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Due Process: Review & Reflection
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The ultimate goal of education is to prepare students for life beyond walls of the institution known as school. For some students this may mean preparing them for advancement to higher learning. Others will look to enter the workforce or military. Others still will look to develop the skills needed to remain self-sufficient in the world. Just as each outcome is unique, so are the individual students seeking those outcomes. While many students will require standard set of developmentally appropriate resources to achieve success, students with disabilities may require more or simply a different set of resources as they march towards life beyond schooling.

The term FAPE often comes into play when describing the resources and services provided to students. FAPE, or free and appropriate education, sets the standard that a student should not be excluded from receiving an education due to a disability. The government has developed legislation to ensure that all students, regardless of disability status, have access to such a FAPE. The two major pieces of legislation governing FAPE are the IDEA, individuals with disabilities education act, and ESEA, elementary and secondary education act. These two laws set precedents for how public schools are to operate.

As local education agencies (LEAs) and schools provide services to students with disabilities they look to make sure that the needs of the student are being met and that they are acting in accordance with IDEA and ESEA. Schools coordinate with building staff, community agencies and parents to see to it that a student is being educated in an appropriate manner. While the parties involved largely agree on what is appropriate for the student, there are times when a parent may disagree with the education placement or services being received by their student. In these cases the parents have several options, with varying degrees of formality, to express their concerns and seek remedy to the dispute.

Due process is a formal procedure by which an ISBE appointed officer resolves a dispute between parent and school district related to the services/placement of their child. Due process, as will be described later in this review, can be a lengthy and consuming procedure. Because of the nature of due process, many parents and districts will avoid it in order to seek a timely resolution.

The first place a parental concern could be heard by the school is at an IEP meeting. Each year the school holds an annual review of the student's IEP (individual education plan). At this meeting the school goes over the student's services, both direct and related, their program placement, and reviews progress towards student goals. Parents may ask questions and offer feedback at this meeting. Every three years schools hold three year reevaluation meetings to determine a student's eligibility for their IEP. Members of the IEP team, including parents, are able to submit reports and voice any concerns they may have. If a referral concern is raised, the team may decide that more testing is needed prior to making changes to the student's IEP. If the team is in agreement, they may decide that no further testing is required to continue the student's eligibility for special education. Often at the high school level for IEP teams I am a part of, this is the decision that is reached. If a parent does not raise concerns at either of these meetings they can call for an IEP meeting at any other time. At any one of these meetings parents may attempt to reach a solution to the dissonance between the services currently offered and the services parents deem appropriate.

If parents are unable to seek remedy to their dissonance at an IEP meeting, they move towards a mediation process. Mediation is a tool set forth by the ISBE to help parents and schools reach mutually agreeable resolutions. Mediation is a voluntary process, but the agreements reached during mediation can be enforced in a court of law. During mediation, an ISBE appointed mediator will listen to the case of both the school and parent, and attempt to help them resolve their disagreement about services/placement of the IEP'd student. The mediator will set ground rules for the mediation before hearing both sides' cases. The mediator may meet with parties individually in private to get a better

understanding of their story if he is not able to get the full picture from joint meetings. If one side receives a private audience with the mediator so shall the other in an effort to maintain impartiality. After hearing both sides of the disagreement, the mediator will present possible solutions. If the school and parents agree to the solution the mediator drafts a written agreement that both parties sign and receive a copy. This agreement can be legally enforced.

In my experience with special education and services disputes, my school districts make every attempt to resolve complaints at one of these steps in order to avoid going to due process or state complaints.

Due Process Complaint Procedures

My school district follows the due process procedures as outlined by the ISBE. To initiate a formal due process complaint, a parent must file the necessary paper work with the superintendent of the school district in which they reside. This is an important distinction because some students in our district attend alternative schools, therapeutic day schools and special education co-ops. These student's day to day education and services are not carried out by our school district, but the complaint will need to be filled with our superintendent and not the chief officer of the provider school. Parents may use the form provided on the ISBE website or may draft a letter containing the required information. This information includes the parent's name and contact information, the student name and school of attendance, issues related to the complaint, factual information related to the complaint, and proposed solutions.

Once submitted to the superintendent the school district has five calendar days to forward the complaint/ request for due process to the ISBE. The ISBE in return has three calendar days to appoint a hearing officer. The hearing officer will ultimately be responsible for deciding the case. Written notice of the hearing officer will be sent to both parent and school district. Once a hearing officer is assigned, both parties have five days to review the hearing officer's profile and decide whether or not to request a

substitution. Each party can request one substitution if they feel the hearing officer would be biased against them in a neutral decision.

