

**“I Didn’t Sign Up For This!”:  
Considering The Impact of Due  
Process On Teachers**

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**When conflict between schools and parents escalate to due process, there are repercussions. Teachers, whose work and testimony are generally vital elements in determining hearing decisions, are largely overlooked in the research. This paper introduces the impact that participating in due process has for educators and calls for further attention, both in research and practice.**

## **IDEA Options for When Schools and Parents Disagree**

Every day, school districts and families must make a multitude of decisions about programming for students with disabilities. In most situations, even when disagreements arise, teams generally are able to reach consensus about the student's Individual Education Program (IEP) through additional discussion, sharing of data, or obtaining more information.

However, when disagreements are unable to be resolved at the local level, the Individuals with Disabilities Education Act (IDEA) provides options for resolution through the State Education Agency (SEA). The mechanisms for dispute resolution include: SEA-sponsored mediation, where a neutral and impartial third-party assists parties in resolving their concerns together; written state complaints, where an allegation of violation of the IDEA requires the SEA to investigate and issue a determination; and the most adversarial of the IDEA dispute resolution options, due process complaints.

While most classroom teachers are equipped with a rudimentary understanding of the legal requirements regarding the provision of special education, even special education teachers and most administrators report only basic familiarity of the dispute resolution

options available under the IDEA (Moody, 2014). The intricacies of the due process system are not topics addressed in the typical teacher-prep curricula, leaving teachers unprepared for what can happen when disputes escalate beyond the IEP team meeting. This study explores that experience and exposes areas for improvement and growth as a field.

## About Due Process Complaints and Hearings

In due process complaints, a parent, adult student, or district may file to request a hearing to have a neutral hearing officer make a determination about any matter relating to the identification, evaluation, educational placement, or provision of a free, appropriate, public education of the student. Also known as “hearing requests,” the due process complaint filing initiates a legal process that typically begins with a resolution meeting (when parents or adult students file). If the parties cannot come to agreement in the resolution meeting, or in the intervening resolution period of thirty days, where they can choose to mediate or otherwise enter into settlement agreements, cases will be elevated to a hearing (unless they are otherwise withdrawn or dismissed).

The due process hearing is the most formal of the dispute resolution options, operating much like a court trial. There are two sides, each usually represented by an attorney, with the case overseen by a hearing officer or, in some states, an administrative law judge, who makes a decision about the dispute and renders a decision. The hearing officer is not an employee of the SEA, is a neutral actor, and is required to be knowledgeable about the IDEA. Generally, the option of going through due process to resolve disputes is more time consuming, stressful, and costly to all parties than the other dispute resolution options available under the IDEA (Center for Appropriate Dispute Resolution in Special Education [CADRE], 2014). Not unlike other types of court filings, most of the due process cases that are filed are settled, dismissed, or withdrawn prior to going to hearing (CADRE, 2023). However, when hearings do occur, they have the formality of court proceedings and adhere to administrative rules enforced

by the hearing officer. Witnesses are sworn in, testimony is provided, and arguments are presented by both sides, generally by counsel, unless parties are representing themselves *pro se*.

## The Critical Importance of Teacher Testimony

Special education teachers are regularly called upon to provide testimony in due process hearings, as are other related service providers such as school psychologists, occupational therapists, and speech language pathologists. Nothing in these educators' professional training prepares them for this high-stress and critically important activity. Rather, and most importantly, teachers typically choose their professions out of their desire to help students learn and succeed. Yet, hearing officers often rely heavily on teacher testimony when issuing their decisions (Zirkel & Yell, 2023). Their high stakes role in the outcome of due process hearings has been overlooked in the existing research that instead focuses on specific topics (e.g., restraint and seclusion) of cases, trends in circuit court rulings, adherence to timelines, and analyses of dispute resolution rates (Connolly, 2017; Connolly et al., 2019; Holben & Zirkel, 2021; Zirkel & Gischlar, 2008; Zirkel & Holben, 2023).

