
BLAMING MOTHERS: A DISABILITY PERSPECTIVE

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This Article grew out of my experience as an advocate in the special education system. Too often, I have received phone calls from parents—primarily mothers—who recount the terrible treatment they and their child have received at the hands of their school district. Mothers tell me that they are blamed for their child's challenges in school and accused of lying to teachers or staff. They sometimes tell me that their school district does not

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carry through with promises made to them concerning their child's education. When I agree to attend a meeting with the mother at the school district, I am surprised when everyone acts so polite and helpful. We soon develop a reasonable educational plan for the child. How can this be, I wonder? Was the mother telling me the truth?

Unfortunately, I have come to believe that the mother's recounting of the school district's treatment of her and her child is accurate. With limited available resources, school districts often provide the least possible resources to children with disabilities. And, unfortunately reflecting the larger devaluation of women and mothers in our society, school districts often do not treat mothers with respect when an outsider is not present to observe these meetings. The school district personnel seemingly know their behavior is inappropriate, so they act appropriately when I appear as an advocate. This repeated experience caused me to decide to investigate this phenomenon to better understand it in the context of American law and society. How and why do school districts frequently treat the mothers of children with disabilities so adversely?

INTRODUCTION

Blaming the mother is a longstanding cultural tradition in the United States. In 1942, Philip Wylie invented the term "momism" in the bestselling book *Generation of Vipers*, to describe the "women of America [who] raped the men, not sexually, unfortunately, but morally, since neuters come hard by morals."¹ More recently, in an edited volume, Molly Ladd-Taylor and Lauri Umansky have documented how women have been blamed for children being autistic, homosexual, cognitively impaired, dependent on welfare, or criminal.²

From the moment of pregnancy, mothers are disproportionately blamed for any difficulties their child faces. During pregnancy, poor mothers are cast as uncaring crack addicts.³ During childbirth, the state distrusts mothers to make appropriate decisions to protect the well-being of the fetus. And, if the child is born with a disability, the mother is blamed for causing whatever difficulties may occur. She is considered either negligent for failing to do enough to assist her child or overly aggressive for advocating on her child's behalf. While legal scholarship has documented the adverse treatment of women during pregnancy and childbirth, this Article focuses that discussion on the treatment of the mothers of children with disabilities, particularly when they seek to obtain an appropriate public education for their child.

¹ PHILIP WYLIE, *GENERATION OF VIPERS* 188 (1942).

² Molly Ladd-Taylor & Lauri Umansky, *Introduction* to "BAD" MOTHERS: THE POLITICS OF BLAME IN TWENTIETH-CENTURY AMERICA 1, 1-23 (Molly Ladd-Taylor & Lauri Umansky eds., 1998).

³ Dorothy E. Roberts, *Privatization and Punishment in the New Age of Reprogenetics*, 54 *EMORY L.J.* 1343, 1346 (2005) (describing "[t]he rush to punish poor, substance-abusing mothers for their reproductive failures").

The Individuals with Disabilities Education Act (“IDEA”) promises each child a free and appropriate public education.⁴ The words “free” and “appropriate” are intended to signify that the school district, not the parent, should take primary responsibility for educating a child. The “blame the mother” (and sometimes, the father) metaphor that permeates many special education cases, however, undercuts the promise of “free” and “appropriate” by placing educational responsibility on the parent rather than the school district.

The bias against mothers often permeates both the school district’s treatment of the mother and, if the mother files for a due process hearing on behalf of her child, the hearing officer’s consideration of the case. Rather than overturn school district practices, hearing officers usually find in favor of the school district. The following chart reflects the results of recent hearing officer decisions in various jurisdictions, including jurisdictions with some of the highest rates of due process hearings, as obtained from each state’s website.

FIGURE 1. Decisions in Special Education Cases⁵

State	Student Prevailed	District Prevailed	Mixed Result	Total
Pennsylvania	67 (26.2 %)	120 (46.9 %)	69 (27.0 %)	256
District of Columbia	55 (22.0 %)	68 (28.0 %)	122 (50.0 %)	245
Ohio	12 (13.3 %)	46 (51.1 %)	32 (35.6 %)	90
California	10 (10.0 %)	60 (60.0 %)	20 (30.0 %)	100
Maryland	11 (10.5 %)	90 (85.8 %)	4 (3.8 %)	105

As the chart demonstrates, other than the District of Columbia, school districts prevail on all issues in a majority or near-majority of cases that go to due process hearings. This Article suggests that the “blame the mother” phenomenon helps explain some of the challenges that mothers face when they seek an appropriate education for their child with a disability. Not only do mothers sometimes face inappropriate resistance from the school district, but if

⁴ 20 U.S.C. § 1400(d) (2012).

⁵ These results are based on the work of my research assistants. Their instructions were to code “student prevailed” if the student prevailed on all issues, “school district prevailed” if the school district prevailed on all issues, and “mixed result” if both the student and school district prevailed on some, but not all, issues. For California, the hearing officer opinions included that designation. For the other states, the coder had to use his or her judgment to determine who prevailed on each issue. If the student prevailed on an issue, but did not get the full amount of relief requested (e.g., received twenty compensatory hours instead of forty compensatory hours), the coder still coded the case as “student prevailed.” Thus, the parent or student’s perception of whether they prevailed might be different than the results in this coding system. In other words, this coding system reflects a liberal interpretation of what it means for the student to prevail on all issues.

they file a due process complaint, the hearing officer often fails to correct the bias against the parent, which in turn harms the child's right to an appropriate education.

This "blame the mother" theme is not unique to the world of special education, and it is complicated by racial and class stereotypes. This Article focuses on the manifestations of this problem under the IDEA but in the broader context of a "blame the mother" syndrome. Part I describes how this phenomenon especially affects mothers of children with disabilities. Part II provides a general review of the literature of the treatment of women during the special education process. Part III offers specific examples from special education decisions that catalogue this adverse treatment.