Districts also have ten days from the time a complaint is first received to respond in writing to the complaint. Any written responses must be sent to both the parent and the hearing officer. A written response may include paper work from a recent IEP meeting or conference if the complaint stems from the outcome of said conference. A second option for a district's written response is a notice of insufficiency. This basically is the district stating that the parent's claims are frivolous and should be dismissed.

If the case is not dismissed by the hearing officer, schools and parents must enter into a resolution process. Resolution processes must begin by the 15th day after a due process complaint is filed. The resolution phase is intended to allow schools and parents to reach agreements prior to the formal due process hearing with the ISBE appointed officer. An authorized representative from the school district must be present at all resolution meetings, in our district this includes the special education department chair, executive director of student services, director of student services or assistant director of student services. The school will not bring a lawyer to the meeting unless the parent first decides to bring their lawyer. As an alternative to the resolution process, both parties can agree to use mediation. In this case both parties must provide written notice to the ISBE and hearing officer. A third option is for both parties to waive the resolution process. The entire resolution process can continue, without an extension, until the 30th day following the filing of due process. With an extension, it can continue up to the due process hearing date.

Agreements reached in the resolution process must be submitted in writing to the ISBE and hearing officer. Both parties must sign off on the agreement, including an authorized agent of the school district. Once an agreement has been reached, each side has three business days to void the agreement. This too must be done in written and submitted. If neither party voids the agreement, it will

become binding and enforceable in a court.

If a resolution is not reached, the hearing officer will move forward the hearing process. This process must be completed within 45 days. The first step is for the officer to set a pre-hearing conference where he will outline the procedures for the hearing as well as allow the school and parents to outline what evidence they will present and what witnesses they will call. At the pre-hearing conference the officer will also set the date for the actual due process hearing. This will take place no earlier than 14 days from the pre-conference.

The actual due process hearing will last one or more days as determined by the amount of issues being heard. Typically these hearings are not open to the public unless a parent specifically requests an open hearing. The hearing is very similar to a court hearing, with opening statements, evidence/witnesses, closing statements. In each event, parents begin and the school closes. After both the school and parent have presented their cases, the hearing officer will have ten days to reach a decision. Decisions are submitted in writing to all parties. The school or parent can ask for clarification on a decision once it has been handed down, but asking for clarification will not change the decision. This decision is a legally binding agreement. If either side is unsatisfied or disagrees with the hearing officer's decision they have 120 days to appeal the decision to a US District Court or Illinois Circuit Court.

Due Process Complaints without District Knowledge

As outlined in the lengthy description of the due process procedures above, the school district is actively involved in the process. Because the Illinois State Board of Education does not accept requests for due process hearings directly from parents, parents are required to file their complaints/requests with their school district's superintendent. The superintendent then files the request with the ISBE. Because the superintendent is the one responsible for filing the due process complaint, it is virtually impossible for a due process complaint to be filed without the school district's knowledge.

Special Education, Due Process & Free and Appropriate Public Education.

As stated in the introduction to this review, IDEA and ESEA provide the legal groundwork that ensures every student receives a free and appropriate public education. Special education services are often put in place to provide students with disabilities access to that appropriate public education. Parents may file for due process if they believe their student's needs are not being met by the school. For instance, if a student has a learning disability with a reading comprehension deficit and the student is not making progress in relation to reading a parent may request additional services. One such service may be for the parent to request that a reading specialist work with their student. This could be seen as an appropriate request because reading is an integral part of an appropriate education and the student's disability prevents them from accessing that part of their education without additional supports. If the school disagrees or does not give the student access to the reading specialist, the parents may move forward with due process. Another example would be if a cognitively disabled student is currently only receiving education within a regular education classroom, a parent may believe this is not appropriate to their student's disability needs. They could request that the district place them in an instructional setting which would be more appropriate to the student's needs. If the district refused, due process could be the avenue to force the additional services.

Due Process & Highly Qualified Teacher Status

Both IDEA and ESEA provide provisions requiring both core regular ed and special ed teachers to be highly qualified. Both the state and school district have a responsibility to ensure that all special education teachers achieve highly qualified status. However according to IDEA 34 CFR §§300.18(f) and 300.156(e), due process complaints cannot address the highly qualified status of a teacher. While due process cannot address questions of a teacher's highly qualified status, parents of special education students can speak with school and district administrators about their concern. Parents can also file formal complaints with the ISBE when they have concerns of a teacher's highly qualified status.

Resolution Meetings

Resolution meetings in their relationship to due process hearings have previously been discussed in the 'Due Process Complaint Procedures' section of this review.

