

**Students with Emotional and Behavioral Disorders and
Special Education Due Process in the United States**

William Blackwell
Assistant Professor, Special Education
Sam Houston State University

Jaime Betancourt Durán
Assistant Professor, Special Education
Sam Houston State University

Jennifer Buss
Associate Professor, Special Education
Lewis University

Abstract: This manuscript presents findings from a study of the contributing factors and details of special education due process hearings in the United States that involved students with emotional and behavioral disorders. The study examined 101 due process hearings conducted over a three-year period in a five-state sample: California, Illinois, Massachusetts, Pennsylvania, and Washington. Findings indicated that students with emotional and behavioral disorders are frequently involved in due process hearings. These students often have multi-layered, complex support needs and a history of suspension/expulsion. The most common issues addressed in the due process hearings related to the development/implementation of individualized education programs, evaluation and assessment practices, procedural safeguards, and program placement decisions. The implications of these findings for teachers, administrators, and parents of students with emotional and behavioral disorders are discussed.

Collaborative planning between school districts and parents in educational decision making is a key component of the primary special education law in the United States, the Individuals with Disabilities Education Act (IDEA, 2004). Although school districts and parents have a variety of strategies for engaging in collaborative planning processes, disagreements arise regarding the planning and provision of special education services that sometimes cannot be settled between school personnel and parents without formal conflict resolution procedures (Mueller, 2009). For these instances, United States special education law describes a multi-tiered process for dispute resolution that consists of progressively more involved options for formally resolving disagreements (IDEA, 2004).

One option provided by the special education law is the complaint resolution process (IDEA Regulations, §§ 300.151 - 300.153). Through this process, parents submit a complaint to the state education agency. The state education agency investigates the alleged issues, communicates with both the parents and the school district, and issues a written decision. During the course of the complaint investigation, the two parties have the option to participate in voluntary mediation (§ 300.506). After the state education agency issues the final written decision, the parties have the option to appeal the decision based on law and processes established by their state.

Besides participating in the complaint resolution process, parents and school districts have additional options for engaging in dispute resolution. As noted above, mediation is one available option. In this process, an impartial mediator typically assigned by the state education agency leads the two parties through a collaborative process of examining their differences and developing a compromise (Wright & Wright, 2014). Although a final written agreement is established, it is non-binding and can be revisited by the parties at a later time.

If mediation is unsuccessful or if the two parties did not agree to participate in this process, IDEA provides the option of filing for a special education due process hearing (§ 300.507). After filing for a hearing, the two sides must participate in a resolution meeting (§ 300.510). In this meeting, a due process hearing officer designated by either the local or state education agency attempts to guide the conflicting parties to a formal compromise based on the evidence presented in the initial filing (Mueller, 2009). If it is not possible to resolve all disagreements at the resolution meeting, then school district personnel and parents participate in a due process hearing (§ 300.512). These hearings are similar to court cases, commonly involving attorney representation, a formal process of evidential discovery, written and oral testimony, cross-examination of witnesses, and a final, legally binding written decision issued by the hearing officer (Wright & Wright, 2014). The results of a due process hearing decision are binding and enforceable by law (§ 300.514).

Dispute resolution in England and Canada is somewhat similar to the process used in the United States (Fritz, 2008). In these countries, parents and teachers are encouraged to resolve disputes at the local level before moving into procedures that are more complex. In England, parent partnership services are a primary means of navigating disagreements related to educational planning and services at the local level (Harris & Smith, 2009). When issues cannot be resolved at this level, parents and school personnel have the option of engaging in mediation

and eventually presenting the case to a designated tribunal. In Canada, emphasis is placed on pro-active conflict resolution strategies, including holding facilitated educational planning meetings and encouraging parents to act as self-advocates (OME, 2007). When conflicts are unable to be resolved through these methods, parents and teachers have the option of presenting issues to local school boards and to the regional office of the Ministry of Education.

Research on Special Education due Process Hearings in the United States

Due process hearings in the United States are burdensome for both school districts and parents in terms of financial costs, time spent preparing for and participating in the hearings, and the further deterioration of relationships between the two sides (Cope-Kasten, 2013). From the perspectives of parents and parent advocates, due process hearings can present significant burdens in terms of financial resources and emotional impact (Wright & Wright, 2014). From the perspective of school administrators, survey results from 200 school superintendents indicated that due process hearings are costly in terms of both financial resources and the stress on school personnel (Pudelski, 2013). Almost 25% of superintendents responding to the survey identified involvement in a due process hearing as a contributing factor for special educators to leave their jobs. Although more recent estimates are not available, Daggett (2004) and Mueller (2009) estimated that due process hearing costs can exceed \$50,000 per hearing, with an average cost around \$10,000.

The potentially negative effects of the significant costs associated with due process hearings are magnified when considered with the volume of due process hearings held annually. In an examination of data from the United States Office of Special Education Programs, Zirkel (2014) found that the annual average number of due process hearings conducted over a five year period in each state ranged from 0 (Montana, Nebraska, North Dakota) to 93 (California), with the exception of one outlier state. New York held an average of 569 due process hearings annually, due in large part to dynamics within the New York City public school system. Removing New York, this resulted in a national average of 481 due process hearings per year. If a cost estimate of \$10,000/hearing is used, the total costs of special education due process hearings across 49 states (excluding New York) exceed \$4.8 million annually.

Multiple studies within the previous 10 years examined various features of due process hearings. These studies have explored the issues in dispute, prevailing parties, legal representation, and the disability categories of students involved in the hearings. Regarding the issues in dispute, a national study of 41 states (Mueller & Carrazana, 2011) as well as studies in Tennessee (Shuran & Roblyer, 2012), Massachusetts (Blackwell & Blackwell, 2015), Texas (Schanding, Cheramie, Hyatt, Praytor, & Yellen, 2017), and Minnesota and Wisconsin (Cope-Kasten, 2013) all identified the development and implementation of individualized education programs (IEPs), program placement, and evaluation as the most frequently occurring issues addressed in due process hearings. School districts were typically the prevailing party in the majority of hearings, prevailing in 59% of hearings in a national sample (Mueller & Carranza, 2011), 90% in Minnesota and Wisconsin (Cope-Kasten, 2013), 55% in Massachusetts (Blackwell & Blackwell, 2015), and 72% in Texas (Schanding et al., 2017). However, a longitudinal analysis of hearing officer decisions conducted by Zirkel and Skidmore (2014) found a 52% - 48% split favoring school districts. Regarding legal representation, parents had attorney

representation in 40% of hearings in Massachusetts (Blackwell & Blackwell, 2015) and 71% in Texas (Schanding et al., 2017). Having attorney representation proved important to parents in both states, as they prevailed in hearings at much higher rates with attorney representation (30% in Massachusetts and 34% in Texas) than without attorney representation (11% in Massachusetts and 13% in Texas).