## The Impact on Educators

The historical shortage of special education teachers continues to persist (National Coalition on Personnel Shortages in Special Education and Related Services, 2023), and retention and attrition remains a problem for schools (Billingsley & Bettini, 2019). Simultaneously, the rates of due process complaints filed are also increasing (CADRE, 2023). The confluence of these two trends puts notable pressure on schools and districts striving to meet the needs of students with disabilities. Much is said about the financial costs of due process hearings (Mueller & Carranza, 2011; Holben & Zirkel, 2021) particularly as part of overall rising special education costs (Lieberman, 2023).

But what is the emotional cost to school staff who are forced to participate? What is the impact on special education teachers navigating the ethical dilemma of a legal dispute between their employer and their student's family (Stevens & Snell, 1995)?

Little research exists revealing the experience of testifying and the impact it has on teachers, both personally and professionally. Prior studies include qualitative interviews (DeSio, 2011; Madara, 2016), comparative analyses (Shean, 2006), and explorations of administrators' and school psychologists' experiences (Ellis, 2017; Havey, 1999). In summary, the research collectively finds participation in due process hearings to be a high stress event, often leading to job burnout among education professionals.



# Research Question and Methodology

The study presented here aims to answer the following:

**For special education teachers, what is the experience and subsequent personal and professional impact of participating in due process hearings?**

The results reflect the experiences of more than 30 special education teachers who testified in due process hearings. Recruitment of teachers into the study occurred through social media via snowball sampling, listservs and email campaigns. Respondents came from 12 states and had an average of 19-years teaching experience. Through surveys, participants in the study shared information about their teaching backgrounds, demographic information, the nature and issues of the dispute in the due process hearing, circumstances (e.g., duration) of due process hearing, and impact the experience had on them personally and professionally.

## Results

Four general themes emerged from the data. First, the amount and type of preparation was inconsistent among respondents. Next, teachers found hearing preparation to be burdensome, with 61% reporting negative impacts on their workloads and 83% describing missed instructional time with their students. Many reflected how the experience adversely affected their professional careers (43%). A third and deeply concerning theme was the increased stress level reported by nearly all of the teachers (96%) who shared negative repercussions to their physical and mental health. A final theme emerged where a majority of respondents found at least some benefit to their

teaching practice (e.g., record keeping and documentation) by being involved in the due process hearing experience. These themes are discussed in more detail below.

## Inconsistent Preparation

Regarding preparation for the actual hearing, teachers reported a range of experiences from no preparation (9%) to a short conversation just before the hearing to extensive preparation over several sessions. Most respondents reviewed the case and student's file with an administrator (81%) and/or attorney (90%), and 43% of respondents engaged in some kind of mock practice including practicing potential questions. Preparation also included summarizing data associated with the case and reviewing IDEA.

Teachers reported the average time spent in preparation was 10.7 hours, the reported range for preparation time was between 0 and 40 hours, reflecting a great variation in amount of time. Seventy-four percent of respondents felt they definitely or probably received a sufficient amount of support in preparing for the due process hearing, while 26% felt that they did not receive enough preparation support. Although there was no statistically significant relationship between the amount of preparation and stress level, overall, teachers found the preparation experience to be burdensome:

- *“Preparing for this process and testifying were extremely stressful. Not knowing what might be asked while testifying increased my stress level tremendously.”*
- *“The binder of information was extremely large, and it was filled with dates and IEP that I had to speak about. I wasn't allowed to bring any notes in with me so it was pure studying. I couldn't concentrate on anything for several days leading up to this. I was anxious, nervous and overwhelmed.”*



Much of the experience with a due process hearing happens before the hearing itself. Educators reported a wide range of preparation, confidence in that preparation, and an overall feeling of increased burden to an already full plate of responsibilities.