I. MOTHERHOOD

Other scholars have done a great job cataloguing the adverse treatment of women from the moment of their pregnancy to childbirth and beyond, especially when the women are poor or members of minority groups. This treatment is often more severe if women give birth to a child with a disability.

At the moment of pregnancy, society often tries to micromanage women's lives, using stereotyped and irrational responses to women's pregnant lives. Dorothy Roberts has documented stereotypes against the "pregnant crack addict," women who are considered social pariahs for their so-called "crack babies" even though medical research has failed "to substantiate any such condition, syndrome, or disorder."⁶

Susan Okie has characterized the crack epidemic as "The Epidemic that Wasn't," because cocaine's effects on a fetus "are less severe than those of alcohol and are comparable to those of tobacco."⁷ Poor women are blamed for the so-called choices they made during pregnancy when they deliver low-birth-weight babies (without considering the deficiencies in the health care system) while affluent women face no social ostracism when they risk delivering low-birth-weight babies through high-risk medical implantation of fertilized eggs.⁸

Rather than to assist women in attaining the health care they need during pregnancy, the state response has been to make reproduction a crime for many poor and minority women. Dorothy Roberts⁹ and Lynn Paltrow¹⁰ have done pathbreaking work to document this phenomenon.¹¹

⁶ Roberts, *supra* note 3, at 1348.

⁷ Susan Okie, *The Epidemic that Wasn't*, N.Y. TIMES, Jan. 27, 2009, at D1.

⁸ Roberts, *supra* note 3, at 1348.

⁹ DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 150 (1997) (telling the story of a woman who "was arrested for 'endangering the life of her unborn child' by smoking crack while pregnant").

¹⁰ Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women's Legal Status and Public Health*, 38 J. HEALTH POL. POL'Y & L. 299 (2013) (providing an empirical study of state deprivations of physical liberty against pregnant women and finding a disproportionate

This adverse treatment of women during (and after) pregnancy is compounded when their children are born with disabilities. Patricia Alvarez McHatton and Vivian Correa were able to document the assumption that poor and minority women caused their children's disabilities through drug use.¹² If their children are born prematurely, strangers and health care professionals accuse these women of using drugs during pregnancy.¹³

Sara Green has documented that women who give birth to children with a readily identifiable condition like Down syndrome are often blamed for failing to abort their fetuses:

One mother, for example anguished over the fact that "His (husband's) mother, she's basically told us that it's our fault that (he's) retarded . . ." Similarly, another mother, while feeling understood and completely supported by her family, noted that others in the community often blame her for not having obtained, and acted upon, a pre-term diagnosis of her son's Down syndrome.¹⁴

Pregnant mothers understand this societal pressure to abort their child. If they fail to abort, then they are responsible for their child's disability. Following childbirth, even when the state seeks to assist poor mothers and their families to keep and raise their own children, it does so in a framework of blame and criticism.¹⁵ "The welfare queen and the wily patient are symbols of *delegitimized* motherhood."¹⁶

If the child is born with a disability, the "blame the mother" process exists across "income, social networks, and cultural capital."¹⁷ The negative attitudes

impact on poor and African American women).

¹¹ See also Krista Stone-Manista, *Protecting Pregnant Women: A Guide to Successfully Challenging Criminal Child Abuse Prosecutions of Pregnant Drug Addicts*, 99 J. CRIM. L. & CRIMINOLOGY 823, 825 (2009) (providing the example of "eight women in one Alabama jurisdiction . . . [who] were prosecuted in an eighteen-month period for drug use during pregnancy").

¹² Patricia Alvarez McHatton & Vivian Correa, *Stigma and Discrimination: Perspectives from Mexican and Puerto Rican Mothers of Children with Special Needs*, 25 TOPICS EARLY CHILDHOOD SPECIAL EDUC. 131 (2005) (examining the discrimination Puerto Rican and Mexican single mothers of children with disabilities faced).

¹³ *Id.* at 136 (describing one such interaction between a mother and a stranger).

¹⁴ Sara E. Green, "What Do You Mean 'What's Wrong with Her?': Stigma and the Lives of Families of Children with Disabilities", 57 SOC. SCI. & MED. 1361, 1366 (2003) (internal citation omitted).

¹⁵ Khiara M. Bridges, *Quasi-Colonial Bodies: An Analysis of the Reproductive Lives of Poor Black and Racially Subjugated Women*, 18 COLUM. J. GENDER & L. 609, 618 (2009) ("Temporary Aid for Needy Families (TANF), the federal program that provides cash assistance to poor families, reinforces the welfare queen trope by describing and treating its beneficiaries as problematic subjects.").

¹⁶ *Id.* at 619.

¹⁷ Linda M. Blum, *Mother-Blame in the Prozac Nation: Raising Kids with Invisible Disabilities*, 21 GENDER & SOC'Y 202, 207 (2007).

of others can make it difficult for mothers to receive appropriate services for their children, especially, as Linda Blum notes, during “a time of heightened public stinginess and . . . the heightened medicalization of daily life.”¹⁸

Feelings of stigma on the part of mothers of children with disabilities have been well documented among Latina mothers. María Fernández and Emily Arcia interviewed sixty-three Latina mothers who had a child with a disability to document the ramifications of this stigma.¹⁹ The mothers reported that they were more likely to be targets of stigma than their children.²⁰ Sources of stigma included pediatricians, clinicians, sitters, teachers, and schools.²¹ One mother reported a public official saying to her: “Come back when you have someone who can care for your daughter.”²² Another mother reported that the assistant principal at her son’s school told her: “You have to talk to him and tell him to shape up because this is not his zone school, and if he does not improve, the school will not take him back next year.”²³ Another mother was upset when team members at her son’s school told her that she needed to do a better job as a parent and “keep him away from the gang he was in.”²⁴ Her response to these false allegations was: “Look, I wanted to die. I started to cry. How do I explain to them that he is not in a gang . . . I didn’t know what to do. I tried to tell them that they were offending me.”²⁵

Feelings of stigmatism have negative consequences for both the mother and child, and it is well established in the public health literature that they create a barrier to seeking help.²⁶ “Stigma surrounding the receipt of mental health treatment is among the many barriers that discourage people from seeking treatment.”²⁷ Thus, it is not surprising that Fernández and Arcia often reported that the mothers they interviewed faced profound isolation.²⁸

Linda Blum has documented the uphill battles that many low-income mothers must face to attain services for their children with disabilities. May Royce, a single mother, waged “a war” against her health care provider for ten months before she succeeded in having the provider locate a psychiatrist who

¹⁸ *Id.* at 204.