The disability categories of students involved in due process hearings have also been examined in multiple studies. In the national study of 41 states, (Mueller & Carranza, 2011) identified specific learning disability (26%), autism (20%), other health impairment (15%), and emotional and behavioral disorder (13%) as the most frequently occurring disability categories. Findings from Massachusetts (Blackwell & Blackwell, 2015) were similar: specific learning disability (24%), autism (14%), and emotional and behavioral disorders (14%) were the three most common disability categories. Students with specific learning disabilities (8%) were involved in due process hearings at a lower rate in Texas, with autism (26%), emotional and behavioral disorders (20%), and other health impairment (19%) occurring at the highest rates in due process hearings (Schanding et al., 2017).

Students with Emotional and Behavioral Disorders Involved in Due Process Hearings

There is a gap in the research related to special education due process hearings involving students with emotional and behavioral disorders (EBD). Students with EBD are among the disability groups most frequently involved in due process hearings, ranging from 13% (Mueller & Carranza, 2011) to 20% (Schanding et al., 2017). However, the existing studies provide limited information regarding the issues at dispute in due process hearings specifically for students with EBD. Only one study (Mueller & Carranza, 2011) examined the issues addressed in due process hearings specifically for students with EBD, and this study reviewed data from one year, 2005-2006. The previous research on due process hearings has not directly examined the characteristics of students with EBD involved in these disputes or details related to the outcomes of the hearings. To further emphasize the need for research on due process hearings involving students with EBD, the overall percentage of due process hearings involving this student population is notably higher than the percentage of students with EBD that are found in the overall population of students receiving special education services in the United States, 5.7% (USDOE, 2017).

Purpose and Research Questions

Considering the above factors along with the documented history of difficulties with academic achievement throughout their school career, high rates of suspension and expulsion, and low rates school completion that have negatively affected this student group (Cannon, Gregory, & Waterstone, 2013), there is a demonstrated need to know more about the contributing factors and details of special education due process hearings that involve students with EBD. By examining the dimensions of these disputes, it is hoped that information can be gleaned that could be used by school district personnel and parents to resolve disputes earlier in the process in less adversarial and less expensive ways. The findings may also identify common areas of difficulties for providing appropriate services for students with EBD, thereby providing information that school personnel can use to better address the challenges faced by students with EBD in school

settings. The information gained from this study may be applicable to countries with special education systems similar to the United States, such as England and Canada. These countries have special education dispute resolution systems that emphasize the importance of resolving disagreements at the local level through facilitation strategies and mediation (Harris & Smith, 2009; OME, 2007). Researchers in these countries have also noted similar concerns with the educational outcomes of students with EBD (Heath, Petrakos, Finn, Karagiannakis, McLean-Heywood, & Rousseau, 2004; Norwich & Eaton, 2014).

The research questions formulated to guide this study were:

1. What were the number and percentage of due process hearings involving students with EBD in the sample states?
2. What were the characteristics of students with EBD involved in due process hearings in the sample states, including grade levels, history of suspension/expulsion, specifics on the type of EBD, and concomitant disability diagnoses?
3. What were the issues addressed in due process hearings involving students with EBD in the sample states? Was there a relationship between the issues addressed in the hearings and the student characteristics?
4. Who were the prevailing parties in due process hearings involving students with EBD in the sample states? Was there a relationship between the issues addressed in the hearings and the prevailing parties?
5. Did participating parties use legal representation in the hearings? Was there a relationship between the use of legal representation and the prevailing parties?

Method

The data set for this study was comprised of all special education due process hearings involving students with emotional and behavioral disorders (EBD) conducted over a three year period (July 1, 2014 - June 30, 2017) in a five state sample in the United States: California, Illinois, Massachusetts, Pennsylvania, and Washington. In identifying the sample, the researchers wanted to include states that a) had large populations of eligible students receiving special education services (USDOE, 2017) and large numbers of due process hearings held annually (Zirkel, 2014), b) published comprehensive due process hearing decisions that were not redacted to such an extent that usable information could not be gathered, and c) provided a level of geographic representation across the United States. For the selected states, the population of students receiving special education services over the specified time period ranged from the largest (California) to the 15th largest (Washington) in the United States (USDOE, n.d.). Regarding the number of due process hearings held annually, the selected states ranged from the 3rd most due process hearings (Pennsylvania) to the 11th most due process hearings (Washington) (Zirkel, 2014).

For the sample states, all due process hearing decisions published over the three year period were downloaded and reviewed by two researchers. All cases that included a student identified for special education services under the IDEA disability category of *emotional disturbance* were included in the study. Cases that involved students with multiple IDEA disability labels were included if one of the categories was *emotional disturbance*. It is important to note that the IDEA regulations (§ 300.8(c)(9)(i)) includes students with attention deficit hyperactivity disorder (ADHD) under the disability category *other health impairment*. For this

study, cases that involved students with ADHD were only included if the students had also been identified under the IDEA category of *emotional disturbance*. In total, 101 special education due process hearings were identified that involved students with EBD in the sample states: California (38), Pennsylvania (31), Massachusetts (13), Washington (12), and Illinois (7).

