

LITIGIOUS EXPERIENCES AMONG TEACHERS  
OF SPECIAL EDUCATION STUDENTS:  
A PHENOMENOLOGICAL STUDY

by

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Liberty University

A Dissertation Presented in Partial Fulfillment

Of the Requirements for the Degree

Doctor of Education

Liberty University

2016

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2016

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## ABSTRACT

The purpose of this transcendental phenomenological study was to explore litigious experiences for special education teachers in South Central Pennsylvania. It was known that teachers are not typically required to have courses on school law, but they are required to abide by educational law. This study was guided by the following research question: How do special education teachers in South Central Pennsylvania describe their litigious experiences? It sought to fill a gap in the literature in the area of actual teacher experience with the problem of litigation. Background information was given to show why this issue was a current problem and how this study sought to address the problem, and an examination of current literature was conducted to show how this study filled the current gap. The data for the study relied primarily on participant interviews and public record documentation from 11 participants. When the data was analyzed, four themes emerged: internalized stress, lack of confidence in present knowledge, lack of personal responsibility for the litigation, and guarding against the possibility of future litigious experiences. The implications for these themes were also discussed.

*Keywords:* special education, teachers, litigation, school law

## Acknowledgments Page

I would be remiss in not first and foremost acknowledging God, without whom I could do nothing. May my work bring you honor and glory.

I must second acknowledge my family. My parents have been my biggest supporters throughout my education. I could not ask for better people to have behind me. And to Heather, I am so grateful to you for using your amazing gifts and intelligence to both support me and my research.

I am also incredibly grateful to professors and committee members I have had the privilege of working with throughout this process. Dr. Milacci, thank you for pushing me to become a better researcher. Dr. Beam, thank you for believing in my study and helping to guide this entire process and making my study better. Dr. Holland and Dr. Sahd, thank you for lending your expertise and support to this study.

To my participants, thank you for being willing to take the time to invest in this study and share your experience. I learned a great deal from each of you and it is my hope that others in the education community will learn just as much from the experiences you shared.

Finally, thank you to my friends and colleagues who helped and supported me by assisting in my search for participants and lending encouragement. Your support was invaluable.

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### **List of Abbreviations**

Americans with Disabilities Act (ADA)

Education (Ed)

Education for all Handicapped Children Act of 1975 (EHA)

Elementary School (ES)

Free and Appropriate Education (FAPE)

General Education (Gen Ed)

High School (HS)

Individuals with Disabilities Education Improvement Act (IDEA)

Individualized Education Program (IEP)

Least Restrictive Environment (LRE)

Middle School (MS)

Specially Designed Instruction (SDI)

Students with Disabilities (SWD)

## **CHAPTER ONE: INTRODUCTION**

### **Overview**

Special education litigation is a costly and rapidly growing issue that has not received a great deal of attention in current research (Shuran & Roblyer, 2012; Zirkel, 2014; Zirkel & Machin, 2012). Even less research has been dedicated to the area of teacher preparation, understanding, and experience in the area of education litigation. This dissertation discusses the qualitative phenomenology that was conducted to address the problem in which educators were largely unaware of school legal issues, especially in the area of special education law (Call & O'Brien, 2011; Kessell, Wingenbach, & Lawyver, 2009; Militello, Schimmel, & Eberwein, 2009; Shuran & Roblyer, 2012). To address this problem, this study sought to explore litigious experiences of special education teachers in South Central Pennsylvania. In this chapter, background is given to introduce the gap in the literature; the problem and purpose, and an explanation of the structure of the research is explained. In Chapter Two, recent literature concerning special education, teacher preparation, and litigation is discussed, as is Kolb's (1984) Experiential Learning Theory, the guiding theoretical framework for this study. Chapter Three addresses the methodology for this study and explains the research procedures. In Chapter Four, the results of the study are explained in-depth and include participant profiles as well as the themes that emerged after data analysis. Finally, Chapter Five further discusses the findings and the implications of the study.

### **Background**

A great deal of research has been conducted on teacher preparation and how that preparation relates to the practice of teaching (Anderson & Stillman, 2013; Cheng, Tang & Cheng, 2011; Chung & Kim, 2010; Nahal, 2010). The focus of the research is on what teachers

know about school law and how their knowledge is implemented in the classrooms, and teacher experiences are analyzed to determine whether changes should be made to teacher preparation, preservice teacher trainings, or inservice programs (Cheng et al., 2011; Chung & Kim, 2010; Nahal, 2010). These studies also focused on administrator knowledge and preparation (Grasso, 2008). One of the areas of preparation and knowledge that has not been thoroughly researched in recent years is the area of school law, especially in the area of special education litigation.

Nearly 20 years ago Gullatt and Tollett (1997) suggested that education litigation was growing and that it should be covered more comprehensively in both teacher preparation programs and inservice programs for current teachers. This study took place prior to the passing of the Individuals with Disabilities Act (IDEA) in 2004 when special education was influenced by Education for all Handicapped Children Act (EHA) of 1975. When IDEA (2004) was passed it provided additional legal protections to students with disabilities (SWD) and mandated that schools provide these students with individualized education that meets their needs at their current level of ability. It also gave parents or guardians of SWD a greater voice into their child's education by requiring parental consent in a variety of areas (IDEA, 2004). While protections for SWD have increased over the last two decades, special education litigation has also risen to the point that it is now the leading form of education litigation (Zirkel, 2014; Zirkel & Machin, 2012).

