

Using Due Process Opinions as an Opportunity to Improve Educational Practice

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Article:

There is little question that today's society is a litigious one, and few professions can escape the realities of such. Although there is no mandate for national data collection on special education due process hearings (Ahearn, 2002), Chambers, Harr, and Dhanani (2003) estimate that more than 9,000 requests for dispute resolution are made per year. The hearings that result from unresolved disputes between parents and school district personnel are often stressful (Lombardi & Ludlow, 2004; O'Shea, Bateman, Algozzine, & O'Shea, 2004), and the outcomes are frequently disappointing to both parties (Mills & Duff-Mallams, 2004; Vitello, 1990). In this article, we attempt to broaden discussion about due process by pointing out potential benefits frequently overlooked in practice and in the professional literature. We begin by offering a redacted or summarized version of a due process case as example. We present reasons why education professionals should view due process hearings as instructive, and then we follow up with suggestions about how educators can best use legal reviews of decision summaries.

A Redacted Due Process Case

In April 2003 (when the student was in third grade), the parents requested the district complete a psychoeducational evaluation because their daughter not only had problems with attention and handwriting but also needed constant praise and reinforcement. At the time, she was earning Ds and Cs on her report card. School district personnel complied with the parents' request and evaluated the student in July. In the report issued after that, school personnel noted that the student's mother reported a "child psychologist has informed the parents the student is hyperactive and may have attention deficit/hyperactivity disorder (ADHD)." Also, within the contents of this report the teacher noted that the student had difficulty focusing and was likely to skip problems or steps when working in class. District personnel confirmed in this same document that the student had needs in organization, attention, concentration, and visual sequencing/tracking as well as self-esteem. But they decided that these needs were not significant enough to warrant provision of special education services.

In April 2004 the parents notified the district again that their daughter was not performing well in school and continued to receive Ds and Cs on her report cards. Seven months later, in November 2004, the student received

an independent evaluation. The independent evaluator concluded that the child had average intelligence and diagnosed her with ADHD (predominantly inattentive sub-type) as well as a learning disability in math. The independent evaluation report also offered school district personnel numerous suggestions for effectively addressing the student's needs. As a result (still in November 2004), the district issued a multidisciplinary report incorporating the independent evaluator's findings. In this version, school district personnel decided that the student did indeed have a learning disability and ADHD and found her eligible for special education services. The report also identified several specific areas in which the student experienced difficulty, including academic focus and motivation.

The parents were dismayed that the district failed to do more for their daughter and requested a due process hearing. In the due process hearing the parents sought compensatory education for alleged denials of a free, appropriate public education (FAPE) over most of the student's schooling. A hearing was held in five sessions, commencing in May 2006 and concluding in September 2006. What was the outcome? Obviously, one party had to prevail—either the parents or the district. School district personnel firmly believed they had acted appropriately and consistently because they had previously not identified students with ADHD as needing special education services. The parents steadfastly believed that district personnel had not acted appropriately and that filing a complaint was in their daughter's best interest.

In October 2006, the hearing officer rendered his decision determining that school district professionals had failed to identify, in a timely manner, the student as eligible to receive special education services under the Individuals with Disabilities Education Improvement Act (IDEA, 2004). Records clearly confirmed that the district personnel had reason to suspect the student had ADHD when she was a third grader. However, because the student was passing from grade to grade, school district personnel decided she did not require specially designed instruction and therefore was not eligible for special education services. Interestingly, school district personnel did recommend that the parents consult with a pediatric neurologist to ascertain whether the student had ADHD even though there were definite signs present.

Specifically, the hearing officer found the school district personnel's reasoning flawed for three reasons. First, the need for specially designed instruction is not limited to academic instruction. Instruction in social skills, study skills, and other nonacademic areas is properly considered to be specially designed instruction. Second, special education law does not require a physician to diagnose ADHD. Third, the district (not the parent) is required by federal law to conduct an evaluation of the child in all suspected areas of disability.