Coding and Analysis

There were two researchers responsible for reading, coding, and recording the results of the 101 due process hearings in an Excel database. The initial code set was based on previous published studies on special education due process hearings (Blackwell & Blackwell, 2017; Cope-Kasten, 2013; Mueller & Carranza, 2011; Rickey, 2003; Schanding et al., 2017). Following the recommendations of Zirkel and Skidmore (2014) on ways to improve the quality of research on due process hearings, two steps were explicitly taken for this study. First, based on the coding frameworks used by Blackwell & Blackwell (2017) and Schanding et al. (2017), the topics of dispute addressed in the due process hearings were recorded at the issue level as opposed to having the coders only record an overall result for each due process hearing. Special education due process hearings typically address multiple primary questions that are directly related to the issues in dispute. By recording information on the specific issues addressed in the hearings, a more refined level of detail on the issues in dispute was able to be gained from the study. Second, when coding the prevailing parties for each issue, the researchers used a multi-point scale that allowed the outcome data to be differentiated between the prevailing parties: district prevailed, parent prevailed, or the decision for the issue-level question was split between the district and parent.

The first round of coding consisted of 21 randomly selected cases (20.8% of the sample). The two researchers coded each case separately, then met to discuss the results, resolve any disagreements, and refine the codebook. During this initial stage of coding, intercoder reliability was calculated at 91.2% using a straightforward formula consisting of the percentage of agreed-upon codes (Patton, 2002). After refining the definitions, the researchers re-coded the initial 21 cases for an intercoder reliability rate of 98.6%. The researchers then both coded the remaining 80 cases, resulting in an overall intercoder reliability rate of 96.4%. At two points in the coding process, preliminary results were presented to small group audiences consisting of special education teachers, special education administrators, parents of children with emotional and behavioral disorders, and special education attorneys. These presentations served as an opportunity to gauge the extent to which the findings reflected the experiences of individuals directly involved in special education services for students with emotional and behavioral disorders, as well as those involved in special education dispute resolution. After each presentation, codes were refined and additional levels of analysis were undertaken.

The final code book consisted of the following:

1. *Fiscal year*: The fiscal year in which the hearing was held based on a July 1 - June 30 fiscal calendar.
2. *Legal representation*: The attorney representation used by each party, coded as yes or no. Although some parents used advocacy support, these data were not recorded because it was not possible to determine the level of involvement and expertise of the advocates listed in the hearing decisions.

3. *Grade level*: The grade level of the student at the time of the dispute, coded as preK-2, 3-5, 6-8, and 9-12+.
4. *History of suspension/expulsion*: Whether the hearing decision indicated the student had been suspended or expelled at any time in her/his educational history. Cases were coded as yes if the hearing referenced prior suspension/expulsion. All other cases were coded as having no mention of suspension/expulsion.
5. *IDEA disability diagnosis(es)*: All hearings included a student identified for special education services under the IDEA disability category of emotional disturbance. Cases that involved students with multiple IDEA disability labels were included if one of the categories was emotional disturbance. In these cases, the concomitant IDEA disabilities(ies) were recorded.
6. *Type or category of EBD*: The EBD diagnosis(es) assigned to the student as detailed in the hearing decision. Overall, a total of 11 different EBD categories of diagnosis were identified across the 101 due process hearings: attention deficit hyperactivity disorder, anxiety disorders, bipolar disorders, depression/mood disorders, disruptive/oppositional/conduct disorders, eating disorders, obsessive-compulsive disorders, schizophrenia or other psychotic disorders, sleep-wake disorders, substance-related/addictive disorders, and trauma related disorders.
7. *Issues*: The identified issue(s) in dispute as listed by the hearing officer in the questions to be addressed in each case. The issue codes were based on previous research from Blackwell and Blackwell (2015) and Schanding et al. (2017), and attempted to record detailed information as recommended by Zirkel and Skidmore (2014). The issues were defined as the following:
 - a. *IEP development/ implementation*: The extent to which the individualized education program was developed to provide a free and appropriate public education. The sub-categories identified were content and implementation of the IEP, extended school day/ year services, and transition planning.
 - b. *Evaluation/ assessment*: Adequacy or the evaluation processes and procedures for determining areas of need and services. The sub-categories identified were eligibility determination and/or independent educational evaluation, and functional behavior assessment.
 - c. *Placement/ least restrictive environment*: Location of special education, including services provided in general education and specialized settings that would provide the student access to the general education environment to the appropriate extent. These issues were coded in terms of the level of restrictiveness. For purposes of reporting, the sub-categories were described from the standpoint of the school district: district sought less restrictive setting, district sought more restrictive setting, or other placement issue.
 - d. *Suspension/ expulsion*: Issue-related questions that concerned the removal of a student from the previously agreed-upon placement as a result of disciplinary actions, including both in-school and out-of-school suspensions. The sub-categories identified were manifestation determination, interim alternative education setting, functional

- behavior assessment/ behavior intervention plan, and other suspension/ expulsion issue.
- e. *Procedural safeguards*: The procedural protections provided to students, parents, and schools through federal and state special education laws and regulations, including parental consent, timelines, and written notices.
8. *Prevailing party*: The prevailing party for each issue in dispute. Based on the recommendations of Zirkel and Skidmore (2014), a multi-point scale was used that allowed the outcome data to be differentiated between the prevailing parties: district prevailed, parent prevailed, or the decision for the issue was split between the district and parent.

The data set was recorded in an Excel database and later imported into SPSS for analysis. The researchers used descriptive statistics as the primary means of analyses along with chi-square tests for examining relationships among variables. This approach was deemed appropriate for use with a data set consisting of categorical variables (Vogt, 2007) and been previously used in similar studies on special education due process hearings (Blackwell & Blackwell, 2013; Mueller & Carranza, 2011; Schanding et al., 2017).

Results

Due Process Hearings Involving Students with EBD

What were the number and percentage of due process hearings involving students with EBD in the sample states? As presented in Table 1, a total of 793 special education due process hearings were held in the sample states from July 1, 2014 - June 30, 2017. The sample consisted of two states with comparatively smaller numbers of hearings (Illinois = 48 hearings; Washington = 49 hearings), one state in the middle of the distribution (Massachusetts = 91 hearings), and two states with a larger number of hearings (Pennsylvania = 300 hearings; California = 305 hearings). Of the total number of hearings held during this time period, 101 (12.7%) involved students with EBD. The percentage of hearings involving students with EBD was consistent across four of the states: Pennsylvania (10.3%), California (12.5%), Massachusetts (14.3%), and Illinois (14.6%). One state, Washington, had a higher percentage of hearings involving students with EBD (24.5%).