¹⁹ María C. Fernández & Emily Arcia, *Disruptive Behaviors and Maternal Responsibility: A Complex Portrait of Stigma, Self-Blame, and Other Reactions*, 26 HISP. J. BEHAV. SCI. 356 (2004).

²⁰ *Id.* at 365.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 366.

²⁴ *Id.*

²⁵ *Id.*

²⁶ DEP’T OF HEALTH AND HUMAN SERVS., U.S. PUB. HEALTH SERV., MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL 1, 8 (Howard H. Goldman et al. eds., 1999) (“Nearly two-thirds of all people with diagnosable mental disorders do not seek treatment.”).

²⁷ *Id.*

²⁸ Fernández & Arcia, *supra* note 19, at 367.

could diagnose her son rather than “whip[] out his prescription pad for Prozac.”²⁹

When these mothers did succeed in battling the medical profession and received medication for their children, they then faced other cultural barriers. They faced “the widespread cultural suspicion that they medicate their kids just to quell annoying behavior.”³⁰ Mothers were also blamed for “drugging boys rather than providing the needed ‘female labor-intensive mode of early child socialization’ and discipline.”³¹

Mothers faced these negative cultural attitudes even as many of them questioned medical recommendations to *reduce* their child’s use of medication.³² Paradoxically, mothers also faced child abuse or neglect charges if they *underused* medications for their children.³³ While poor mothers were disproportionately likely to be threatened with a referral to the Department of Social Services, even affluent mothers were accused of giving up if they did not aggressively pursue medication for their school-aged children.³⁴ This theme of mothers being either “too pushy” or “not pushy enough” is reflected in the special education cases discussed later in this Article.³⁵

II. SPECIAL EDUCATION LITERATURE REVIEW

Mothers of children with disabilities often reported that their greatest challenges involved dealing with the school system. David Gray investigated the experiences of mothers in Brisbane, Australia.³⁶ The mothers’ experiences modeled what is often reported in the United States. One mother reported: “I’ve had a gut-full. Just . . . school last week. I thought, ‘I’ve had a gut-full of this. Why am I bothering? Why am I pushing him through school? Why don’t I take him out? Give him distance education’. I’m sick of the hassles with school.”³⁷ Another mother reported: “There are days when I fall apart. Towards the end of last year at school, I’ve left school in tears . . . I mean, that sort of thing happens quite often and you try to shut it out and distance yourself

²⁹ Blum, *supra* note 17, at 215.

³⁰ *Id.* at 216.

³¹ *Id.* at 219 (quoting Nicky Hart et al., *Making the Grade: The Gender Gap, ADHD, and the Medicalization of Boyhood*, in *MEDICALIZED MASCULINITIES* 154 (Dana Rosenfeld & Christopher A. Faircloth eds., 2006)).

³² *Id.* at 216-17 (documenting one mother’s attempts).

³³ *Id.* at 217.

³⁴ *Id.*

³⁵ *See also* Green, *supra* note 14, at 1371-73 (discussing stigma faced by mothers of children with disabilities).

³⁶ David E. Gray, “Everybody Just Freezes. Everybody is Just Embarrassed”: *Felt and Enacted Stigma Among Parents of Children with High Functioning Autism*, 24 *SOC. HEALTH & ILLNESS* 734 (2002).

³⁷ *Id.* at 745.

from it.”³⁸ It is easy to understand, as we will see below, that mothers who are frustrated with these feelings of stigmatization from many sectors of society will experience a hostile reception from the school district. The “blame the mother” attitude that the mothers experience at school is a small piece of the phenomenon they are exposed to throughout their lives.

Jane Taylor McDonnell, who is the mother of a boy with autism, documented similar responses in both the United States and London, England. When her son was a preschooler in London, she found that school staff wanted to blame her for her son’s disability, acting as if she was selfish and not spending enough time with him.³⁹ When she returned to the United States, her son’s pediatrician suggested she read a book, which

suggested that mothers (otherwise well-meaning, intelligent, kind women) had the power to deprive their children of a sense of self, to destroy them at their very core, to kill their “souls,” as people a generation or two ago might have put it. It attributed an awesome power to the mother, and it was a power to harm, but not to heal.⁴⁰

Later, when her son was in middle school, she visited a private school that she thought would be a good fit for him. When told that her son had high-functioning autism, however, the principal explained that he was “one of those people who really does believe that autism is caused in the home. It’s psychological in origin. That means we simply can’t do anything for him here.”⁴¹ This story reflects that even high-income mothers, who can afford to send their children to private school, can face a “blame the mother” response to their child’s educational challenges.

Although school officials may blame mothers for not doing enough for their children, they also criticize them for seeking to do too much for their children. Given the structure of the special education system, Blum describes these mothers as “vigilantes,” “to denote both the intensified monitoring of the child and oneself and the need to take the ‘law’ into one’s own hands when advocating on behalf of one’s vulnerable child.”⁴²

Not surprisingly, Blum documented that school districts do not respond positively to the mothers’ efforts as vigilantes:

They uniformly described team meetings as adversarial sites requiring vigilantism. Ronda Salter, in night school to complete her high school equivalency degree, elaborated:

They always say “parents are a valued member of the IEP

³⁸ *Id.*

³⁹ Jane Taylor McDonnell, *On Being the “Bad” Mother of an Autistic Child*, in “BAD” MOTHERS: THE POLITICS OF BLAME IN TWENTIETH-CENTURY AMERICA, *supra* note 2, at 220, 222.

