DISPUTES OF ASSESSMENT AND EVALUATION: AN ANALYSIS OF CONNECTICUT DUE PROCESS HEARINGS FROM 2020-2022

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ABSTRACT

Between January 2020 and March 2022, there were 20 fully adjudicated due process hearings in the state of Connecticut. Over half of those address disputes regarding assessment and evaluation. In this analysis, I provide an overview of the legal requirements for special education assessment and evaluation as well as look for trends in the decisions of these 11 hearings. The purpose of the analysis is to determine any potential patterns in these recent rulings to learn more about current issues in the state and make potential recommendations for districts desiring to reduce the likelihood of future disputes. Specifically, there were clusters of cases addressing the following topics: evaluator credibility when reviewing disputes about independent evaluations, movement between services received under Section 504 and special education, dismissal of complaints due to case circumstances, and economic-related geographic distribution of cases. Understanding these issues of current dispute provides opportunities for improved practice to subsequently reduce future conflict.

Keywords: Due process hearing, evaluation

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In the United States, due process is a constitutionally protected right as per the Fourteenth Amendment (Lombardi & Ludlow, 2004). In the field of special education, the Continuum for Dispute Resolution Processes and Practices considers due process hearings to be among the most advanced stages of conflict (Center for Appropriate Dispute Resolution in Special Education [CADRE]), n.d.). In fact, CADRE describes due process hearings as "the most contentious and adversarial of required dispute resolution processes under IDEA (Individuals with Disabilities Education Act)" (CADRE, n.d.). As such, due process hearings can often serve as a bellwether for current issues in special education at the local, state, and even federal levels. Indeed, the Supreme Court of the United States will hear Perez v. Sturgis Public Schools during the 2022-2023 term, a case that centers on special education dispute resolution (Supreme Court of the United States, 2022).

Between January 2020 and March 2022, there were 20 fully adjudicated due process hearings in the state of Connecticut; over half (55%) of those addressed disputes regarding assessment and evaluation. In this analysis, I provide an overview of the legal requirements for special education assessment and evaluation as well as look for patterns in the decisions of these 11 hearings. Based on these findings, recommendations will be provided for districts interested in reducing the likelihood of future disputes.

IDEA REQUIREMENTS

To begin, I provide an overview of federal and state special education legal requirements for conducting dispute resolution and student evaluations. The Individuals with Disabilities Education Act (IDEA; 2004) is the primary federal law addressing special education. Chief among the many requirements included in IDEA is that public schools must provide a Free Appropriate Public Education (FAPE) to students with disabilities. FAPE encompasses special education and related services that are free of charge, meet the standards of the State Educational Agency (SEA) and IDEA, and delivered in a school setting under the context of an Individualized Education Plan (IEP). In order to receive special education services, a student must be identified as having a qualifying disability that requires specially designed instruction.

IDEA (2004) also addresses evaluations and eligibility determinations. If a student is determined in need of an evaluation for special education eligibility, parental consent must be obtained and a comprehensive evaluation must occur within 60 calendar days. If found eligible for special education services, a student must receive a re-evaluation no less than every three years to determine continued eligibility. As described in 20 USC § 1414b2-3, the evaluation should use a variety of technically sound assessment tools and instruments; investigate all areas of suspected disability; be administered by trained personnel in accordance with instructions provided; consider multiple data sources in determining eligibility; and consider input from parents and teachers as well as present levels of performance.

Parents of students with disabilities must be provided with a copy of their rights as well as prior written notice any time changes to the IEP are initiated (IDEA, 2004). Inevitably, families of special education students will not always agree with the recommendations made by a local education authority (LEA). Consequently, IDEA (2004) provides mechanisms for dispute resolution via Procedural Safeguards. Dispute resolution can occur through mediation or through an impartial due process hearing in which a hearing

officer considers the arguments and evidence presented by both sides, most often the parent/student and the LEA, before issuing a decision. While mediation is considered a less contentious avenue for dispute resolution (CADRE, n.d.), both parents and LEAs have the right under IDEA to elevate a dispute to a formal due process hearing. In these disputes, either the parent or the LEA makes an accusation of a procedural violation of IDEA's detailed procedural requirements or more commonly, a substantive violation that a particular child's IEP has not been reasonably calculated for that student to make appropriate progress (Lombardi & Ludlow, 2004). An example of the latter would be a parent disputing the results of a school's evaluation and subsequently requesting an independent educational evaluation by an outside evaluator at the LEA's expense. If the LEA believes that its evaluation was sound, then a due process hearing must be initiated to resolve the dispute (Musgrove, 2013). In all adjudicated due process hearings, both the parent and the LEA have the right to appeal the decision via an administrative review or a judicial review at a civil circuit court (Lombardi & Ludlow, 2004). In rare cases, the appeal process can continue all the way to the United States Supreme Court as happened most recently in Endrew F v. Douglas County School District (2017).