Table 1. Special education due process hearings involving students with EBD in sample states from 7/1/2014 - 6/30/2017.

	# hearings involving students with EBD	Total # of hearings	% of hearings involving students with EBD
California	38	305	12.5%
Illinois	7	48	14.6%
Massachusetts	13	91	14.3%
Pennsylvania	31	300	10.3%
Washington	12	49	24.5%

Total	101	793	12.7%
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Characteristics of Students with EBD Involved in Due Process Hearings

What were the characteristics of students with EBD involved in due process hearings in the sample states, including grade levels, history of suspension/expulsion, specifics on the type of EBD, and concomitant disability diagnoses? The results for students' grade levels and their suspension/expulsion histories are presented in Table 2. Across the sample, there was a higher percentage of students with EBD in grades 9-12 (39.6%) involved in due process hearings than in grades PreK-2 (10.9%), grades 3-5 (26.7%), and grades 6-8 (22.8%). California (47.4%), Massachusetts (53.8%), and Washington (41.7%) had the largest percentage of students in grades 9-12 involved in due process hearings. For Illinois, the highest percentage was in grades 6-8 (42.9%) and the highest percentage for Pennsylvania was in grades 3-5 (32.3%). Based on the information provided in the written hearing decisions, 46.5% of the students with EBD involved in due process hearings had been suspended or expelled at some point in their educational history. The percentages of students that had been suspended or expelled ranged from 30.8% (Massachusetts) to 58.3% (Washington).

Table 2. Grade levels and suspension/ expulsion history of students with EBD involved in special education due process hearings in sample states from 7/1/2014 - 6/30/2017.

	CA	IL	MA	PA	WA	Total
<u>Grade levels</u>	# (%)	# (%)	# (%)	# (%)	# (%)	# (%)
PreK-2	1 (2.6%)	2 (28.6%)	0 (0.0%)	31 (19.4%)	2 (16.7%)	11 (10.9%)
3-5	10 (26.3%)	1 (14.3%)	3 (23.1%)	10 (32.3%)	3 (25.0%)	27 (26.7%)
6-8	9 (23.7%)	3 (42.9%)	3 (23.1%)	6 (19.4%)	2 (16.7%)	23 (22.8%)
9-12	18 (47.4%)	1 (14.3%)	7 (53.8%)	9 (29.0%)	5 (41.7%)	40 (39.6%)
<u>Suspension/ expulsion history</u>	# (%)	# (%)	# (%)	# (%)	# (%)	# (%)
Yes - Suspended or expelled at some point	22 (57.9%)	4 (57.1%)	4 (30.8%)	10 (32.3%)	7 (58.3%)	47 (46.5%)
No – No mention of suspension or expulsion	16 (42.1%)	3 (42.9%)	9 (69.2%)	21 (67.7%)	5 (41.7%)	54 (53.5%)

As described in the *Method* section, all cases that included a student identified for special education services under the IDEA disability category of *emotional disturbance* were included in the study. Additional information from each case was recorded that identified the type or category of the EBD(s) exhibited by the student. Overall, a total of 11 different EBD categories of diagnosis were identified across the 101 due process hearings:

- attention deficit hyperactivity disorder,
- anxiety disorders,
- bipolar disorders,
- depression/mood disorders,
- disruptive/oppositional/conduct disorders,
- eating disorders,
- obsessive-compulsive disorders,
- schizophrenia or other psychotic disorders,
- sleep-wake disorders,
- substance-related/addictive disorders, and
- trauma related disorders.

Of the 101 special education due process hearings, there were 17 students (16.8%) identified as having one EBD diagnosis, 50 students (49.5%) with two identified EBD diagnoses, and 34 students (33.7%) with three or more identified EBD diagnoses. The most commonly identified EBD diagnoses were attention deficit hyperactivity disorder (48.5%), disruptive/oppositional/conduct disorders (45.5%), depression/mood disorders (42.6%), and anxiety disorders (40.6%). Table 3 presents the complete results for each state.

Table 3. Specific EBD diagnoses assigned to students involved in special education due process hearings in sample states from 7/1/2014 - 6/30/2017.*

	CA	IL	MA	PA	WA	Total
	# (%)	# (%)	# (%)	# (%)	# (%)	# (%)
Attention deficit hyperactivity disorder	17 (44.7%)	4 (57.1%)	8 (61.5%)	13 (41.9%)	7 (58.3%)	49 (48.5%)
Anxiety disorders	14 (36.8%)	3 (42.9%)	6 (46.2%)	14 (45.2%)	4 (33.3%)	41 (40.6%)
Bipolar disorder	8 (21.1%)	0 (0.0%)	1 (7.7%)	1 (3.2%)	0 (0.0%)	10 (9.9%)
Depression / mood disorders	14 (36.8%)	5 (71.4%)	5 (38.5%)	15 (48.4%)	4 (33.3%)	43 (42.6%)
Disruptive / oppositional / conduct disorders	20 (52.6%)	1 (14.3%)	0 (0.0%)	17 (54.8%)	8 (66.7%)	46 (45.5%)
Eating disorders	0 (0.0%)	0 (0.0%)	1 (7.7%)	1 (3.2%)	0 (0.0%)	2 (2.0%)

Obsessive-compulsive disorders	0 (0.0%)	0 (0.0%)	1 (7.7%)	2 (6.5%)	1 (8.3%)	4 (4.0%)
Schizophrenia or psychotic disorders	4 (10.5%)	0 (0.0%)	1 (7.7%)	0 (0.0%)	1 (8.3%)	6 (5.9%)
Sleep-wake disorders	1 (2.6%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (1.0%)
Substance-related / addictive disorders	1 (2.6%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (1.0%)
Trauma related disorders	5 (13.2%)	0 (0.0%)	4 (30.8%)	6 (19.4%)	1 (8.3%)	16 (15.8%)

*Note: This table totals more than n = 101 and the percentages total more than 100% due to the fact some students had multiple EBD diagnoses assigned to them. Percentages were calculated based on the number of due process hearings for each sample state (CA = 38; IL = 7; MA = 13; PA = 31; WA = 12; Total = 101).