## Impact on Teacher Workload and Student Services

Collecting and summarizing data associated with the case and reviewing IDEA requires considerable effort. The impact on teachers' workloads was commonly identified as a problem. Sixty-one percent of respondents reported an increase in their workload, citing the burden of preparing for the hearing while also maintaining their other responsibilities of teaching and case management. Teachers described being required to attend additional hearing-related meetings and spending late nights and weekends in hearing-related preparation (e.g., compiling emails, retrieving and reviewing documents). Some teachers described notable workload impacts:

- *“I had to prepare sub lesson plans, miss the first instructional day with students as well as another day. I missed several prep periods reviewing documents for the case which increased my take-home workload and took personal time away from my family. I attended meetings during the summer missing part of my family vacation and spent countless hours reviewing emails, IEP notes, attendance records, behavior plan, incident reports, daily communication notes, writing and reviewing an affidavit, communicating with team members via email and telephone.”*
- *“The preparation for the (case) did not allow me to complete my regular duties and I had to work weekends to catch up on my paperwork and special education responsibilities.”*

Because of the preparation and testifying demands, 83% of respondents missed instructional time with their students, often without any (32%) or adequate (16%)

coverage of their classes. Further, teachers described negative impacts to their lesson planning, communication with families, collaboration with other practitioners and service delivery to other students. They shared:

- *“I was unable to focus on my new students and prepare adequately what I wanted to because I was reviewing hundreds of emails and other documents instead.”*
- *“I still had my typical duties and I had student service delivery impacted as teachers within my building had to cover my classroom regardless of their certification areas.”*

As reported, the cumbersome experience of being involved in a due process complaint is related to responding to the complaint and gathering documentation. Teachers reported the negative impact levied on their students resulting from their divided attention and absences caused by their involvement in the due process hearings. With a significant amount of educators missing instructional time with their students and snowballing negative effects upon other instructional duties like lesson planning, collaborating with peers, and supporting students through family communication, the impact of one teacher’s involvement in a due process hearing extends to other students, families, and service providers.

## **Detrimental Effects on Health and Career**

Teachers reported that participating in a due process hearing imposed significant personal cost and often cited the difficulty of having their expertise questioned. They experienced high stress levels and reported detrimental effects on both their physical and mental health (e.g., migraines, anxiety, insomnia, miscarriage). As a result, 43% stated they were less likely to remain a special education teacher. Responses about the toll of the experience of participating in a due process hearing included:

- *“My stress level was so high I had to see my therapist to calm me down.”*
- *“I wasn’t able to sleep, and my anxiety still hasn’t recovered.”*
- *“I almost left the field of special education due to this experience. I had to leave the district and start new somewhere else.”*
- *“The stress of this experience led to me resigning from this district.”*

With an increased lens on teacher burn-out, the experience of preparation for, participating in, and the aftereffects of a due process hearing can contribute to an already precarious sense of personal well-being. This theme was the highest noted by participants in the study at 96% experiencing personal negative effects on their stress and well-being.

In a time of national teacher shortages, particularly in special education where 65% of public schools are reported to be understaffed for special educators (Bodenhamer, 2023), stemming the tide of these teachers leaving the profession is of utmost concern. Mitigating the negative impacts of participation in due process hearings for teachers called upon to testify is of critical importance.

## **Benefits of Testifying**

While many educators focused on the challenges and burdens associated with testifying in a due process hearing, there were some teachers who reported positive outcomes, reflecting that they improved their practices as a result of the experience. Some noted increased attention to their progress monitoring practices (48%), record keeping and documentation (65%), IEP writing (48%), and improved communication with parents (39%). For example, two teachers identified the following positive outcomes:

- *“I was a new teacher who received excellent training in progress monitoring and documentation. The experience probably increased my documentation.”*

- *“I received excellent support from my school administrators and the LEA’s administration. I was also able to maintain a good relationship with the child’s parent.”*

While most themes identified in this study highlighted the gaps in preparation, training, and support for teachers participating in due process, positive experiences are important to highlight. Teachers recognized their excellent support or training and the additional skills and knowledge they gained from the experience. Leveraging those positive experiences, perhaps by encouraging those educators to assist others through the process or detailing beneficial preparation practices, may be useful.