In his written decision, the hearing officer stated there was no question that the district was notified of the student's potential disability. Moreover, he pointed out that district personnel should have known that the student's progress in school would become increasingly dependent on the very academic and behavioral skills impaired by ADHD. In the end, he decided in favor of the parents and awarded compensatory education to the student. Compensatory education is a possible remedy when a district has failed to provide a student with FAPE under IDEA. Lombardi and Ludlow (2004) defined *compensatory education* as "the award of additional services beyond what is required by law" (p. 36). Examples of *compensatory education* include (a) extended school year, (b) special services provided before or after the school day, or (c) services provided after the age of 21. In this case, the hearing officer found that the student's needs pervaded her entire school day. Therefore, she was entitled to compensatory education for each day she attended school from April 2003 to November 2004.

Understanding Special Education Law and Appreciating Due Process Opinions

As frontline educational professionals, teachers and administrators might think this due process case is interesting but might be tempted to forgo the rest of this article. After all, due process means conflict, which understandably causes some practitioners apprehension. Others who remain undaunted by dispute resolution might think they do not have time to be concerned with such legal issues, because they have students to teach. We agree that educators are not litigators, and we recognize the multiple demands on practitioners' time. Nevertheless general and special education professionals need to enhance their knowledge about special education law and find practical benefit in present-day due process opinions for two reasons: legal and practical.

The Legal Rationale

All public school personnel are required to be knowledgeable about the educational rights, federal mandates, and civil statutes extended to students with exceptionalities and their families (deBettencourt, 2002; Getty & Summy, 2004; O'Shea et al., 2004). More than six million public school children receive special education services under IDEA (2004), according to the *2005 Annual Report to Congress* (U.S. Department of Education, 2005). Understanding the implications of IDEA is the first step toward complying with the complexities of the law and providing these students with FAPE in the least restrictive environment.

Unfortunately, it is often difficult for practitioners to understand and interpret IDEA regulations because the federal statutory rights and civil protections contained therein are deliberately vague (Dagley, 1995; Drasgow, Yell, & Robinson, 2001). Newcomer and Zirkel (1999) suggested that Congress may have adopted ambiguous statutes because of academic deference, a practice in which legislators abstain from substituting their judgment for that of educators who have special expertise. Although perhaps well intended, this ambiguity often results in questions and conflicts between educational professionals and families of students with disabilities. To answer these questions and resolve unavoidable conflicts, Congress put forth procedural safeguards, one of which is due process.

The due process provisions put forth in IDEA protect the educational rights of students with disabilities and their families. Specifically, the law ensures that parents have the right to examine records, receive independent evaluations, receive prior written notice, and challenge educational decisions at an impartial hearing. If parents decide to pursue due process, they have the right to receive counsel, cross-examine witnesses, present evidence, compel witnesses, and receive a written or taped hearing transcript (O'Shea et al., 2004). A due process complaint may be classified as procedural, substantive, or both. Procedural matters relate to upholding the letter of the law, whereas substantive issues center on preserving the spirit of the law (Lombardi & Ludlow, 2004).

These due process procedures ensure that IDEA is interpreted objectively when parents and school districts disagree. Instead of parents and school personnel working together to solve the educational problem, a trained third-party mediator, due process hearing officer, or administrative law judge is called on to achieve a sensible solution. Although this solution seems reasonable and simple enough to understand, due process of law is a complex legal procedure that may be unfamiliar and may prove overwhelming to many practicing school professionals (Lombardi & Ludlow, 2004).

In fact, recent studies confirm that public school personnel need more training to understand special education law. Davidson and Algozzine (2002) found that self-reports by administrators indicated a lack of sufficient training in special education law. Wakeman, Browder, Flowers, and Ahlgrim-Delzell (2006) also reported that principals who participated in their study received little or no training in special education law during coursework offered by their higher education licensure programs. Practicing teachers (Gartin, Murdick, Thompson, & Dyches, 2002) thought that more training and support were needed in the area of special education law. There is no question that education professionals can obtain further training in special education law through in-service programs, Web-based professional development, and so forth. However, another way professional personnel can improve their understanding of the ambiguous policy directives guiding present-day practice and increase their familiarity with due process is by reviewing opinions handed over by due process hearing officers or administrative law judges. We are not suggesting that this approach be used in place of training provided in face-to-face or electronic workshops. Instead, we are advocating that practicing school personnel regularly review due process opinions to supplement information gleaned from formal training.