Data were collected on any other identified IDEA disability category(ies) co-existing with the identified EBD(s) for students involved in due process hearings. A total of 41 students (40.6%) had *emotional disturbance* as the only identified IDEA disability category. Another 51 students (50.5%) had one additional IDEA disability category identified along with *emotional disturbance*, and 9 students (8.9%) had two additional IDEA disability categories identified. These results were consistent across all five states. There were 34 students (33.7%) identified with the concomitant IDEA disability category of other health impairment, 18 students (17.8%) with specific learning disability, eight students (7.9%) with autism spectrum disorder, seven students (6.9%) with speech/language impairment, two students (2.0%) with intellectual disability, and one student (1.0%) with a hearing impairment.

Issues Addressed in Due Process Hearings Involving Students with EBD

What were the issues addressed in due process hearings involving students with EBD in the sample states? Was there a relationship between the issues addressed in the hearings and the student characteristics? There were five major categories of issues that were addressed in the due process hearings: IEP development/ implementation, evaluation/ assessment, placement/ least restrictive environment, suspension/ expulsion, and procedural safeguards. With the exception of procedural safeguards, the other four categories included a number of sub-categories. The IEP development/ implementation category included subcategories addressing the content and implementation of the IEP, extended school day/year services, and transition planning. The evaluation/ assessment category included subcategories addressing eligibility determination and/or independent educational evaluations and functional behavior assessment. The placement/ least restrictive environment category included subcategories for hearings in which the district sought either a less restrictive setting or a more restrictive setting or the placement issue was categorized as "other." The suspension/expulsion category had subcategories addressing manifestation determinations, interim alternative education settings

(IAES), functional behavior assessment and/or behavior intervention plan, or was categorized as “other” issues related to suspension/expulsion.

Across the sample, a total of 231 issues were identified within the 101 due process hearings. The five issues identified within the most hearings were:

- IEP development/ implementation: Content and implementation of IEP (27.3%),
- Evaluation/ assessment: Eligibility determination and/or independent educational evaluation (19.5%),
- Procedural safeguards (14.3%),
- Placement / least restrictive environment: District sought a less restrictive setting (13%), and
- Placement / least restrictive environment: District sought a more restrictive setting (9.5%).

Remaining categories were all less than 5%. Complete results for issues addressed in due process hearings are presented in Table 4.

Chi square analyses between the issues addressed and student characteristics were conducted. The relationship between *issues addressed* and *grade levels* were not significant. In addition, neither the relationship between *issues addressed* and *EBD diagnoses* nor the relationship between *issues addressed* and *other IDEA disabilities* were significant. The relationship between *issues addressed* and *suspension/expulsion history* was significant ($\chi^2(12) = 22.1, p < .05$).

Table 4. Issues addressed in special education due process hearings involving students with EBD in sample states from 7/1/2014 - 6/30/2017.*

	CA	IL	MA	PA	WA	Total
	# (%)	# (%)	# (%)	# (%)	# (%)	# (%)
IEP development/ implementation						
Content and implementation of IEP	23 (27.4%)	4 (17.4%)	10 (37.0%)	18 (29.5%)	8 (22.2%)	63 (27.3%)
Extended school day/year services	0 (0.0%)	0 (0.0%)	1 (3.7%)	0 (0.0%)	0 (0.0%)	1 (0.4%)
Transition planning	1 (1.2%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (0.4%)
Evaluation/ assessment						
Eligibility determination and/or independent educational evaluation	14 (16.7%)	5 (21.7%)	1 (3.7%)	15 (24.6%)	10 (27.8%)	45 (19.5%)

Functional behavior assessment	5 (6.0%)	1 (4.3%)	0 (0.0%)	1 (1.6%)	2 (5.6%)	9 (3.9%)
Placement / least restrictive environment						
District sought less restrictive setting	13 (15.5%)	2 (8.7%)	4 (14.8%)	8 (13.1%)	3 (8.3%)	30 (13.0%)
District sought more restrictive setting	7 (8.3%)	4 (17.4%)	4 (14.8%)	5 (8.2%)	2 (5.6%)	22 (9.5%)
Other placement issue	4 (4.8%)	0 (0.0%)	1 (3.7%)	6 (9.8%)	0 (0.0%)	11 (4.8%)
Suspension/ expulsion						
Manifestation determination	3 (3.6%)	1 (4.3%)	2 (7.4%)	1 (1.6%)	2 (5.6%)	9 (3.9%)
Interim alternative education setting	0 (0.0%)	2 (8.7%)	0 (0.0%)	1 (1.6%)	1 (2.8%)	4 (1.7%)
Functional behavior assessment / Behavior intervention plan	1 (1.2%)	0 (0.0%)	0 (3.7%)	0 (1.6%)	0 (0.0%)	1 (0.4%)
Other suspension/expulsion issue	0 (0.0%)	0 (0.0%)	1 (3.7%)	1 (1.6%)	0 (0.0%)	2 (0.9%)
Procedural safeguards (e.g., timelines, notifications, consent)	13 (15.5%)	4 (17.4%)	3 (11.1%)	5 (8.2%)	8 (22.2%)	33 (14.3%)
Total	84 (100%)	23 (100%)	27 (100%)	61 (100%)	36 (100%)	231 (100%)

*Note: This table totals more than n = 101 due to the fact most due process hearings addressed more than one issue. Percentages were calculated based on the number of issues identified within the due process hearings for each sample state (CA = 84; IL = 23; MA = 27; PA = 61; WA = 36; Total = 231).

Prevailing Parties in Due Process Hearings Involving Students with EBD

Who were the prevailing parties in due process hearings involving students with EBD in the sample states? Was there a relationship between the issues addressed in the hearings and the prevailing parties? A descriptive analysis of prevailing parties across states and issues was conducted within three categories: district prevailed, parent prevailed, or the decision for the identified issue was split between both the district and parent as the prevailing party. The range of percentages for the district prevailing across states was between 39.3% in California to 60.9% in Illinois. The percentages for parents as the prevailing party ranged from 30.4% in Illinois to 50.8% in Pennsylvania. Percentages in the “mixed” category, which indicated that both the

parent and district prevailed on at least one aspect of the issue in dispute, ranged from 0.0% in Washington to 11.9% in California. Overall, parents prevailed at a slightly higher rate than districts (46.8% to 45.5%). Table 5 presents the results.