⁴⁰ *Id.* at 223.

⁴¹ *Id.* at 228.

⁴² Blum, *supra* note 17, at 212.

[("Individualized Education Program") team"—but as a parent, if you argue, then okay, you're The Uncooperative Parent. I've actually had that written on reports. For them to develop a plan is really easy. Getting them to carry out the plan, *all* of the plan, is the hardest part. They want you to read the IEP, ask a few nice questions, and then go away.⁴³

For Spanish-speaking mothers, the failure of the school district to provide information in their native language often caused these mothers to appear unconcerned with their child's education. In McHatton and Correa's study, one Spanish-speaking mother reported that she did not sign anything that the school sent home because she could not understand it.⁴⁴ The authors speculate that this refusal to sign forms "may convey to the school that she is not interested in her child's education, thus furthering a deficit view of culturally and linguistically diverse families."⁴⁵ Thus, mothers can be considered "bad mothers" if they seem aggressive or if they seem passive.

Unfortunately, there is no literature (that I could find) on how school districts treat mothers of children with disabilities when the mother herself is disabled. The National Council on Disability prepared an outstanding report entitled *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children*, which discusses, at length, the barriers that society often creates to make it especially difficult for parents with disabilities to care for their children.⁴⁶ These parents "must struggle to retain custody of their children[,] . . . are more likely to lose custody of their children after divorce, have more difficulty in accessing reproductive health care, and face significant barriers to adopting children."⁴⁷ Although the report concludes that "the legal system is not protecting the rights of parents with disabilities and their children," it does not focus specifically on the ways in which the IDEA may not be applied fairly to the parents of children with disabilities.⁴⁸ It is easy to extrapolate from the report's extensive findings that such parents are not likely to find their rights protected in this arena any more than in any other legal arena.

This sociological literature, while documenting the challenges that mothers often face when seeking an appropriate education for their child with a disability, does not discuss how these mothers (and children) are treated if the mother brings a due process claim on behalf of her child under the IDEA. Unfortunately, the hearing officer decision sometimes reinforces, rather than corrects, this bias against the mother.

⁴³ *Id.* at 213.

⁴⁴ McHatton & Correa, *supra* note 12, at 139.

⁴⁵ *Id.*

⁴⁶ NAT'L COUNCIL ON DISABILITY, *ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN* (2012).

⁴⁷ *Id.* at 14.

⁴⁸ *Id.*

III. SPECIAL EDUCATION DECISIONS

The themes mentioned above, present in the general literature on mothering, are easily found in the hearing officer decisions involving mothers and their child with a disability. Some of these themes can be found in the hearing officer's bias in these cases. Other examples of these themes can be found in descriptions of the conduct of the school district, which the hearing officer in some cases criticizes. This latter development is certainly a positive one, but it also makes one wonder about the many instances of bias against mothers that occur at the school district level, where the mother does not have the resources to file a due process complaint to redress this bias.

A. *School District Disrespects Mother's Own Disability Status*

Below, I discuss an example from Ohio and an example from California, in each of which the school district displayed blatant bias against the mother's own disability status when she sought to obtain an appropriate education for her child. This is a very important problem because, if one assumes that there is often some genetic component to a child's disability status, the mothers of children with disabilities are more likely to have a disability than the general population. The hearing officer replicated the school district's bias in the first case discussed below but corrected it in the second. Due to the difficulty of obtaining representation in these kinds of cases, one can only surmise that many mothers who face bias because of their own disability statuses do not have the resources to use the due process avenue to correct that bias.

1. Ohio Example

When the mother herself is disabled, the level of distrust and disrespect between her and the school district can be especially pronounced. Unfortunately, the hearing officer sometimes internalizes this atmosphere of disrespect.

One recent Ohio decision reflects this phenomenon. The decision included a heading marked "The Parent,"⁴⁹ which included a lengthy discussion of the mother's purported problems. The hearing officer indicates that the mother repeatedly explained to the school district that she "has an auditory processing issue" and requested communication to be in writing.⁵⁰ Nonetheless, the hearing officer felt compelled to question the mother's purported disability:

The Parent did not provide testimony by a physician or any other health care professional to establish that she has been diagnosed with an auditory processing deficit and similar medical condition that would impair her ability to process verbal communications This [Impartial

⁴⁹ The Impartial Due Process Hearing for Student: [Redacted], Case No. SE-2715-2012, at 21 (Ohio Dep't Educ. Aug. 8, 2013), available at <http://www.edresourcesohio.org/wp-content/uploads/2014/05/SE-2715-2012.pdf>.

⁵⁰ *Id.* at 22.

Hearing Officer (“IHO”)] observed that the Parent understood both counsels’ questions as well as most witnesses that this IHO has observed testifying [during a] due process hearing. This IHO observed the Parent process both counsel’s questions and then answer their questions without undue difficulty, and certainly with no more difficulty than experienced by other lay witnesses when examined during a due process hearing by an attorney.⁵¹

In other words, the hearing officer felt qualified to second-guess the mother’s assertion that she had an auditory processing disability. This assessment is beyond the competency of a hearing officer. Further, under federal disability law, an individual is not required to offer medical testimony to establish disability status in a case under the Americans with Disabilities Act in which the individual is the plaintiff.⁵² In this case, the individual was acting as a parent, not a plaintiff, and should not have been forced to meet a heavy burden of proof to receive recognition as a person with a disability.