# Recommended Practices

The experience of testifying in due process hearings is stressful and intense and takes a personal and professional toll on special education teachers. Given this significant impact, and the implications to the profession in terms of teacher shortages, awareness must be matched by action to mitigate the most damaging outcomes. The following are several recommendations for how to support teachers and other practitioners who participate in due process hearings.



## Be Proactive

Outcomes for children with disabilities are positively impacted by positive family educator relationships, leading to increased school engagement, academic performance, school adjustment, and greater self-determination (Ryan & Quinlan, 2017). In special education, the “family-professional partnership (FPP)” is considered the most critical of relationships (Gershwin, 2020; Kyzar et al., 2019; Mueller, 2017; Turnbull et al., 2015).

Parents have reported that their experiences in team meetings are shaped by the status of their ongoing relationships with school personnel. Reciprocally, parent satisfaction with the IEP team meeting will affect the nature of their continued interactions with the team (Esquivel et al., 2008). One challenge is that parents often do not have the knowledge necessary to participate meaningfully regarding services and programs, or they lack skills to participate (Mueller, 2015). Others support that this lack of knowledge causes parents to be treated as recipients of educator’s knowledge, rather than partners (Turnbull & Turnbull, 2006). Although this oversight is not done with malice in most cases, the result is that parents are effectively locked out of participating and the team is denied parental expertise to the level that would be most beneficial to the student (Scanlon et al., 2018). Finding opportunities to increase knowledge and build skills will lead to greater team participation with the parents. Parents whose experience is that of

partnership with the school are more likely to work with educators when disagreements arise.

Schools should aim to establish and maintain open lines of communication between families and school staff so that all parties feel comfortable asking questions and expressing concerns. Families should know who they should contact when they have a concern or question. When problems do arise, school staff should address concerns of families early before they become bigger issues, and when there is disagreement, those discussions should focus as much as possible on being productive and positive. The use of alternative dispute resolution practices such as facilitated IEP meetings can help facilitate problem solving as well as empower staff to see opportunities for system and self-improvement when disagreements are surfaced.



## Be Prepared

The participants emphasized the importance of adequate preparation, particularly for testifying. As one teacher stated, “I was terrified before the prep. Without that, I would have quit.” Helpful practices include reviewing the case with administrators and attorneys (e.g., file review, data summary) as well as reviewing the relevant provisions of the IDEA. Teachers appreciated having someone “demystify the process” by conducting mock trial practice, including going over a list of questions that would be asked. Bateman et al. (2023) offered several questions and witness tips for testifying that can be used to prepare teachers for what to expect in the hearing. For example, witnesses should be coached to explain their background and credentials succinctly. Providing teachers techniques to assist them in remaining calm when challenged will afford them strategies to remain direct and factual in their responses instead of responding defensively or emotionally.

Raising awareness about how testifying impacts teacher witnesses with hearing officers offers another opportunity for improving the system. Hearing officials have considerable

latitude over the tone and structure of their hearings and can protect all witnesses from aggressive tactics by setting and enforcing norms for interactions between opposing counsel and witnesses. Presiding hearing officers should be reminded that, unlike attorneys and administrators, teachers did not enter their profession expecting to be part of a trial, and teachers specifically described feeling like their credibility and expertise were being doubted.



## Be Responsive

Teachers involved in a due process hearing reported a high level of stress and a notably increased workload. Administrators should consider providing release time for teachers preparing for a hearing as well as additional support for teachers' typical responsibilities (e.g., instruction, case management). When possible, appoint district staff, instead of teachers, to assemble needed documentation.

Further, given the significant emotional toll reported, offering mental health supports (e.g., counseling, coordinated peer support) to help teachers process the experience is warranted. Providing paid time off for respite may help mitigate the negative mental health impacts.