Table 5. Prevailing parties for the issues addressed in special education due process hearings involving students with EBD in sample states from 7/1/2014 - 6/30/2017.*

	<u>Prevailing Party</u>			
	District	Parent	Mixed	Total
	# (%)	# (%)	# (%)	# (%)
CA	33 (39.3%)	41 (48.8%)	10 (11.9%)	84 (100%)
IL	14 (60.9%)	7 (30.4%)	2 (8.7%)	23 (100%)
MA	13 (48.1%)	13 (48.1%)	1 (3.7%)	27 (100%)
PA	25 (41.0%)	31 (50.8%)	5 (8.2%)	61 (100%)
WA	20 (55.6%)	16 (44.4%)	0 (0.0%)	36 (100%)
Total	105 (45.5%)	108 (46.8%)	18 (7.8%)	231 (100%)

*Note: This table totals more than n = 101 due to the fact most due process hearings addressed more than one issue. Percentages were calculated based on the number of issues identified within the due process hearings for each sample state (CA = 84; IL = 23; MA = 27; PA = 61; WA = 36; Total = 231).

When examining issues that were addressed in at least five or more due process hearings, districts were more likely to prevail on issues related to evaluation/ assessment that involved eligibility determination and/or independent educational evaluations (60.0%) and placement / least restrictive environment where the district sought a more restrictive setting (72.7%), whereas parents were more likely to prevail when hearings involved placement / least restrictive environment where the district sought a less restrictive setting (66.7%), evaluation/ assessment that involved a functional behavior assessment (66.7%), and suspension/ expulsion involving a manifestation determination (77.8). The other eight categories were either closely divided between prevailing parties or were addressed in fewer than five hearings. The results are presented in Table 6. A chi square analysis of issues by prevailing party revealed that districts were more likely to prevail on issues involving placement / least restrictive environment where the district sought a more restrictive setting ($\chi^2(24) = 41.8, p < .01$).

Table 6. Prevailing parties by the issues addressed in special education due process hearings involving students with EBD in sample states from 7/1/2014 - 6/30/2017.*

	<u>Prevailing Party</u>			
	District	Mixed	Parent	Total
	# (%)	# (%)	# (%)	# (%)
IEP development/ implementation				
Content and implementation of IEP	26 (41.3%)	9 (14.3%)	28 (44.4%)	63 (100%)
Extended school day/year services	1 (100%)	0 (0.0%)	0 (0.0%)	1 (100%)
Transition planning	0 (0.0%)	0 (0.0%)	1 (100%)	1 (100%)
Evaluation/ assessment				
Eligibility determination and/or independent educational evaluation	27 (60.0%)	3 (6.7%)	15 (33.3%)	45 (100%)
Functional behavior assessment	3 (33.3%)	0 (0.0%)	6 (66.7%)	9 (100%)
Placement / least restrictive environment				
District sought less restrictive setting	8 (26.7%)	2 (6.7%)	20 (66.7%)	30 (100%)
District sought more restrictive setting	16 (72.7%)	0 (0.0%)	6 (27.3%)	22 (100%)
Other placement issue	5 (45.5%)	0 (0.0%)	6 (54.5%)	11 (100%)
Suspension/ expulsion				
Manifestation determination	2 (22.2%)	0 (0.0%)	7 (77.8%)	9 (100%)
Interim alternative education setting	1 (25.0%)	0 (0.0%)	3 (75.0%)	4 (100%)
Functional behavior assessment / Behavior intervention plan	0 (0.0%)	1 (100%)	0 (0.0%)	1 (100%)

Other suspension/expulsion issue	1 (50.0%)	0 (0.0%)	1 (50.0%)	2 100%
Procedural safeguards (e.g., timelines, notifications, consent)	15 (45.5%)	3 (9.1%)	15 (45.5%)	33 (100%)
Total	105 (40.2%)	18 (10.5%)	108 (49.3%)	231 (100%)

*Note: This table totals more than n = 101 due to the fact most due process hearings addressed more than one issue. Percentages were calculated based on the number of issues identified within the due process hearings for each sample state (CA = 84; IL = 23; MA = 27; PA = 61; WA = 36; Total = 231).

Legal Representation in Due Process Hearings Involving Students with EBD

Did participating parties use legal representation in the due process hearings? Was there a relationship between the use of legal representation and the prevailing parties on issues? The types of legal representation used by the parties in due process hearings are presented in Table 7. Districts used attorney representation in 100% of hearings in California, Illinois, Massachusetts, and Washington. In Pennsylvania, districts utilized attorney representation in 20 out of 31 hearings (64.5%). The districts in the 11 hearings in Pennsylvania without attorney representation were all charter school districts. Parents had attorney representation in 61 out of the 101 hearings (60.4%). Parents were represented by attorneys in over 50% of the hearings in all states except for Washington. In Washington, parents were represented by attorneys in three out of the nine hearings (25.0%). There were no statistically significant associations between the use of legal representation and the prevailing parties in the issues addressed in the hearings.

Table 7. Legal representation in special education due process hearings involving students with EBD in sample states from 7/1/2014 - 6/30/2017.

	<u>Legal representation</u>			
	<u>District attorney</u>		<u>Parent attorney</u>	
	No	Yes	No	Yes
	# (%)	# (%)	# (%)	# (%)
CA	0 (0.0%)	38 (100%)	11 (28.9%)	27 (71.1%)
IL	0 (0.0%)	7 (100%)	2 (28.6%)	5 (71.4%)
MA	0 (0.0%)	13 (100%)	6 (46.2%)	7 (53.8%)

PA	11 (35.5%)	20 (64.5%)	12 (38.7%)	19 (61.3%)
WA	0 (0.0%)	12 (100%)	9 (75.0%)	3 (25.0%)
Total	11 (10.9%)	90 (89.1%)	40 (39.6%)	61 (60.4%)

Discussion

The percentage of due process hearings that involved students with EBD in the sample states was consistent with findings from previous studies. In this study, the overall percentage was 12.7%, ranging from 10.3% in Pennsylvania to 24.5% in Washington. Mueller and Carranza (2011) reported that 13% of hearings involved students with EBD in a 41-state study of 575 due process hearings conducted in 2005-2006. In state-specific studies, Blackwell and Blackwell (2015) reported that 14% of 258 hearings in Massachusetts from 2006-2013 involved students with EBD and Schanding et al. (2017) reported that 20% of 139 due process hearings in Texas from 2011-2015 involved students with EBD.