EVALUATIONS IN PRACTICE

As part of the Connecticut Department of Education Regulations for Children Requiring Special Education (2015), Connecticut General Statute § 10-76d addresses Conditions of Instruction, including referrals, evaluation, and eligibility. Specifically, parents can request the assessment and evaluation results three days prior to a planning and placement team (PPT) meeting in which eligibility decisions will be made. Connecticut General Statute Chapter 164 § 10-76fff (2015) echoes the federal statutes by requiring that assessments must be valid and reliable, administered by "trained and knowledgeable personnel… in accordance with any instructions provided by the producer of such tests." Once identified for special education, the assessment and evaluation results must be reflected in the Individualized Education Plan (IEP) in sections 4 and 5, known as Present Level of Academic Achievement and Functional Performance (Connecticut State Department of Education, 2021b).

34 C.F.R. §300.532(a) provides that any decision regarding placement may be subject to a request for a due process hearing. Connecticut General Statute § 10-76h (2015) fully outlines the procedures for due process hearings including hearing requests, mediation, scheduling, appointment of hearing officers, conduct and decisions. In Connecticut, the party who filed the due process "has the burden of going forward with the evidence" (Connecticut General Statute § 10-76h, 2015); however, the school district must prove the appropriateness of a given student's program or placement.

If parents disagree with an evaluation conducted by the public agency (i.e., school district), they have the right to request an independent education evaluation (IEE) under 34 C.F.R. § 300.502. If requested, the school district must either proceed with a due process complaint or provide public funding for the full cost of the IEE. The IEE is to be conducted by someone who is not affiliated with the school district. As stated in Connecticut Regulation 10- 76d-9, a parent is permitted to request an IEE per the provisions of IDEA. In Connecticut, a parent may proceed with obtaining an IEE and then request that the school district pay for it; however, the school district can refuse

if it determines that its own evaluation was appropriate or that the IEE did not meet criteria (Connecticut Department of Education, 2021a). In 2017, the Connecticut State Board of Education Task Force on the Implementation of IEEs, Observation and Related Matters was established by the Connecticut State Board of Education to review issues related to Connecticut Regulation 10-76d-9 (Connecticut State Department of Education, n.d.). While the meeting agendas for this task force are available, a final report of their recommendations is not.

SUMMARIES OF FULLY ADJUDICATED HEARINGS

Due process hearings serve as ever-current examples of special education case law, providing unique insight into the most recent issues of dispute between families and LEAs and the subsequent trends of how hearings officers are ruling. As an IEP is a highly personalized and complex document, the potential subjects of these disputes are seemingly infinite given the particular details of a given child's circumstances. Therefore, looking at recent decisions provides important understandings about current special education challenges facing both families and schools.

For the 2015-16 school year, Connecticut had the sixth highest rate of dispute resolution activity per ten thousand children out of all the states and entities served by the United States Department of Education (CADRE, 2017). Considering this fact that Connecticut is one of the most litigious states regarding special education, I examine the most recent due process hearing rulings to determine potential patterns, particularly in light of school disruptions due to the COVID-19 pandemic. In reviewing the 20 fully adjudicated due process hearings that have occurred in Connecticut since 2020, the most common topic for disputes was evaluation. In fact, over half (55%) of these 20 hearings addressed disputes about assessment and evaluation.

Subsequently, I decided that my analysis would focus on this area by limiting my review to fully adjudicated hearings in Connecticut from January 2020 to March 2022 that addressed disputes regarding evaluation and/or assessment. This time frame was initially chosen to determine potential impacts of the COVID-19 pandemic, although based on the timing of testimony and decisions, not all the cases decided overlapped with the pandemic. Non-adjudicated hearings were not included because they did not provide sufficient detail to determine the issue at hand. The purpose of the analysis is to determine any potential patterns in these recent rulings to learn more about current issues in the state and make potential recommendations for districts learning how to reduce the likelihood of future disputes. I hypothesize that these patterns will include disputes regarding pandemic-related interruptions to schooling and disputes regarding dyslexia as a result of the six state-level dyslexia laws passed in Connecticut since 2014. In sum, understanding these issues of current dispute provides opportunities for improved practice to subsequently reduce future conflict.