Later in the opinion, the hearing officer determines that the mother has limited credibility because she was confused about the date of one communication:

Indeed, the Parent’s testimony on these matters brings into question whether any of her testimony on direct examination can be confidently trusted and has a reasonable probability of truthfulness. When testimony cannot be confidently trusted and does not have a reasonable probability of truthfulness, such testimony is not reliable evidence and will not be accorded any evidentiary weight.⁵³

Rather than acknowledge that the mother’s auditory processing impairment might cause some miscommunication, the hearing officer used her confusion as an excuse to conclude that she was not a reliable witness.

The hearing officer, however, was not the only individual who treated the mother with disrespect. At the due process hearing, the mother testified she had “an issue of trust . . . with the district”:

It took for me to file due process twice, the first time to find out exactly what was happening with my child at [the school district]. We were not communicated to. It’s been emotionally draining to hear under oath what happened to my son when we just had glances and he was trying to tell us. And he would tell us, and he was able to communicate to us what was being done to him by not just the students. It took sitting in that chair to understand what my son had to endure.

Yes, there’s a trust issue. It took a record review for me to see documents that I never received. That’s why I’m such a hostile parent when I’ve

⁵¹ *Id.*

⁵² *See, e.g.*, 29 C.F.R. § 1630.1(c) (2010) (providing regulations promoting broad coverage).

⁵³ *Impartial Due Process Hearing*, Case No. SE-2715-2012, at 136-37.

done nothing more than try to advocate for my child. It took a due process case to understand. That's why there's lack of trust, no communication, even when I have asked and asked and repetitively asked to understand.⁵⁴

The mother, in this instance, self-identifies as "hostile" in response to her frustration with trying to communicate with the school district. This lengthy quotation within the hearing officer opinion is a subtle way to further discount her testimony; she is dishonest and hostile. It is thus unsurprising to read at the end of the opinion that the parent failed to prevail on any of the issues raised in her complaint. Her inability to communicate effectively with both the school district and the hearing officer resulted in her child with autism receiving an inadequate education in his local school district, rather than an appropriate education at a special school for children with autism. Unfortunately, that result was predictable as soon as one sensed the hearing officer's hostility to the mother's own disability status.

2. California Example

In a strikingly similar case from California,⁵⁵ the mother told the school district that she had an auditory processing disorder, requested not to hold meetings over the telephone, and asked that she have an opportunity to review information five days in advance of all meetings.⁵⁶

The e-mail trail helped to demonstrate the school district's hostility towards the mother. The special education director, Sue Shalvey, sent an e-mail to the mother (which was intended for another school employee) which referred to the mother's "freakin notes" and then urged school employees to "[b]ring[] Zanex [sic]" to the next IEP meeting.⁵⁷ The mother's response, which the hearing officer described as "restrained and gracious," included a request that the special education director no longer be present at any IEP meetings.⁵⁸

Despite this obvious evidence of hostility against the mother, and the school district's repeated refusal to comply with the mother's request for documents in advance of meetings, the school district insisted on taking the unusual step of filing for due process to persuade the hearing officer to approve an IEP that was created at a meeting which neither parent attended.⁵⁹ The hearing officer, however, saw through this hostility and found that the mother's request to reschedule an IEP meeting so that she could be prepared for it did not justify

⁵⁴ *Id.* at 145.

⁵⁵ *Aspire Pub. Sch. v. Parents on Behalf of Student*, No. 2013040872, at 7 (Cal. Office of Admin. Hearings July 9, 2013), *available at* http://www.documents.dgs.ca.gov/oah/seho_decisions/2013040872.pdf, *archived at* <http://perma.cc/DH3N-5NNA>.

⁵⁶ *Id.* at 6-7.

⁵⁷ *Id.* at 9.

⁵⁸ *Id.*

⁵⁹ *Id.* at 1.

the school district holding a meeting without her being present.⁶⁰ The school district's request for relief was denied.⁶¹

This case is an example of a parental victory despite overt hostility towards the mother as both a "pushy" mother and a mother with a disability. It is hard to rejoice in this victory, however, because it reflects one of the few instances in which the hostility can be catalogued (due to an errant e-mail) and in which the mother has the fortitude to pursue a due process hearing quite aggressively. This mother did not have an attorney, although an advocate and family friend accompanied her to the hearing.⁶² As I have reported in previous work,⁶³ it is rare for a parent acting pro se to prevail in these proceedings.

B. *School District Blames Mother's Assertive Behavior for Educational Problems at School*

Rather than accept responsibility for educating a child with a disability, it is common for the school district to try to blame the mother for its challenges educating these children. In each of the four cases discussed below, the school district tries to place all the blame on the mother for the child's difficulties because the mother is allegedly too aggressive. (In Part C, we will see school districts blame mothers for being too passive.) In only one of these cases does the hearing officer in any way try to correct for the school district's bias and, in that case, the remedy is quite modest in comparison to the bias exhibited against the mother.

1. First Pushy Mother

In one case from Ohio, the school district blamed the mother for its staffing crisis after she filed a professional complaint against a teacher who was subjecting her son to seclusion and restraint.⁶⁴ The school district insisted that the mother home-school her son for many months while it made little attempt to find a new teacher.⁶⁵ The hearing officer reacted to this accusation with the following statement:

I cannot turn a blind eye to Mother's role in causing the original staffing crisis. Again, it was Mother's complaints regarding [Teacher] and her disagreements with Dr. DePolo (that went so far as filing a professional

⁶⁰ *Id.* at 13.

⁶¹ *Id.* at 27.

⁶² *Id.* at 1.

⁶³ See generally RUTH COLKER, *DISABLED EDUCATION: A CRITICAL ANALYSIS OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT* (2013); Ruth Colker, *California Year in Review: 2013 Special Education ALJ Decisions*, 34 J. NAT'L ASS'N ADMIN. L. JUDICIARY 47 (2014).

⁶⁴ Due Process Hearing on Behalf of [Redacted] and Hudson City Sch. Dist., No. SE-2802-2013 (Ohio Dep't Educ. June 17, 2013), available at <http://www.edresourcesohio.org/wp-content/uploads/2013/07/SE-2802-2013.pdf>.