The legal need for practitioners to review due process decisions is more essential today than ever before because of the prevailing legislative focus on improving educational results for all students (No Child Left Behind [NCLB] Act, 2001). When the original version of IDEA passed in 1975, the emphasis was on improving access to special education services for students with exceptionalities (Katsiyannis, Yell, & Bradley, 2001; Scheffel, Rude, & Bole, 2005). At that time, disagreements between families and professionals occurred mainly when interpretations differed about students' right to services; therefore, interpretation was often limited to

issues of access.

Over the past three decades, the focus of IDEA has changed. In 2004, Congress reauthorized IDEA, emphasizing the spirit of the law (i.e., the substantive aspects of special education; Yell, Shriner, & Katsiyannis, 2006). Attention is now on accountability and improved educational results for students with disabilities (Yell, 2006; Yell & Katsiyannis, 2001). This evolution from ensuring access to achieving improved outcomes has made IDEA interpretation more problematic. One result has been “a virtual explosion” in special education due process and litigation (Newcomer & Zirkel, 1999, p. 470; O’Shea et al, 2004). In an effort to reduce the burgeoning number of due process complaints, law-makers made several changes to the due process requirements during the reauthorization process. Now, school personnel cannot file due process if parents do not con-sent to special education services for their child. Also, courts can award attorney fees to the prevailing state or local education agency if the courts view the litigation as frivolous or unnecessary (Smith, 2005). Although clearly the intent is to focus time and energy on resolving substantive violations, we could not locate any published data showing that these changes have, in fact, reduced the number of complaints. Thus, our view is that the plentiful supply of due process opinions avail-able nowadays serves as an untapped resource—a virtual wealth of instructive information about special education law. Scheduling time each week or month to review these opinions is one way administrators and teachers can stay abreast of the rapidly changing expectations in professional policy and possibly avoid making substantive violations to IDEA.

TABLE 1
Selected Literature on the Objective Costs of Due Process

Literature	Findings
Zirkel, P. A. (2006). Pondering ponderousness. <i>Phi Delta Kappan</i> , 87, 717-719.	The <i>Murphy v. Arlington Central School District</i> case began during the 1997-1998 school year and dragged on for more than 7 years. As a result, Zirkel concluded that the costs of due process to a small district are “astronomical” (p. 719).
Zirkel, P. A. (2005). Legal sanctions. <i>Phi Delta Kappan</i> , 87, 255-257.	Offered an example of costs in a discussion of <i>Robert M. (1998)</i> wherein Zirkel pointed out that more than 10 hearing sessions took place, and the Fresno Unified School District was ordered to pay legal fees of more than \$3 million.
Idstein, P. (1996). Swimming against the mainstream. <i>American Educator</i> , 19, 28-31.	Reported due process costs in a general sense by offering a case study in which Idstein described the process of moving one “chronically disruptive special education student to a more restrictive environment that took almost nine months, hundreds of hours of work, and thousands of dollars to achieve” (p. 28).
Getty, L. A., & Summy, S. E. (2004). The course of due process. <i>Teaching Exceptional Children</i> , 36, 40-44.	In 2001, the Michigan Office of Special Education Early Intervention Services reported that the average pecuniary loss during a due process hearing ranged between \$13,000 and \$61,000 locally and in 2000 between \$2,000 and \$137,000.
Sellars, S. (2001). <i>Texas education agency special mediation scores high marks in survey of participants</i> (Report: Consortium for appropriate dispute resolution in special education). Austin: Texas Education Agency, 14.	The Texas Education Agency reported costs averaging \$10,000 for each due process hearing.
Havey, J. M. (1999). School psychologists’ involvement in special education due process hearings. <i>Psychology in the Schools</i> , 36, 117-123.	Havey studied the general impact of due process on practicing school psychologists and found that half of the participants commented on the “high emotional and/or financial costs demanded by hearings” (p. 120). He also found that every 1 hr of due process testimony required about 7.5 hr of professional preparation.

The Practical Rationale

Beyond the legal rationale lies an even more important need for public school personnel to broaden their understanding of special education law and gain greater appreciation for due process opinions—the practical one. As we mentioned previously, school personnel frequently view the due process system with “fear” and “resentment” (Lombardi & Ludlow, 2004, p. 42). Because special education teacher attrition is attributable, in part, to job dissatisfaction (U.S. Department of Education, 2003), some researchers have asserted that the negativity often permeating practitioners’ perceptions about due process might influence the increasing number of professionals who are deciding to prematurely leave the field (Boe, Bobbitt, Cook, Whitener, & Weber, 1997; Getty & Summy, 2004).