Table 1 presents a chronologically ordered summary of the 11 cases that meet the selection criteria of timeframe (January 2020- March 2022) and content (addressed issue of evaluation or assessment).

Table 1

Summary of selected fully adjudicated decisions

Case and year	Reasoning for dispute	Ruling
North Branford Board of Education v. Student, 2019	The family of a seventh-grade student identified under OHI-ADHD requested an IEE because they believed that the psychosocial and psychiatric evaluations conducted were not sufficiently comprehensive.	Citing the credentials of the evaluator and the content of the evaluation, the decision is ruled in favor of the school district.
Greenwich Board of Education v. Student, 2020	After the initial evaluation conducted of a fourth-grade student found her to be ineligible for special education services but eligible for services under Section 504, the parents disputed some of the evaluation's conclusions and interpretations and requested an IEE.	Citing the credentials of the evaluator and the content of the evaluation, the hearing officer ruled that the evaluation was appropriate and that the parents were not entitled to an IEE.
Student v. Meriden Board of Education, 2020	Both the parent and the school district filed separate due process hearings after the parent had refused consent for an initial evaluation. The parent was self- represented and did not communicate prior to the hearing or attend the hearing.	The ruling was in favor of the district proceeding with an initial evaluation without parental consent.
Watertown Board of Education v. Student, 2020	A sixth-grade student, classified under the disability of autism with a secondary disability of ADHD, was previously unable to be evaluated via a formal academic achievement assessment. However, the current special education teacher felt that the student was now able to engage in the assessment process with proper supports and accommodations and thus an academic achievement evaluation was conducted. The student's mother requested an IEE in reading based on lack of progress and requested that the special education teacher's testimony be found not credible.	Both parent requests were denied in the ruling.

Greenwich Board of Education v. Student, 2021	A triennial evaluation conducted of a fifth-grade student classified under SLD- dyslexia found the student to be no longer eligible for special education services but recommended services under Section 504 instead. Subsequently, the mother disagreed and requested an IEE.	The hearing officer ruled in favor of the mother, citing several reasons why the evaluation was not sufficient, including its failure to address the student's recent diagnosis ~~with~~ of Ehlers-Danos Syndrome.
East Hartford Board of Education and Student, 2021	A student requested an IEE and then became an adult who graduated from high school and subsequently was no longer eligible for special education services.	Case was dismissed because student was no longer eligible for special education services.
Enfield Board of Education v. Student, 2021	The mother of a seventh-grade student receiving services under a Section 504 Plan for ADHD made a PPT referral, and the student was found eligible for special education services under OHI-ADHD. Subsequently, the mother shared private evaluation results along with concerns about student performance, and the district conducted additional evaluations. The mother's primary disputes centered on the request for specific services as opposed to disputing the evaluation results.	Citing the credentials of the evaluators and the content of the evaluations, the hearing officer ruled that the evaluation was appropriate and that the mother was not entitled to an IEE.
Student v. Cheshire Board of Education, 2021	This case had multiple claims and issues, one of which was a request for an IEE. The student was homeschooled until sixth grade when she then attended a parochial school. At that time, her mother made a special education referral, and the district conducted an evaluation. She was found eligible under the category of specific learning disability but did not receive services in the parochial school. She subsequently returned to the public school and additional evaluations were conducted. After a period of average performance and additional evaluation	The hearing officer ruled in favor of the IEE request.