⁶⁵ *Id.* at 34.

complaint against her) that caused [Teacher] to discontinue involvement of its staff with Student and left the School District in a position to scramble to replace staff mid-school year.⁶⁶

Ultimately, the hearing officer accepted the school district's "blame the mother" version of the story and denied her attorney's fees, even though he found that the school district had violated the IDEA.⁶⁷

2. Second Pushy Mother

In another case from Ohio, the school district was allowed to get away with an appalling failure to identify a child with serious behavioral issues as disabled by blaming the mother for his supposedly "intentional" bad behavior.⁶⁸ The hearing officer said he was in no way "punishing" the mother for filing repeated administrative complaints against the school district, but he did, in fact, rely on those previous findings for the purpose of "detrimental reliance/collateral estoppel."⁶⁹ According to the hearing officer:

The student admittedly stays out of the classroom setting for reasons other than time-out breaks or to relieve anxiety Allowing the student to do so, to such an extreme as has been tolerated by the school, and demanded by the [Mother], may be doing a dis-service to this student.⁷⁰

In other words, the mother was punished for supposedly supporting her son's inappropriate behavior while also seeking to get him assistance so that he could make adequate educational progress.⁷¹

3. Third Pushy Mother

In a case from Pennsylvania,⁷² the special education director unilaterally imposed a rule that the mother could not speak to any member of the IEP team

⁶⁶ *Id.* at 35.

⁶⁷ *Id.* at 46.

⁶⁸ [Redacted] v. Wilmington City Sch., No. SE-2804-2013E (Ohio Dep't Educ. Apr. 19, 2013), available at <http://www.edresourcesohio.org/wp-content/uploads/2013/07/SE-2804-2013E.pdf>.

⁶⁹ *Id.* at 45.

⁷⁰ *Id.* at 20.

⁷¹ Ironically, in the same situation, a hearing officer can blame a mother for doing too little and too much for the child. For example, in another case from Ohio, the hearing officer criticized the mother for moving three times in one school year and turning down extended school year services, while also criticizing the mother for doing the student's homework. Impartial Due Process Hearing Between [Redacted] and Forest Hills Local Sch. Dist. Bd. of Educ., No. SE-2381-2009, at 25 (Ohio Dep't of Educ. Apr. 4, 2011), available at <http://www.edresourcesohio.org/wp-content/uploads/2013/07/SE-2381-2009.pdf>.

⁷² Due Process Special Education Hearing, No. 3264/11-12AS (Pa. Office Dispute Resolution Aug. 26, 2012), available at <http://204.186.159.23/odr/HearingOfficerDecisions/3264-11-12.pdf>, archived at <http://perma.cc/NN3E-RFTN>.

except the director.⁷³ The mother learned of this restriction for the first time at an IEP meeting when it was announced to the entire team.⁷⁴ The special education director also sent three e-mails that were unprofessional and treated the mother disrespectfully. One e-mail made a joke that allegedly concerned the mother (but was redacted in the hearing officer's opinion), another e-mail jokingly suggested "spanking" the mother for sending an e-mail in violation of the rule about no contact with anyone but the special education director, and a third e-mail referred to the mother as the student's "mouthpiece."⁷⁵

Although the hearing officer partially found in favor of the student and ordered four hours of compensatory education, he also described the mother as a "handful" based on the (unspecified) "volume of communication coming from the student's mother."⁷⁶ Further, the hearing officer said that the mother "clearly overreacted" when she cancelled her child's social work services at the end of the school year because she believed the social worker "was trying to trap the student into going to an inappropriate website on a computer."⁷⁷

Reading between the lines, it appears that the school district tried to blame the mother for her child's declining educational performance after the social worker's services were terminated and also tried to describe the mother's decision as "crazy."⁷⁸ The hearing officer seems to have partially accepted this line of argument. When viewed in context, the hearing officer said that "the mom's overreaction seems much less crazy and perhaps almost understandable."⁷⁹ He agreed that the mother's actions "deprived" the student of the social worker's services and that this deprivation occurred "when the student would have benefited most from counseling with the Respondent's social worker."⁸⁰ By saying that one might view the mother as "less crazy" and that her behavior was "almost understandable," the hearing officer seems to be accepting the school district's narrative that the mother overreacted and was crazy.

4. Fourth Pushy Mother

A California case presents another example of a mother who was vilified for her adamant advocacy on behalf of her son.⁸¹ Her son was multiply disabled

⁷³ *Id.* at 10.

⁷⁴ *Id.* at 11.

⁷⁵ *Id.*

⁷⁶ *Id.* at 24.

⁷⁷ *Id.* at 26-27.

⁷⁸ *See id.* at 27.

⁷⁹ *Id.*

⁸⁰ *Id.* at 27-28.

⁸¹ *Parent on Behalf of Student v. Yuba City Unified Sch. Dist.*, No. 2013120207 (Cal. Office of Admin. Hearings, Apr. 7, 2014), *available at* http://www.documents.dgs.ca.gov/oah/seho_decisions/2013120207%202013110182.pdf, *archived at* <http://perma.cc/5244-24RU>.

with an estimated IQ of thirty, limited communication skills, and a severe case of diabetes.⁸² He had worked successfully with one nurse, and the mother insisted she would only consent to the IEP if that particular nurse was named as the care provider.⁸³ Although parents cannot ordinarily name a service provider, this was an unusual case in which communicating with the student was very difficult and an error in communication could be life-threatening. The mother testified that her son “would be subjected to a dire and life-threatening predicament if he attended school without [the named nurse].”⁸⁴