Also on a practical note, Bateman and Linden (2006) asserted that “the loss of time and money in dispute resolution is undeniable” (p. 209). We agree. The professional literature is replete with opinions and studies documenting the time, labor, and money spent during due process. Besides recognizing objective costs, the

literature is filled with discussions documenting the subjective price of due process. Subjective costs are psychological or social and center on emotions; thus, they cannot be measured objectively. Tables 1 and 2 offer literature summaries regarding these costs. As can be seen, the objective and subjective costs of due process are high and well documented, thereby legitimizing frontline practitioners' apprehension about due process. If administrators and teachers become more familiar with due process opinions by routinely reviewing them, some of these costs may be reduced, including the apprehension that characterizes the psychological ones.

TABLE 2
Selected Literature on the Subjective Costs of Due Process

Literature	Findings
Mills, G. E., & Duff-Mallams, K. (1999). A mediation strategy for special education disputes. <i>Intervention in School and Clinic, 35</i> , 87-92.	Most due process hearings produce disappointing results and take a great emotional toll on both parties.
Goldberg, S. S., & Kuriloff, P. J. (1991). Evaluating the fairness of special education hearings. <i>Exceptional Children, 57</i> , 546-555.	In an investigation of due process in Pennsylvania, Goldberg and Kuriloff reported that professionals and parents demonstrated few positive feelings about participation in due process.
Zirkel, P. A. (1994). Over-due process revisions for the individuals with disabilities education act. <i>Montana Law Review, 42</i> , 236-251.	Zirkel described the overall due process experience as negative because it is time intensive, open-ended, uncertain, and adversarial.
Lombardi, T. P., & Ludlow, B. L. (2004). A short guide to special education due process. <i>Phi Delta Kappa Fastbacks, 523</i> , 7-48.	Emotions run high and personal, and professional sensitivities can be hurt in the course of due process.
Getty, L. A., & Summy, S. E. (2004). The course of due process. <i>Teaching Exceptional Children, 36</i> , 40-44.	Emotional stress and confusion can place strain on participants' personal and professional lives. For instance, families can harbor feelings of distrust and anger toward the school (before, during, and after the hearing). Educational professionals can have negative or cautious attitudes toward the student and his or her family.
Boe, E. E., Bobbitt, S. A., Cook, L. H., Whitener, S. D., & Weber, A. L. (1997). Why didst thou go? Predictors of retention, transfer, and attrition of special and general education teachers from a national perspective. <i>Journal of Special Education, 30</i> , 390-411.	Due process hearings may influence job satisfaction and retention. Specifically, due process hearings may contribute to the rapidly increasing attrition of special educators.

Another practical need relates to practitioners' decision making. When apprehension overrides appreciation, the ability of school personnel to make sound educational decisions may be compromised. For instance, Meinhold, Mulick, and Teodoro (1994) suggested that special education decision making is based on an implicit process of assessing risks, costs, and benefits. Drawing on their analytical framework, we argue that practitioners' firsthand involvement in dispute resolution and the professional literature relating to it substantiate existing views about the high costs of special education due process. But the benefits associated with due process are rarely acknowledged or discussed. We reviewed the professional literature relating to special education due process, concentrating on works published between 1994 and 2006. In all, we found 292 publications using the keywords special education and due process. However, only a few articles (Lombardi & Ludlow, 2004; Margolis, 1998; Miller & Connolly, 2003; Rickey, 2003; Scheffel et al., 2005; Weishaar, 1997) addressed the need for education professionals to view due process procedures as useful. Thus, the decision-making process of weighing risks, costs, and benefits may be unnecessarily biased toward the negative.

To promote sound decision making, all school personnel need to broaden their understanding of special education law and become more familiar with the benefits of due process. In the few articles found, the practical benefits of understanding special education law and due process often were described as follows:

1. Practitioners might be better prepared to provide appropriate services, thereby ensuring the letter and the spirit of IDEA.
2. School personnel might participate more effectively in dispute resolution.
3. Educational professionals might avoid due process all together (Lombardi & Ludlow, 1998; Margolis, 1998; Miller & Connolly, 2003; Rickey, 2003; Scheffel et al., 2005; Weishaar, 1997).