Mediation Process

Mediation can serve as a preceding attempt to resolve conflict prior to due process or it can be used in place of a resolution meeting in the early stages of due process. A detailed discussion of the mediation process has been previously discussed in the 'Prior to Due Process' section of this review.

School/District Rights to File Due Process Claims

The vast majority of cases involving due process are initiated by parents. However, there are certain situations where a school may file for due process against a parent. The first situation would be where a parent refuses to give consent for special education evaluation. The school, acting in the best interest of the child, may believe the student is in need of special education support. Unfortunately without an evaluation and IEP in place the school is limited in what services they can provide. If the parent refuses for an evaluation to be done, the school may fight on the student's behalf to complete the evaluation and be able to provide services. The second instance when a parent could file for due process is when they refuse to pay for an independent evaluation requested by the parents of a student. A school may have many reasons for turning down this request. It maybe that there are qualified in-district staff capable of completing the evaluation, the district may disagree with the need to complete an independent evaluation, or that the district feels that an additional testing on the student would cause psychological stress. All in all, these cases of districts filing due process against a parent are rare and only in extreme situations.

School Administration Involvement in Due Process

The level of involvement by school administrators in cases of due process will vary depending on the grade level of the building. At the highest level, the school district superintendent is involved

with the process as the filing agent. They will receive and formally file due process complaints with the state. In our school district, the superintendent has little direct involvement with the case past this point. Our district is large enough to have several levels of administration overseeing student services and IEP students. The due process case would be overseen by either our Executive Director or Director or Student Services. The day to day proceedings of the case would be handled by an assistant director. The assistant director would work closely with the school building in the form of the special education department chair and student's case manager. Our building principal or assistant principal may be called as a witness during the due process hearing but would not likely serve in any other capacity. This would be different in a middle school or elementary school where there are not as many levels of supervision and administration. At these smaller schools the principal or assistant principal may take on the role of a assistant director or special education department chair.

Local School Involvement in Due Process- Past Five Years

Waubonsie Valley and IPSD204 maintain strong family and community relationships. In our school organizational chart parents are at the top, even list above school board members. While this is largely a symbolic gesture, it reflects the lengths are district goes to in order to help parents and satisfy their child's needs. Due to these efforts, our student services department has not gone to due process within the past five years. The school has gone to the mediation process on more than one occasion, but has always been able to find a compromise with the parents before the case moved to due process. Because mediation is a confidential process, I cannot discuss the specifics of the cases.

Typically the school will meet the parents half way on requests related to special education. This could mean paying for half of an outside evaluation, increasing the number of service minutes a student receives, to giving students additional years of school once their graduation requirements have been met.

Reflection

Prior to this paper and class, I thought I had a firm understanding of special education law. As the case would be, I had a firm understanding of how special education services are delivered on a day in day out basis, but not necessarily the laws that govern those services. As a counselor it is important for me to know what services are available to students, how those services are recorded and who is responsible for them. As an administrator I will need to go beyond this practical knowledge and move to a technical knowledge. There are so many caveats to special education law in both ESEA and IDEA, that it is vital to have knowledge so that you are not caught off guard by a case of unique circumstance. Certainly as an administrator you will not have intimate knowledge of each law, but you should have a working knowledge so that when the law comes up in discussion you can actively contribute. Also as an administrator it is vital to surround yourself with knowledgeable colleagues, such as special education directors, who have detailed knowledge.

Previously I heard conversations of due process, and even heard parents throw the term around in an almost threatening manner. I knew it was something that we wanted to avoid as a school, but until diving into the actual law did I realize why schools sought to avoid due process complaints. It is a very lengthy, resource heavy and costly process. The cost of providing extra services will in many cases be less than the combined cost of going through a due process hearing. Also from a public relationships stand point due process is not something that looks good. When a parent is requesting due process, they are looking to get something that is in the best interest of their child. Now the school may disagree with what is the best interest of the child, but they can't argue that the parent isn't genuinely concerned about their child's welfare. As an administrator, before I allowed a case to go to due process I would work to accommodate the student and parent and find a compromise.

After speaking with our special education department chair, case managers and researching due process, I think I have a firm grasp of the topic. I would like to be a part of a team meeting when due a potential due process complaint comes up. It is one thing to read and ask questions about due process

and it is another to actually be involved in the case. As a future administrator, I would like to make sure my entire staff is aware of the cost of going to due process. Many general education teachers are unfamiliar with due process and special education in general. I would not expect them to have detailed knowledge of the process, but rather get them to see how serious and time intensive the process is. This way we could focus on what their role is in teaching IEP students. If they know what is at stake to our school and district they will be more likely to do their part to avoid going to due process and best serving the needs of the student.

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