The school district and hearing officer refused to respect the views of the mother and the nurse that had already worked successfully with the student. Rather than credit the nurse for her extensive efforts to work with a very low-functioning child, which sometimes included pulling him out of a stressful environment, the hearing officer concluded that the nurse “interfered with the teacher’s and aides’ ability to provide instruction to Student.”⁸⁵ Remarkably, the hearing officer found no legal support for the commonsense notion that “if otherwise qualified, a school nurse must also be able to communicate directly with a pupil who may be non-verbal.”⁸⁶ Given the hostility of both the school district and hearing officer to the notion that communicating with a student who has brittle diabetes is essential to the adequacy of an IEP, it is not surprising that the mother acted aggressively to protect her child by keeping him home from what she considered to be an unsafe school environment.⁸⁷ Thus, the mother and (female) nurse were found to be undermining, rather than furthering, the student’s education. “It was the conduct of Mother, not District or the County, which impeded the provision of special education and services”⁸⁸

5. Why Mothers Must Be Pushy

In reading these cases, I am often struck by the near impossibility for mothers to wade through the bureaucracy to help their children get the education to which they are legally entitled. The children who languish without an advocate don’t make it onto the pages of due process decisions. A typical example of the bureaucratic nightmare many mothers face is a case from Washington, D.C., in which the mother, despite many phone calls, could not figure out how to get her son’s IEP transferred from one school to another.⁸⁹

⁸² *Id.* at 17.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 19.

⁸⁶ *Id.* at 25.

⁸⁷ *See id.* at 19 (describing the mother’s several safety concerns).

⁸⁸ *Id.* at 28.

⁸⁹ *Student v. D.C. Pub. Sch.*, at 4-5 (Office of the State Superintendent of Educ. July 26, 2013), *available at* <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/July%202013%20>

The transferring of an IEP from one school to another should not require a heroic effort (or the filing of a due process complaint), because it is a basic statutory requirement under the IDEA.⁹⁰

Even when a student prevails on an issue, the relief can be quite limited. The Pennsylvania case, discussed above, in which the school district forbade the mother from speaking directly to any school personnel, fits that pattern.⁹¹ The mother sought compensatory relief for a denial of a free and appropriate public education for the entire school year.⁹² The hearing officer only ordered relief for the student's failure to receive social work services for the brief interval during which the mother terminated those services.⁹³ In other words, the only relief ordered was in response to the *mother's* actions. The school district's alleged denial of an appropriate educational program for the entire school year went unremedied.⁹⁴ Four hours of compensatory relief can only be seen as a token remedy to "quiet" the mother. It was not genuine relief for the child. Thus, the hearing officer's opinion can be seen as a vehicle to further the humiliation the mother had already faced at the hands of the school district. The child was only awarded relief to make up for the mother's somewhat "understandable" "overreaction" in withdrawing the services of the social worker. She was another bad mother, undermining her child's education.

C. *School District Tries to Blame Mother When Her Behavior Is Allegedly Too Passive*

When a mother does not act aggressively to push for her child's education, but instead acquiesces to the school district's recommendations, the district can still try to blame the mother for her child's educational failures.

1. D.C. Example

In one case from the District of Columbia,⁹⁵ the school district tried to excuse its egregious behavior by saying that the mother, who had trouble

HOD%2014.pdf, archived at <http://perma.cc/UD7L-2VWC>.

⁹⁰ 34 C.F.R. § 300.323(e) (2010).

⁹¹ Due Process Special Education Hearing, No. 3264/11-12AS (Pa. Office Dispute Resolution Aug. 26, 2012), available at <http://204.186.159.23/odr/HearingOfficerDecisions/3264-11-12.pdf>, archived at <http://perma.cc/NN3E-RFTN>.

⁹² *Id.* at 18.

⁹³ *Id.* at 31.

⁹⁴ *Id.* at 19 ("It is concluded that the student's IEP was reasonably calculated to confer meaningful educational benefit and that the student was receiving meaningful educational benefit.").

⁹⁵ Student v. D.C. Pub. Sch., at 27 (D.C. Office of the State Superintendent of Educ. July 24, 2013), available at <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/July%202013%20HOD%2013.pdf>, archived at <http://perma.cc/WAE6-3B4Y>.

attending meetings and reading the documents presented at those meetings, had acquiesced to the educational program (that the district had not even implemented). Rather than provide the student with the fifteen hours of direct instruction required by his IEP, the student was required to attend regular educational classes and attempt to access that education, for at least part of the time, with a computer program written at least one or two grades above his reading level.⁹⁶

This case was brought in the District of Columbia, where hearing officers do frequently rule in favor of parents and their children.⁹⁷ In this instance, the hearing officer held the school district accountable for its conduct, saying that it appeared “to be placing Student’s subsequent academic failures and behavioral responses at [the mother’s] feet rather than accepting its responsibility for failing to implement Student’s IEP.”⁹⁸

2. Maryland Example

In a case from Maryland, the mother did not file for due process until her child had endured several years of completely inadequate education.⁹⁹ The student’s emotional difficulties were so severe that the child had attempted suicide and engaged in various acts of violence.¹⁰⁰ The mother navigated the due process system on a pro se basis.¹⁰¹ The hearing officer granted no remedy while also acknowledging: “I have no doubt that the Student’s behavior at home has escalated and that the Parent is at her wit’s end.”¹⁰² With assistance from an advocate, or a due process hearing in a more favorable climate like Washington, D.C., one can imagine this mother would have found a way to attain more adequate relief.¹⁰³

⁹⁶ *Id.* at 22.

⁹⁷ *See supra* text accompanying note 5.

⁹⁸ *Id.* at 28. In another case from New Jersey, the school district conducted an inadequate evaluation of a student because the mother happened to oversleep and was late to the testing. *T.O. v. Summit Bd. of Educ.*, No. EDS 12248-11 (N.J. Office of Admin. Law July 2, 2012), available at http://njlaw.rutgers.edu/collections/oal/html/initial/eds12248-11_1.html, archived at <http://perma.cc/YHZ3-UPUN>.