We think these benefits are substantive, and we offer an example of how they might be achieved in daily educational practice.

One of the unique features of IDEA is its requirement for partnerships between parents and school officials (Dagley, 1995; Newcomer & Zirkel, 1999). Most educators are aware that the Act ensures that parents of students with disabilities have meaningful participation in their child's education, and most educators also understand that they are expected to work with parents to design and implement FAPE programs in the least restrictive environment. But researchers have clearly documented that many parents are not afforded this opportunity (Caruso, 2005). Thus, many school officials do not comply with the IDEA mandate for shared decision making. When parents find themselves excluded from meaningfully participating in their child's education and are unhappy with a teacher's classroom practices, they are placed in the undesirable position of enforcing IDEA compliance and filing a request for due process (Dagley, 1995; Mayerson, 2004). If, however, educational professionals fulfill their practical obligation to improve their knowledge of special education law by routinely reviewing due process opinions, an important shift might occur. In time, parents may be placed in the role of attorney less often and districts may adopt a philosophy of service more frequently (Dagley, 1995), the end result being strengthened partnerships between parents and school professionals, better special education services for students with disabilities, improved academic and behavioral outcomes, and fewer court battles.

There is little question, then, that the obvious, immediate benefit of a due process decision is to the prevailing party. In other words, after the hearing officer's decision is made, the full array of remedies and relief provided therein are typically carried out only for the student who filed the complaint. We agree that the legal and practical due process benefits of achieving an appropriate education for one student are important, not to be discounted. IDEA ensures just that for all students with disabilities, yet the largest constituencies served by special education services are families and students living in poverty (U.S. Department of Education, 2005). Do these families have access to the knowledge and legal or educational resources needed for due process? The obvious response is no. In fact, data analyzed by researchers at the Center for Special Education Finance (CSEF) working on the Special Education Expenditure Project (SEEP) support this assertion. These data indicated that high-income districts were 13 times more likely to have due process cases than lower income districts (Chambers, Harr, & Dhanani, 2003). Thus, to improve the way special education is practiced in all schools, frontline educational professionals should regularly review due process opinions, which offer valuable educational lessons that serve the greater good.

Resources for Accessing Due Process Opinions

Due process hearing officers typically devote substantial amounts of time, labor, and energy to preparing and writing their decisions (O'Shea et al., 2004). But unless practitioners take it upon themselves to routinely review due process opinions, the educational lessons contained therein are, at best, limited to a single student in a lone classroom and, most often, lost in vast caverns of bureaucratic paperwork. A notable exception to this phenomenon is the rare dispute that starts with due process locally and, through appeals, reaches the U.S. Supreme Court.

Although the educational lessons learned from Supreme Court cases such as *Hendrick Hudson v. Rowley* (1982), *Irving v. Tatro* (1984), *Burlington v. Mass. Dept. of Ed.* (1985), and *Honig v. Doe* (1988) are valuable, they are commonly taught in teacher education programs and available in introductory textbooks about special education. Such cases were handed down in the 1970s and 1980s when IDEA was in its infancy (Yell & Katsiyannis, 2001). Today, most of the IDEA interpretation occurs not at the Supreme Court level but instead at the local and state levels—beginning with the hearing officer's due process opinion. The most recent Supreme Court rulings regarding IDEA, *Schaeffer v. West* (2005), *Arlington Central v. Murphy* (2006), and *Winkelman v. Parma City* (2005), do not look at substantive implementation but rather look at the process of litigation itself.

Given the concerns over increasing special education litigation (Smith, 2005) and the availability of information on the Internet, one would expect easy access to results of due process hearings. Information is available but accessing it often problematic, in part because of the variability that exists between the states. Some states publish due process hearing decisions, some states publish only the appeals of those decisions, and others

publish nothing at all.