One way of contextualizing these data is to compare the percentage of due process hearings involving students with EBD to the percentage of students with EBD in the overall special education population in the sample states. For all five states included in this sample, students with EBD were represented at much higher rates in due process hearings than in the overall special education population. For the sample states, the overall percentage of students with EBD in the special education population for the years included in the study was 5.3% (USDOE, n.d.), as compared to 12.7% of due process hearings that involved students with EBD. The two states with the largest discrepancy were California (3.3% in the overall population compared to 12.5% in due process hearings) and Washington (3.5% compared to 24.5%). These results point toward the difficulties experienced by students with EBD, their parents, and their teachers when engaged in educational planning and programming decisions. Viewed through the lens of special education dispute resolution, students with EBD in the sample states are much more likely to be involved in timely, expensive, and adversarial disagreements related to their educational programs than would otherwise be expected based on their overall representation in the special education population.

To better understand the factors that might contribute to the comparatively high rate of due process hearings that involved students with EBD, this study examined the characteristics of the students involved and the issues addressed in the hearings. Regarding the grade levels of students, the higher percentage of hearings in the sample states that involved students with EBD in grades 9-12 (39.6%) was not surprising. Special education due process hearings are often a culmination of disagreements that has taken place over a number of years between school personnel and parents (Wright & Wright, 2014). Pennsylvania was the one state that had a higher percentage in grades 3-5 (32.3%), but it also had a high percentage in grades 9-12 (29.0%).

These data provide useful information that could inform school-level practices. If earlier disagreements are not resolved effectively to the satisfaction of both sides, then later disputes may become more significant and result in the more adversarial mechanism of a fully adjudicated due process hearing. As Mueller (2009) has suggested, the use of alternative dispute resolution strategies during the early stages of disagreement can result in more collaborative problem-solving that allows the parties to avoid due process. These strategies may include the use of third-party consultation, structured approaches to facilitate educational planning meetings, parent-to-parent assistance, and the use of mediation at earlier stages in the dispute (Mueller, 2009). Similar approaches to special education conflict resolution are used in England, Canada, and other countries to positive effect (Fritz, 2008).

We believe that the analyses presented in this study on the history of suspension/expulsion, specifics on the type of EBD, and the concomitant disability diagnoses make an important and useful contribution to the research literature on students with EBD and special education due process hearings. This information has not been previously examined, particularly for this study's target population of students with EBD. By better understanding the characteristics that are shared by many students with EBD who are involved in due process hearings in the sample states, stakeholders may be better able to identify factors that might contribute to more complex and difficult educational planning processes. These findings could be applicable to countries with similar special education dispute resolution systems to the United States, such as Canada and England.

Nearly half (46.5%) of the students with EBD involved in due process hearings in this study had been suspended or expelled at some point in their educational history. This finding aligns with previous research on predictors of school exclusion that have identified students with EBD as being at greater risk for disciplinary measures such as suspension and expulsion than other student populations (Achilles, McLaughlin, & Croninger., 2007; Bowman-Perrot et al., 2013; Sullivan, Van Norman, & Klingbeil, 2014). Based on the results from this study, it appears that students with EBD who are suspended or expelled may be more likely to later be involved in disputes related to special education programming than other students. From a practice standpoint, this finding highlights the need for increased emphasis on collaborative planning processes following suspensions and expulsions for students with EBD.

The due process hearings reviewed for this study provided useful levels of detail related to the specifics of the students' EBD diagnoses beyond listing the IDEA disability category of emotional disturbance. The majority of students were described as having two identified EBD diagnoses (49.4%) or three or more identified EBD diagnoses (33.7%). This finding demonstrates that some students with complex layered EBD diagnoses may be more likely to be involved in educational planning processes that can become contentious and require outside assistance in resolving differences. In particular, students with diagnoses such as attention deficit hyperactivity disorder, disruptive/ oppositional/ conduct disorders, depression/ mood disorders, and/ or anxiety disorders were involved in these disputes. This finding is not only applicable to the United States. Regardless of the country, it is quite possible that students with similarly complex support needs related to EBD diagnoses may be involved in educational planning processes and services that result in conflict and disagreement.

The results on other identified IDEA disability categories that co-existed with the EBD(s) further emphasized the difficulties experienced by teachers and parents in engaging in successful collaborative planning. Over half of the students with EBD (50.5%) involved in due process hearings in this sample had one additional IDEA disability category that co-existed with the IDEA diagnosis of emotional disturbance, and an additional 8.9% had two additional IDEA disability categories identified. Based on these results, it appears that students with EBD who eventually become involved in special education due process hearings have a wide range of disability support needs that extend beyond just those characteristics presented by their EBD diagnoses. Parents and school personnel need to be sure to address the range of student needs and not only focus on the emotional and behavioral supports that are needed.

This point is further emphasized by the findings on the issues addressed in the due process hearings conducted in the sample states. Of the 231 issues in dispute that were addressed in the 101 due process hearings, approximately 10% of the issues were exclusively related to IDEA provisions that could be considered somewhat specific to emotional and behavioral disorders: 3.9% of the issues addressed evaluations focused on functional behavioral assessment, 3.9% addressed manifestation determination decisions, 1.7% addressed interim alternative educational settings, and 1.3% addressed other issues related to suspension/ expulsion. Almost 90% of the issues addressed in the hearings related to broader issues encountered in educational programming, including the content and implementation of the IEP (27.3%), placement / least restrictive environment (27.3%), and evaluation/assessment (19.5%). These findings were consistent with previous research that examined the issues addressed in due process hearings for a range of students with disabilities in multiple state contexts (Blackwell & Blackwell, 2015; Cope-Kasten, 2013; Mueller & Carrazana, 2011; Schading et al., 2017; Shuran & Roblyer, 2012).