⁹⁹ [Redacted] v. Prince George’s Cnty. Pub. Sch., No. MSDE-PGEO-OT-10-03436, at 3 (Md. Office of Admin. Hearings, Apr. 28, 2010), available at <http://www.marylandpublicschools.org/NR/rdonlyres/530BDBBB-F77B-41F1-B2F9-D33657BD19E2/28654/10HPGEO03436.pdf>, archived at <http://perma.cc/ZM7G-QEMY>.

¹⁰⁰ *Id.* at 10.

¹⁰¹ *Id.* at 1.

¹⁰² *Id.* at 52.

¹⁰³ Similarly, in a case from New Jersey, the mother reluctantly agreed to a placement for her preschooler, despite significant reservations. *R.B. v. Clark Twp. Bd. of Educ.*, No. EDS10198-10 (N.J. Office of Admin. Law Sept. 29, 2010), available at http://njlaw.rutgers.edu/collections/oal/html/initial/eds10198-10_1.html, archived at <http://perma.cc/5V6P-GCFN>. Then, when she tried to withdraw her consent (after her child escaped from the building due to insufficient supervision and accessed a busy roadway), she

D. *School District Places Unrealistic Expectations on Working Mother*

Unfortunately, many school districts operate under the unrealistic expectation that parents can help their children on a full-time basis and do not have to work outside the home. If a mother does take a leave of absence from work to assist her child, then that expectation becomes the “normal” expectation for the mother. She is also considered to be a bad mother, causing all of her child’s problems, if she cannot be home on a full-time basis.

A case from D.C. highlights this problem. The student had very difficult emotional problems and had begun to run away from home repeatedly and engage in prostitution.¹⁰⁴ The mother sought a nonpublic placement in a segregated environment.¹⁰⁵ The school district sought to blame all the child’s problems on her home life and argued that the child could be successful in a regular public school classroom.¹⁰⁶ The evidence in favor of the school district’s position was that the mother had taken a three-month leave of absence to stay home full-time with the child and that the child had done well during that period of time (which had also been some time before the hearing took place).¹⁰⁷ While claiming not to accept the school district’s narrative, the hearing officer also provided extremely limited relief. He ordered a new psychological evaluation but made no findings about the kinds of services that should be available to the child and accepted the school district’s suggestion that the child could succeed in a regular public school environment.¹⁰⁸

CONCLUSION

The fact that mothers are mistreated in educational matters involving their children with a disability should come as no surprise to us. The literature on reproduction has already documented that women are often blamed for their children who are born with disabilities and criticized for failing to abort these children. It is often said that society cares about children until they are born. Thus, we can easily imagine that there is no posture that a mother can take with respect to a school system that is likely to be effective. She is either considered too pushy or too passive, or even too disabled, to be helpful.

This Article can shed light on only a small aspect of that problem. Most mothers of children with disabilities do not bring due process claims on behalf

was stuck with the stay-put rules that leave a current educational arrangement in place pending a due process hearing. *Id.* Maybe a “pushier” approach would not have subjected her child to such danger.

¹⁰⁴ [Redacted] v. D.C. Pub. Sch., at 13 (D.C. Office of the State Superintendent of Educ. Mar. 10, 2014), *available at* <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/HOD%20March%202014%20%286%29.pdf>, *archived at* <http://perma.cc/226Z-KHP3>.

¹⁰⁵ *Id.* at 3.

¹⁰⁶ *Id.* at 11.

¹⁰⁷ *Id.* at 5.

¹⁰⁸ *Id.* at 18.

of their children. Over the years, I have received many phone calls from mothers and grandmothers who tell heart-wrenching stories of the mistreatment both they and their children experience during the special education process. Occasionally, I can try to assist them by attending some meetings at the school district where, oddly, everyone “plays nice” in my presence, thereby trying to undermine the veracity of what my client has told me about her treatment by the school district. Of course, I do believe my client’s description of her horrific treatment (which can often be documented by the paper record). It is almost more shocking, though, to see the school district “play nice” as soon as someone enters the room who knows what legal rules apply to the situation. I often ask myself: Why couldn’t the school district “play nice” when I am not in the room?

There is no easy solution to this problem, in part because the special education laws are modeled on a cooperative parent-participation model in which the parents’ views are supposed to be taken seriously. Further, school districts are supposed to have ample resources, and teachers are supposed to have the time to develop and implement individualized education programs. Unfortunately, none of these aspirations is realistic.

But even in a world in which there is a shortage of both time and resources, I would suggest that we can still treat each other with respect. These mothers of children with disabilities deserve to be treated with dignity and respect when they attend educational meetings. I always encourage mothers to attend these meetings with, at least, a friend or partner. Ideally, each mother would attend meetings with an advocate trained to achieve effective results in a cooperative atmosphere (rather than resort to litigation, which is unlikely to be effective).

Although it is not a long-term solution, I can only end this Article as I end my Special Education Advocacy course each semester—encouraging everyone to “adopt” a family with a child with a disability and help act as an advocate for that child. It may be trite to say that it “takes a village,” but it is not trite to say that mothers cannot navigate this system alone. Ideally, each child would be assigned a high-quality, effective advocate through some kind of government-sponsored program. Unless and until such resources become available, we each need to volunteer some of our own time to help these families.¹⁰⁹

¹⁰⁹ After this Article went to press, a California federal district court judge reversed a California Administrative Law Judge decision in which the ALJ inappropriately blamed the mother’s lack of proficiency in American Sign Language for her deaf child’s lack of educational progress. In reversing the ALJ’s decision, and awarding relief to the student, the district court judge found that the ALJ mischaracterized the mother’s use of ASL and, more importantly, considered a factor “wholly inappropriate and irrelevant to the issue of whether [the school district] has complied with its obligations under the IDEA.” *J.G. v. Baldwin Park Unified Sch. Dist.*, No. CV 13-5690 FMO (JEMx), at 16 (C.D. Cal. Mar. 20, 2015).