Although we could not pinpoint evidence in the professional literature, we think that the reticence toward the release of information may come from several fronts. First, the due process hearing typically involves a minor, and most records involving the education, treatment, and litigation involving minors are not available for the public. Also, a hearing may be open or closed (O’Shea et al., 2004). An open hearing is one in which anyone from the public may attend; the decision (with the student’s name) but not the transcript and other materials from the hearing may be released and made available to interested persons. In a closed hearing the decision will be released in an identifiable form only to the parties involved in the hearing and to those persons who must implement the decision. Finally, the record often contains confidential information regarding the student’s disability, the causes of the disability, the financial status of the parents, the educational level of the parents, or even the competence of the parents.

TABLE 3
Selected Resources for Accessing Due Process Decisions

Resource	Description
Electronic databases	The following electronic databases can be searched to locate journal articles about special education due process hearings: <i>Education Resources Information Center [ERIC]</i> , <i>Academic Search Premier</i> , <i>Education Full Text</i> , <i>PsycARTICLES</i> , <i>PsycINFO</i> , <i>LEXIS</i> , and <i>Westlaw</i> . Try using the keywords “special education” and “due process hearings.”
Reputable Web sites	<p>These Web sites provide access to due process decisions and show how IDEA is interpreted by legislators as well as the courts.</p> <ul style="list-style-type: none"> • www.dueprocessillinois.org—Central location where individuals can obtain copies of actual due process decisions entered under the laws of the State of Illinois. • http://www.k12.wa.us/SpecialEd/due_process.aspx—Offers summaries of State of Washington, Office of Administrative Hearings, Special Education Due Process hearing decisions requested during the years 2000-2006 and issued prior to March 21, 2006. • http://www.ode.state.or.us/search/page/?id=366—A log of individual due process requests and their orders compiled by the Oregon Department of Education (ODE); provides training materials on avoiding the most frequent problems identified through the dispute resolution system and monitoring. • http://www.directionservice.org/cadre/—Web site for CADRE, the National Center on Dispute Resolution, which encourages the use of mediation and other collaborative strategies to resolve disagreements about special education. The menu item titled “Literature Database” includes a developing and searchable database containing literature (research-based and policy/practice) related to dispute resolution in special education. The Due Process Hearings box provides summaries and some links to full-text articles. • www.wrightslaw.com—Provides parents, educators, advocates, and attorneys with accurate, reliable information about special education law, education law, and advocacy for children with disabilities; contains thousands of articles, cases, and free resources about dozens of topics. • www.special-ed-law.com—Sussan & Greenwald Attorneys At Law Index to Major IDEA Court Decisions. • Specialedlaw.blogspot.com—A special education legal resource discussing case law, practical advocacy advice, and developments in states and federal statutes and regulations. Postings include insight and sometimes humor from Charles P. Fox, a Chicago attorney who is also a parent of a child with special needs, and other guest authors. • www.lexisnexis.com/educationlaw/—Education law publications; an accurate and authoritative source for administrators, school board members, attorneys, principals, and teachers. • www.findlaw.com—Includes summaries of many decisions. Educators are encouraged to check the resources by jurisdiction page. Go to http://laws.lp.findlaw.com/3rd/940896p.html#Scene_1 to read a case summary about a student with a learning disability who was denied a free, appropriate public education.
Newsletters	The <i>Individuals with Disabilities Education Law Report (IDELR)</i> is a subscription-based newsletter published by LRP Publications, which also publishes <i>The Special Educator</i> , with a similar format as IDELR.
Professional journals	Professional journals offer frontline practitioners excellent sources of information about due process hearings. <i>Phi Delta Kappan</i> , <i>Teaching Exceptional Children (TEC)</i> , and <i>Intervention in School and Clinic</i> are journals that offer teacher-friendly articles on the topic. <i>Phi Delta Kappan</i> and <i>TEC</i> feature regular articles about due process hearing decisions and special education law. <i>TEC</i> features a column titled <i>Legal Perspectives</i> ; <i>Phi Delta Kappan</i> features one referred to as <i>Courtside</i> ; both are written by a professor of law at Lehigh University, Perry A. Zirkel.
Local, state, and	Attendance at local, state, and national education or law conferences is another way professionals can access information about due process decisions. State and national Council for Exceptional Children (CEC) conferences offer sessions on best practice, some of which feature discussion on due process decisions. These discussions are practical in nature and offer participants many useful application examples.