	results, the student was exited from special education services and found eligible for a 504 Plan. In the following year, the mother placed another referral to special education services, and in disagreement with the results of that evaluation, she requested an IEE. This was denied so the parents hired a private evaluator.	
Vernon Board of Education and Student, 2021	The parents disputed the appropriateness of the evaluations conducted for their preschool age son with autism. They did not submit any evidence to support their claim.	The hearing officer found that the assessments used were appropriate and technically sound and dismissed the request for an IEE.
Student v. Monroe Board of Education, 2021	A seventh-grade student's triennial re-evaluation were planned for February 2020, and subsequently, schools were closed for the pandemic. The student was identified under the category of SLD-dyslexia and attended a private school per a recent PPT decision. The speech/language evaluation was conducted prior to school closure. The neuropsychological and central auditory processing evaluations were also conducted successfully and after review of the assessments, adjustments were made to the IEP.	The dispute of the hearing had many issues, one of which was around the denial of FAPE because of failure to evaluate in a timely manner. This claim was denied.
Student v. Trumbull Board of Education, 2022	A middle school student had been unilaterally placed at an unapproved special education school. The parent requested that the home district contact the private placement for data and records in preparation for the annual review. The team did not review this information. The PPT recommended a diagnostic placement at the student's home school and denied the parent's "stay put" request for the diagnostic placement to be done at his current school. The evaluations were not completed during the 40-day diagnostic placement. The student began declining academically, emotionally, and behaviorally in the home school placement.	The hearing officer ruled on multiple points including the failure of the district to timely complete evaluations.

ANALYSIS

Next, I provide evidence of patterns that appeared in these eleven rulings. Specifically, there were clusters of cases addressing the following topics: evaluator credibility when reviewing IEE disputes, movement between services received under Section 504 and IDEA, dismissal of complaints due to case circumstances, and economic-related geographic distribution of cases.

EVALUATOR CREDIBILITY WHEN REVIEWING IEE DISPUTES

As previously stated, 55% of all the fully adjudicated cases held since January 2020 involved disputes regarding evaluation and assessments. Of that subset, about half of the cases involved an IEE request. For these cases, much of the findings of relevant fact relied on the specific credentials and experience of the evaluator as determined by 20 USC § 1414b2-3 which requires that special education evaluations use a variety of technically sound assessment tools and instruments that are administered by trained personnel in accordance with instructions provided. These same criteria are used by school districts in deeming the credibility of an IEE obtained by a parent (Zirkel, 2009). In fact, the regulations outline the steps for IEE disputes as such: the parent disagrees with an evaluation the school has conducted, the school district files without unnecessary delay and subsequently shows that its evaluation was appropriate and that the IEE is not appropriate (34 C.F.R. § 300.148(b)-(e), 2008). For these Connecticut cases, the hearing officers often relied on the background and training of the evaluators in determining that appropriateness of the school evaluations. In other words, in following federal guidance issued from the Office of Special Education Programs (OSEP; 1995), if the evaluator was knowledgeable and trained, then their evaluation was deemed appropriate. Consequently, the hearing officers in North Branford Board of Education v. Student (State of Connecticut Department of Education, 2019), Greenwich Board of Education v. Student (State of Connecticut Department of Education, 2020), Enfield Board of Education v. Student (State of Connecticut Department of Education, 2021), and Vernon Board of Education and Student (State of Connecticut Department of Education, 2021) deemed the evaluations in dispute to be appropriate based on the credentials of the evaluators and the content of the evaluations.

MOVEMENT BETWEEN SERVICES RECEIVED UNDER SECTION 504 AND IDEA

Over a third of the cases analyzed involved movement from ineligibility in special education to eligibility for services under Section 504 of the Disability Act and vice versa. Services received under Section 504 are typically accommodations provided in the general education setting as opposed to the specially designed instructed provided through special education under IDEA. Specifically, the disputes in Greenwich Board of Education v. Student (State of Connecticut Department of Education, 2021), Enfield Board of Education v. Student (State of Connecticut Department of Education, 2021), and Student v. Cheshire Board of Education (State of Connecticut Department of Education, 2021) all involved movement between services provided under IDEA (i.e., special education) and Section 504. These decisions were based partially on evaluation results in addition to student performance. Section 504 and IDEA both provide mechanisms

for serving students with disabilities; however, not all students who meet the definition of disability under Section 504 are eligible for services under IDEA (Yell, 2016). Indeed, IDEA services encompass specially designed instruction which is considered more robust and comprehensive than the accommodations provided by Section 504. Thus, it is not surprising that parents who are looking for additional supports for their children would seek eligibility under IDEA instead of Section 504 and subsequently use evaluation results to support their argument.

DISMISSAL OF COMPLAINTS DUE TO CASE CIRCUMSTANCES

Two of the cases had complaints dismissed outright due to lack of adherence to IDEA requirements (Gilsbach, 2015). The dispute in East Hartford Board of Education and Student, (State of Connecticut Department of Education, 2021) was considered under an improper party provision because the student in question had aged out of IDEA services. The argument in Vernon Board of Education and Student (State of Connecticut Department of Education, 2021) was dismissed due to insufficient complaint as the parents failed to submit any evidentiary support.