Attending to the emotional needs of educators who find themselves defending a particular course of action is incumbent upon district leadership. Following a hearing where a district was found to have erred in providing services and in which teachers' professionalism may have been questioned, can leave them feeling disheartened. Bateman et al. (2023) call upon administrators to demonstrate support and encouragement following hearings:

There may be a palpable sense of frustration, or there may be downright anger at either the parent's attorney for how they questioned witnesses or with the hearing officer for their interpretation of what was presented. As a result of this, administrators and fellow teachers need to be supportive (p. 134).

If additional training is needed to address specific issues raised in the dispute and or the hearing results indicate the need for systemic improvements, district leaders must ensure those steps are taken.



## Be Restorative

Due process cases often involve or result in broken relationships, and rebuilding those relationships is both difficult and important (Bateman et al., 2023). Identifying and mitigating harm when it happens, rebuilding trust, establishing new norms of communication, and focusing on working together for the betterment of the student are all elements of restorative practices.

Restorative practices [RP] within educational settings gained popularity in the late 1990s as schools implemented more exclusionary discipline policies following the rise in school shootings (Fronius et al., 2016). However, restorative practices are not relevant only in the context of restorative justice or discipline policies. The healing impact of restorative practices can be implemented in the repairing of any relationship. Cruz et al., (2018) highlight the importance of recognizing that parents and educators of students with disabilities are engaged in lasting relationships. They noted, “Following a due process hearing, an IEP team is expected to come together and develop a student’s educational program with unresolved and intense feelings of hurt, anger, betrayal, and broken trust,” with unresolved conflict potentially leaving “a team struggling to work collaboratively to meet the needs of the child” (p. 12). They identified several strategies of restorative dialogue to aid in rebuilding trust and aid in the prevention of escalatory conflict spirals, such as restorative questioning, restorative chats or dialogue, restorative circles, and community conferencing (see also: Morrison & Vaandering, 2012; Zehr, 2015). Cruz et al. (2018) contend that “All RP processes address harm and the underlying human needs; ensure equity and accessibility to a collaborative process; and provide opportunities to ‘put things right’” (p. 2). The goal is for parties to have a



structure and culture in place where they can meet to explore their concerns early, directly, and positively.

Keeping the focus on the shared goal of meeting the student's needs can help this effort. School staff and families should strive to maintain positive communication and respectful meeting interactions. Cruz et al. (2018) promote facilitation if parties require support to overcome strained communication patterns and work together productively.

## Implications

The critical place for due process as one of the dispute resolution options for districts and parents to resolve IDEA disputes is well-established and warranted. While due process is generally considered to be the most time-consuming, costly and adversarial of the dispute resolution options (CADRE, 2014), there is the necessity for a resolution system decided on the merits of evidence and testimonial provides avenues for cases to be determined by hearing officers within the legal structure of administrative rules, proceedings, precedents, and procedures. However, this study brings to light an awareness of the toll due process can exact on teachers whose testimony is often at the crux of most proceedings.

Testifying in a due process hearing comes with an imbalance of costs to benefits for special education teachers. Administrators, attorneys, and hearing officers need to understand the impact of this experience so they can better support educators. Given the effects described in this study, further research is needed in the areas of (a) the coverage of dispute resolution in special educator professional development and preservice preparation; (b) the impact of due process hearing participation on other practitioner populations (e.g., speech language pathologists, school psychologists) and (c) the impact on all practitioners engaging in other forms of dispute resolution (e.g., mediations, due process complaints that are settled prior to a hearing). While administrators, attorneys, and hearing officers may be focused on the case at hand, the results of this study underscore the importance of attending to the collateral damage

that may be caused to teachers (and all who may be called as witnesses) who participate in due process proceedings. Indeed, this current work is a call for additional research in how due process impacts educators and what can be done to mitigate potential harm.



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