Where, then, can educational professionals turn to find this information? Fortunately, technology has made access to due process opinions easier than ever before. Practitioners can now locate some hearing officers’ opinions and interpretations about case law from school or home by searching electronic databases, visiting

reputable Web sites, or reading newsletters and online journals. Local, state, or national conferences on law or special education also offer frontline educational professionals a wealth of information about the virtual landslide of due process decisions. Table 3 lists some of the most reliable and teacher-friendly sources of information.

Implications for Practitioners

Suggestions for Reviewing Due Process Opinions

To move beyond the feelings of apprehension frequently surrounding dispute resolution, educators need specific suggestions for how to review and use due process opinions to improve educational practices. Because special education dispute resolution is a legal procedure (O’Shea et al, 2004), the hearing transcripts and opinions are often difficult to read. Still, like Rickey (2003) we think there is value in periodically doing so. To make the task more appealing, we offer the following suggestions.

TABLE 4
Sample Template to Guide Readings
of Due Process Opinions

Essential Aspects	Notes
Title of the case	
Jurisdiction	
✓Local, state, or federal	
Author	
✓Due process hearing officer or administrative law judge	
Issues in the case	
✓Identification, evaluation, program, placement, or curriculum	
Parts of the case	
✓Facts	
✓Arguments of each party	
✓Results and reasoning	
✓Conclusion (holding or order)	
Summary points	
Themes related to current school issues	
✓Discipline, transition, overrepresentation, ESY, compliance	
Possible effects/scope of decisions	
Implications for practice	
✓More training	
✓Improved monitoring procedures	
Legal vocabulary to clarify	

Note: ESY = extended school year. For additional information regarding legal terms go to dictionary.law.com.

First, administrators and teachers can develop and refine their vocabulary, because the readings are likely to be filled with hearing terminology and legal jargon. The Special Education Due Process Handbook (O’Shea et al., 2004) is a helpful resource to accomplish this.

Second, school personnel should schedule a regular time each month to peruse due process opinions. This review time can be spent alone in the comfort of one’s home, with a small group of interested colleagues at a local eatery, or with larger groups of colleagues during formally scheduled professional development.

Third, we encourage practicing professionals to have a purpose in mind as they review the opinions. Five issues need to be addressed during due process: identification, evaluation, program, placement, and curriculum (Lombardi & Ludlow, 2004). As school personnel review the opinions, it makes sense to take notes about how the hearing officer ruled in each of these areas. Ricky (2003) recommends that analysis of due process opinions should also include the particular area of dispute, the prevailing party, the student’s characteristics (gender, age, disability), and any other relevant data. Thus, we think it wise for practitioners to note this information as well.

Fourth, before, during, and after reading, professionals should consider the special education issues they are dealing with in their schools and compare them with past, present, and future litigation themes evidenced in the due process opinion data. O'Shea et al. (2004) identified some of these possible themes as follows: discipline, extended school year, transition services, accessing the general education curriculum, tuition reimbursement, compensatory education, overrepresentation, funding, accountability, and compliance. This type of comparison may shed light on how special education law is being interpreted, how to deal more effectively with the issues, and how to avoid disagreement in their school or district (Rickey, 2003).

We created a template incorporating some of these considerations as a way for practitioners to take notes while reading (see Table 4). It is important for practitioners to use their notes to develop and maintain a resource file that can be housed in their classroom or school building (Brookshire and Klotz, 2002). The resource file should be organized by hearing themes or the major components of IDEA law to promote ease of access to the information contained therein.

Reading the due process opinions is the first step toward developing an appreciation of them. However, to move beyond appreciation and make the decisions useful to practitioners, specific suggestions are in order. The following discussion provides clear-cut suggestions, based on the redacted due process case offered previously, for using due process opinions to improve educational practices.

Suggestions for Using Due Process Opinions to Improve Educational Practices

Rely on due process opinions for professional guidance. When frontline professionals allow their educational practices to be guided, in part, by due process opinions, legislative gray areas can be clarified. For example, to help students who are floundering, teachers and administrators should understand the similarities and differences between IDEA and Section 504 (deBettencourt, 2002). But, as deBettencourt points out, because the criteria for identification, eligibility, appropriate educational programming, placement, and due process differ between the two statutes, this seemingly simple task can be quite confusing. In the redacted due process case offered at the beginning of this article, school district personnel did not think it was necessary to identify a student with ADHD as needing special education, despite the student's clear needs for specially designed instruction. After the due process hearing, school personnel were better able to understand the differences between the two statutes. Thus, the personnel were more adept at deciding which students needed Individualized Education Programs (IEPs) and which students needed Section 504 accommodation plans.

