sticking points that arise when considering whether or not to provide an IEE for a speech or language impairment.

Psycho-educational evaluations (52.1%, $n = 50$) were the most common types IEE addressed in the hearings, followed by speech-language evaluations (discussed above), and neuro-psychological evaluations (22.9%, $n = 22$). Psycho-educational evaluations form the core

of special education evaluation, consisting of assessments in core academic areas and cognitive ability (Farrall, Wright, & Wright, 2014). The hearing decisions highlighted disagreements between parents and school districts regarding a) the qualifications of school personnel to conduct the evaluations, b) the quality and level of detail of the psycho-educational evaluations conducted by school districts, and c) the interpretation of evaluation results. Since psycho-educational evaluations are the most frequently used evaluations in special education (Farrall, Wright, & Wright, 2014), it is not surprising that they would arise as an issue of dispute. Essentially, there are more opportunities for there to be disagreement regarding these evaluations. However, it is a noteworthy finding because psycho-educational evaluations are routinely performed by qualified school district personnel for purposes of both initial and re-evaluation for special education services. It is arguably the area of evaluation in which school districts have the most practice and the most established professional expertise. The fact that parents are requesting independent evaluators to conduct psycho-educational evaluations is a potential flag that problems with either procedures or practices exist within school districts. Additional research that closely examines district-level practices would yield potentially helpful information in this area.

Multiple studies have previously examined issues of dispute in special education due process hearings, but they did not focus specifically on cases in which IEEs were involved. In these previous studies, the most frequently occurring issues at dispute in due process hearings were IEP development and implementation, evaluation, procedural safeguards, and program placement (Blackwell & Blackwell, 2015; Cope-Kasten, 2013; Mueller & Carranza, 2011; Schanding, et al., 2017). The findings in this study paralleled the previous research. Due process hearings that addressed IEEs as issues of dispute also frequently addressed issues related to IEP

development and implementation, placement for special education services, and the implementation of procedural safeguards. These cases also addressed other evaluation-related issues in addition to IEEs (14.9%, $n = 49$). The other evaluation issues included disagreements regarding which evaluations should be conducted, the qualifications of personnel conducting the evaluations, and the interpretation of evaluation results.

School districts prevailed on the majority of issues (63.5%), including issues specifically addressing IEEs (67.3%). These results were similar to previous studies on due process hearings in Massachusetts (Blackwell & Blackwell, 2015) and Texas (Schanding, et al., 2017). In this study, there were statistically significant associations identified that indicated school districts were more likely to prevail on issues in Arizona and Texas, and parents were comparatively more likely to prevail on issues in Georgia, Illinois, and Massachusetts. However, this finding was not specific to IEEs as issues of dispute. It was based on the aggregate total of issues. A study that focuses more closely on these states could help us to better understand why this might be the case. Given the relatively small sample size and the limited time period, it could be that these findings might be the result of chance more than the statistical analysis indicates. However, it could be that hearing officers are more likely to rule in favor of one party versus the other party in different states. Further research and analysis is needed in order to understand potential issues related to prevailing parties and hearing officer decisions in due process hearings.

Finally, the findings related to legal representation utilized by school districts and parents were consistent with previous research (Blackwell & Blackwell, 2015; Schanding, et al., 2017). School districts were represented by attorneys in 97 out of 98 cases (99.0%) for which the information was available. By comparison, parents had attorney representation in 63 cases (64.3%). One finding of note was that parents in Florida and Washington were statistically less

likely to have attorney representation than parents in other states. Given that parents without attorney representation only prevailed on 9.0% of IEE-related issues and on 6.4% of all issues, further research into the reasons for the lack of attorney representation could prove informative. We can speculate that the financial costs of attorney representation are a primary barrier to accessing qualified legal representation for many parents. However, we are unclear as to why this might be more of a barrier in some states (Florida and Washington) than in other states in the sample. Additional research into the costs and availability of legal representation could shed light on this issue.

Conclusion

This study examined the pertinent details and outcomes of special education due process hearings that addressed independent educational evaluations (IEEs) as an issue of dispute in a 14-state sample. This research can help policy makers and practitioners develop a better understanding of the dimensions of disagreement related to this important IDEA procedural safeguard. By examining the frequency of these cases, the characteristics of students involved, the specific types of IEEs requested, and the other related issues and outcomes, we can be better positioned to identify areas to target for research and improved practice. With a reauthorization of IDEA looming on the horizon, this information can prove helpful as regulations and guidance are developed regarding IEEs, procedural safeguards, and evaluation practices in special education.

References

- Bateman, B. D. (2011). Individual education programs for children with disabilities. In J. M. Kauffman & D. P. Hallahan (Eds.), *Handbook of special education* (pp. 91–106). Philadelphia, PA: Taylor & Francis/Routledge.
- Blackwell, W., & Blackwell, V. (2015). A Longitudinal Study of Special Education Due Process Hearings: Issues, Representation, and Student Characteristics. *SAGE Open, January-March 2015*, 1-11.
- Cope-Kasten, C. (2013). Bidding (fair)well to due process: The need for a fairer final stage in special education dispute resolution. *Journal of Law & Education, 42*(3), 501-540.
- Farrall, M. L., Wright, P. D., & Wright, P. D. (2014). *All about tests and assessments*. Hartfield, VA: Harbor House Law Press.
- Individuals with Disabilities Education Act Regulations, 34 C.F.R. § 300 (2004).
- Meyer, R. (2016). Independent and unequal: How independent educational evaluations provide a less than equal educational opportunity to students with disabilities. *Boston University Public Interest Law Journal, 75*, 75-100.
- Miles, M. B., & Huberman, A. M. (1994). *Qualitative data analysis: An expanded sourcebook* (2nd ed.). Thousand Oaks, CA: SAGE.
- Mueller, T. G. (2009). Alternate dispute resolution: A new agenda for special education policy. *Journal of Disability Policy Studies, 20*(1), 4-13.
- Mueller, T. G., & Carranza, F. (2011). An examination of special education due process hearings. *Journal of Disability Policy Studies, 22*(3), 131-139.
- Schanding, G. T., Cheramie, G. M., Hyatt, H., Praytor, S. E., & Yellen, J. R. (2017). Analysis of special education due process hearings in Texas. *SAGE Open, April-June 2017*, 1-6.

Vogt, W. P. (2007). *Quantitative research methods for professionals*. Columbus, OH: Allyn & Bacon.

Wright, P. W., & Wright, P. D. (2014). *Special education law (2nd ed.)*. Hartfield, VA: Harbor House Law Press.

Zirkel, P. A. (2014). Longitudinal trends in impartial hearings under the IDEA. *West's Education Law Reporter*, 202, 1-11.

Zirkel, P. A. (2009). Independent educational evaluations at district expense under the Individuals with Disabilities Education Act. *Journal of Law and Education*, 38(2), 223-244.

Zirkel, P. A., & Gischlar, K. L. (2008). Due process hearings under the IDEA: A longitudinal frequency analysis. *Journal of Special Education Leadership*, 21(1), 22-31.

Zirkel, P. A., & McGuire, B. L. (2010). A roadmap to legal dispute resolution for students with disabilities. *Journal of Special Education Leadership*, 23(2), 100-112.