To expand on previous research conducted on due process hearings, we attempted to code issues related to placement / least restrictive environment in terms of the level of restrictiveness. For purposes of reporting, we presented these data from the standpoint of the school district. Of the 52 issues that were coded as addressing either a more or less restrictive setting, school districts were seeking less restrictive placements in 58% of these issues and were proposing a more restrictive placement in 42% of these issues. Based on the authors' previous professional experiences working with students with EBD in school settings, we were somewhat surprised by this finding. Considering that students with EBD are often placed in more restrictive placements (Kauffman & Landrum, 2013), we expected to find that school districts were more frequently seeking to place students into restrictive settings. However, this was not the case in the due process hearings examined for this study. This would seem to indicate that special education disputes related to placement and least restrictive environment are more nuanced and complex than may be expected. In many instances, parents of students with EBD pursued placements that are more restrictive than school district personnel were proposing and school districts were willing to enter into the due process hearing process in order to resolve disagreements related to this issue. Considered within the context of the other issues most frequently addressed in due process hearings, the three components of IEP development/ implementation, placement/ least restrictive environment, and evaluation/ assessment are inter-related and must all be addressed in resolving complicated disputes related to special education programming for students with EBD.

The final areas addressed in this study were the prevailing parties in fully adjudicated due process hearings involving students with EBD and the use of legal representation by both school districts and parents. The outcomes of the issues addressed in due process hearings in the sample states were evenly split between parents and school districts. Parents prevailed on 46.8% of issues, school districts prevailed on 45.5% of issues, and the hearing officer split the decision between the two parties on 7.8% of the issues. These findings are slightly different than previous studies that addressed due process hearings for broader populations of students. In four studies previous studies, school districts prevailed more frequently than parents (Blackwell & Blackwell, 2015; Mueller & Carrazana, 2011; Schanding et al, 2017; Shuran & Roblyer, 2012). The only state in this study in which school districts prevailed notably more than parents was in Illinois (60.9% to 30.4%).

When the outcomes were examined by issue, the one statistically significant finding was that school districts prevailed on issues involving placement/ least restrictive environment where the district wanted a more restrictive setting. This connects back to the discussion in the preceding paragraphs that highlighted that school districts sought *less* restrictive placements in 58% of the issues that addressed placement/ least restrictive environment. Considered from the viewpoint of school districts, the findings presented an interesting juxtaposition. Although school districts were more likely to pursue *less* restrictive placements, they prevailed at much lower rates (26.7%) than parents (66.7%) in these cases. When school districts pursued *more* restrictive placements, they prevailed on 72.7% of these issue-level questions as compared to 27.3% for parents ($\chi^2(24) = 41.8, p < .01$). Additional research is needed on a broader population of due process hearings involving a wider range of students with various disability categories to better understand if this finding could be generalized to a larger number of due process hearings. If it is generalizable, it can help inform parents and school districts on their relative likelihood of success when choosing to use special education due process to resolve disagreements related to placement/ least restrictive environment.

Across the sample, parents used attorney representation in 60.4% of the hearings. This fell between results from Massachusetts in which parents used attorneys in 40% of hearings (Blackwell & Blackwell, 2015) and Texas in which parents used attorneys in 71% of hearings (Schanding et al., 2017). Washington was somewhat of an outlier in this study. Parents only used attorney representation in three hearings (25.0%). Additional research is warranted to better understand why parents in Washington used attorney representation at such comparatively lower rates. Overall, there were no statistically significant relationships between the use of attorney representation and the prevailing parties in the hearings. Although it stands to reason that using an attorney should improve the chances of prevailing in a due process hearing, the results from this particular study do not bear this out. However, two previous studies have indicated that having attorney representation increased the frequency of hearings in which parents prevailed (Blackwell & Blackwell, 2015; Schanding et al., 2017).

Limitations

There are several limitations to this study. First, the study is based solely in the United States. Although countries such as England and Canada have similar special education dispute resolution systems, the findings from this study are based in the United States. There is a need

for additional research in order to determine the extent to which these issues are common across countries. Second, whereas the results of special education due process hearings in the United States have a direct effect on the parties involved, these cases do not create legal precedent and do not carry the weight of influence on future hearing decisions as do cases decided in state and federal court. Next, the study is restricted to a five-state sample. Although we attempted to identify states that held a large number of due process hearings annually and provided a level of geographic representation across the United States, the fact remains that this study presented data from a limited number of states.

Another limitation relates to the level of detail provided in the written due process hearings. Although we were able to identify contributing factors such as disability diagnosis, suspension/ expulsion history, and the issues addressed, it was not possible to identify other factors that might potentially contribute to disputes moving into due process such as details on prior mediation attempts or the size and resource levels of the communities involved. In many instances, the names of participating school districts and schools were redacted in the published decision. Whereas the United States special education regulations require states to make the results of due process hearings available to the public (IDEA Regulations, § 300.514(c)(2)), the regulations are not explicit on what types of information can and cannot be redacted. A final limitation relates to the nature of the written due process hearings themselves. Published hearing decisions contain a high level of detail based on the information presented to the hearing officer. However, there are likely a number of details in every case that do not get included in the final written decision. Future studies that included follow-up conversations with school personnel and parents involved in these hearings would be one method for gathering this additional information.

Conclusion

Special education due process hearings in the United States present a no-win situation for all parties involved. This method of dispute resolution carries a high cost in terms of fiscal resources and relationships between school personnel and parents. This study attempted to examine issues addressed in due process hearings that involved students with EBD, with the hopes of identifying information that could be potentially helpful to teachers, administrators, and parents in more effectively developing educational programs for students with EBD and thereby avoiding time-consuming and costly disputes. The information gained from this study may be applicable to countries with special education dispute resolution systems similar to the United States, such as England and Canada. The students involved in these hearings often had complex, multi-layered disability support needs that were not readily addressed within the structures currently in place in their school communities. In order to better navigate the complexities of educational planning for students with EBD support needs, school personnel and parents can hopefully utilize the information presented in this study to identify potential barriers and engage in collaborative, proactive dispute resolution practices that will result in fewer costly due process hearings and more positive programming outcomes for students with EBD.

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