Use due process opinions to make informed educational decisions. Due process opinions can also be used to aid professionals' decision making when determining special education and related services. Yell et al. (2006) point out that in a wait-to-fail model, students who are struggling do not receive specialized services in a timely manner and are therefore often unable to receive meaningful educational benefits from them. Again relying on the case presented previously, school district personnel used the decision to initiate a review of all students who were at risk for failure. Thus, the direction the district gained from the hearing officer's decision allowed school personnel to make better decisions by more accurately referring students needing evaluation for special education. As a result, a greater number of students were appropriately identified as eligible for IDEA and help was provided to students sooner.

Consider due process opinions to improve IDEA Compliance. Due process opinions can be used to modify educational practices, thereby reducing procedural and substantive violations of IDEA and improving teacher and school district compliance. As mentioned previously, due process complaints can be classified as procedural or substantive (Lombardi & Ludlow, 2004). In the previous case scenario, school district personnel did not realize that because they were informed about the student's disability, through repeated parental requests for evaluation and the findings of the independent evaluator, they were responsible for providing specialized services to her. They erroneously thought that because the student was earning Cs and Ds, they were not obligated to serve her. Thus, the district was violating both the letter and the spirit of the law. Why? Because the student was not receiving the specialized services to which she was entitled, so the error was both procedural and substantive. After the hearing, district personnel implemented a monitoring system to ensure that

students who were suspected of having a disability but were still passing were evaluated within IDEA timelines.

Read due process opinions to promote partner ships. Due process opinions can also be used to promote meaningful partnerships with key stakeholders. Many education professionals agree that because the majority of students with disabilities receive all or part of their education in the general education classroom, collaboration is a key factor in improving educational outcomes. Unfortunately, most current approaches to education fail to support meaningful professional collaboration at the building, district, or state level (Friend & Cook, 2003). In the redacted due process case, school personnel strengthened their collaborative practices by bringing in advisors from the state Department of Education to provide technical assistance on appropriate methods to seek out and identify all students with a disability in their district. This collaboration helped school professionals to expand their knowledge, skills, and abilities and modify their existing approaches to reflect best educational practices.

Be well versed in due process opinions to improve outcomes. The greatest benefit of using due process hearings to improve educational practices may result from increased provision of free, appropriate services, thereby improving educational outcomes for more students with disabilities. There is little question that to provide FAPE and improve outcomes, practitioners need to make consistent use of scientifically based practices. The revised statutes are clear that such practices should not be limited to academic instruction. Positive behavior supports must also be addressed in the IEP, and those deemed necessary must be provided on the basis of proven practices (Yell et al., 2006). For instance, in the scenario case, the hearing officer awarded compensatory education to the student in part because the need for specially designed instruction is not limited to academic instruction. Prior to the decision, district personnel failed to provide this. But afterward, district personnel went the extra mile to ensure that all their teachers received training in the use of scientifically based instruction and behavior supports for students with ADHD. By including in the IEP and providing in the classroom scientifically based instruction in social skills, study skills, and other nonacademic areas, district personnel are now more likely to facilitate improved educational outcomes for students with disabilities.

Closing Thoughts

Zirkel (2006) has repeatedly cautioned education professionals about the legalization of special education, and in the 2004 reauthorizations to IDEA, decreasing the rising number of due process hearings was a clear theme. The message of this column is consistent with these statements. The goal should be to help practitioners move beyond prevailing negative associations of due process and begin to view the system as useful. Educators should be taken aback by the time, labor, money, and emotional energy exhausted during due process and what little impact there is beyond the parties directly involved. To counteract this long-standing, lopsided approach, school personnel need to broaden their knowledge of special education law and derive practical benefit from periodic reviews of due process opinions. In this way, the opinions of hearing officers are used to improve classroom practices and educational outcomes for many students and their families.

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