ECONOMIC-RELATED GEOGRAPHIC DISTRIBUTION OF CASES

A final pattern that emerged was related to geographic wealth distribution. Out of the eight counties in Connecticut, Fairfield County has the highest median household income (Connecticut Department of Economic and Community Development, 2022), and over one-third of the cases originated there. Securing legal representation in a due process hearing typically requires financial resources, and families with limited means often cannot afford to hire private counsel. However, parents represented by attorneys have more favorable outcomes than the pro se alternative (Hoagland-Hanson, 2014). Further, parents who have the financial means to secure an IEE also have more favorable outcomes in due process hearings (Hoagland-Hanson, 2014). Considering that the cost for neuropsychological evaluations can start at $5,000 (Carr, 2022), clearly families with ample income or access to wealth are better suited to obtain outside evaluations. Parental networking and knowledge-sharing may also lead to increased special education disputes; interestingly, two-thirds of Connecticut's Special Education Parent Teacher Associations are located in Fairfield County (Connecticut PTA, 2022).

COVID-19 PANDEMIC

The COVID-19 pandemic shut down Connecticut schools starting in March 2020, and thus I expected it to be a frequent factor in the cases analyzed. In reality, the pandemic disruption to schooling was only a factor in Student v. Monroe Board of Education (State of Connecticut Department of Education, 2021). In this case, the parent argument of failure to timely evaluate was denied since the school district had already conducted part of the evaluations prior to the shutdown and was able to successfully complete the remaining portions afterward. However, future hearings may more greatly reflect disputes over

pandemic-related education disruptions, including compensatory services and education (Zirkel, 2021). A study of future rulings would likely show a greater pandemic impact.

CONNECTICUT DYSLEXIA LEGISLATION

Since 2014, Connecticut has passed a series of six laws related to dyslexia. Although dyslexia was mentioned in a few of the cases, I did not discern any influence of the state legislation in these specific decisions. That said, recent research has shown a dramatic national increase in court cases related to dyslexia-specific instruction (Sayeski & Zirkel, 2021) and so it remains to be seen whether this trend will emerge in Connecticut.

DISCUSSION

In this study, I aim to discern topical patterns in recent due process hearings in Connecticut; one goal in doing so is to suggest improvements to practice that may prevent future conflicts. Given the potential breadth of topics that these disputes can address, frequent analysis of recent rulings is essential to determine the issues currently impacting the field. Indeed, I find that over half of the cases since 2020 addressed issues around assessment.

Given the proportion of cases in this analysis that addressed disputes involving evaluation, LEAs should prioritize continued professional development on assessment for their special education staff. Indeed, teacher preparation programs and school districts should ensure that both future and current special education personnel are well-trained in administering and interpreting assessments. On-going professional development will also be important to stay abreast of instrument updates as test publishers often release revised editions.

Further, both parents and LEAs need to have a clear understanding of the eligibility criteria for special education services under IDEA and Section 504. To provide parents greater clarity regarding specific eligibility requirements under IDEA versus Section 504, LEAs may consider sharing information with parents through print or online resources or in-person workshops. Critically, districts should consider offering informational sessions for families to delineate these service provisions. Doing such would be a proactive step towards reducing confusion and potential future disputes.

Districts should increase parent communication and collaboration in an effort to maximize parent input and involvement prior to disputes (Otte, 2022). In one national analysis, Connecticut was among the five states with the highest number of due process hearings per capita (Mueller & Carranza, 2011). Cope-Kasten (2013) described the due process hearing system as unfair and advocates for the use of mediation instead. Connecticut stakeholders may consider using the resources and support provided by organizations such as the Center for Appropriate Dispute Resolution in Special Education (CADRE) to strengthen special education services, improve parent-school district relations and ultimately reduce the number of special education due process hearings.

Because due process hearing decisions are an ever-occurring source of case law, continued analyses such as these are helpful to discern current issues and patterns. Indeed, a future analysis using a wider time period may detect a greater impact of pandemic-related school interruptions and would also allow for a greater understanding of potential equity concerns than this limited analysis.

CONCLUSION

Disputes between LEAs and parents in special education will always exist. But the field can work towards reducing the need for extreme conflict resolution measures such as due process hearings. Indeed, careful examinations of due process rulings provides a unique opportunity to understand current issues in order to improve future practice – and hopefully decrease future disputes.

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