Despite Gullatt and Tollett's (1997) suggestions, according to Gajda (2008), Nevada was the only state that requires teacher candidates to have a course in school law in order to become certified teachers. Special education law is the primary issue in education litigation, and recent studies show a significant lack of knowledge on the part of teachers concerning special education legal provisions (Kessell et al., 2009; Zirkel, 2012). Additionally, studies also discussed the fact

that not only does litigation generate negative publicity and impact the way in which a school is perceived, it can also cost the district a substantial amount of money (Shuran & Roblyer, 2012; Zirkel, 2014; Zirkel & Machin, 2012). Several recent studies have sought to examine the law and what teachers or administrators may know about it, but have not examined the experiences of teachers who have participated in litigation involving special education issues (Grasso, 2008; Shuran & Roblyer, 2012; Zirkel, 2014; Zirkel & Machin, 2012).

### **Situation to Self**

This study relied on an epistemological philosophical assumption. The goal of the study was to understand and articulate the experiences of the participants. Experience with litigation, the phenomenon that was examined, can be a sensitive issue for participants. For this reason, it was important and beneficial to approach the study in a manner that “attempts to lessen distance” between the participants and the researcher (Creswell, 2013, p. 21). One of the ways this was done was through informal communication with the participants through email or phone once the official recruitment procedures were completed. The interviews were also conducted at a space that the participants chose, allowing them to be more comfortable in their surroundings. The participants were made aware of the types of questions in the interview in an effort to put them at ease and not surprise them with the line of questioning.

The study was also guided by a pragmatist paradigm. It was believed that the reality of the phenomenon would be known through interactions with the participants as well as examination of documents. The focus was on the outcome of the research and what could be learned based upon the examined experiences (Moustakas, 1994). Unfortunately, there were no personal documents available to examine; however, public record documentation was used instead.

### **Problem Statement**

The problem was that educators were largely unaware of school legal issues, especially in the area of special education law (Call & O'Brien, 2011; Kessell et al., 2009; Militello et al., 2009; Shuran & Roblyer, 2012). This was and is a significant problem because special education law is the leading cause for litigation in education (Zirkel, 2014; Zirkel & Machin, 2012). Current research has discussed the fact that educators in general are ignorant of these issues, but tends to focus on administrators and their knowledge or experience in litigation (Findlay, 2007; Grasso, 2008). Several researchers have discussed the variety of benefits to having an understanding of school legal issues including decreased litigation and increased perceived professionalism (Delaney, 2009; Militello et al., 2009; Wagner, 2012). There was a gap in the literature as researchers had not examined the experiences of teachers in litigious situations. Delaney (2009) stated, “[a]lthough there is no dearth of writing on educational law, there appears to be a gap in that literature on exactly how educational law affects the daily practice of educators” (p. 120).

### **Purpose Statement**

The purpose of this phenomenological study was to explore litigious experiences of special education teachers in South Central Pennsylvania. Litigious experiences were generally defined as experiences before, during, and/or after participation in special education court cases as defendants. This study was guided by Kolb's (1984) Experiential Learning Theory, which explains that individuals create knowledge through experiences. In this case, the litigious experience is viewed as the catalyst for the creation of new knowledge for the participants. This theory is further discussed in Chapter Two.

### **Significance of the Study**

Examining litigious experiences for special education teachers had several benefits. Kolb (1984) suggested that when an individual reflects on his or her experiences, he or she has the ability to make broader generalizations that can inform or change future practice. This study gave those individuals an opportunity to both share their stories and reflect on the experiences. By sharing the experiences of these individuals, educators, administrators, and other interested parties will have the opportunity to learn from these reflections.

Militello et al. (2009) found that legal knowledge could change how educators handle certain situations. This study went beyond simply looking at what the law says and instead attempted to share the experiences of the participants before, during, and after litigation in a way that could order the experience and provide knowledge to other educators. Several studies point to the fact that special education law is a growing and costly issue for schools (Shuran & Roblyer, 2012; Zirkel, 2014; Zirkel & Machin, 2012). Gullatt and Tollett (1997) suggested that there should be additional training given to teachers and teacher candidates in order to help them make decisions relating to legal issues. This study examined the experiences of those who had dealt with litigation as teachers. This study may allow teacher preparation programs the opportunity to understand commonalities in special education litigation which may then be used to better prepare future teachers in school legal issues in special education as Gullatt and Tollett (1997) suggested nearly 20 years ago and Zirkel (2014) has echoed recently.

### **Research Questions**

In order to explore litigious experiences of special education teachers in South Central Pennsylvania, four research questions were constructed to guide the study. The following research questions were addressed in this study:



**RQ1:** How do special education teachers in South Central Pennsylvania describe their litigious experiences?

**RQ2:** How do the participants describe their experience prior to litigation regarding preparation and self-perceived knowledge of special education law?

**RQ3:** How do the participants describe their experience during the process of litigation regarding support from superiors, the district, etc.?

**RQ4:** How do the participants describe what, if anything, they learned from the litigation process?

### **Purpose of Research Questions**

There has been a rise in the number of lawsuits against school districts in recent years (Gullatt & Tollett, 1997; Militello et al., 2009; Shuran & Roblyer, 2012). Special education litigation is the primary reason that school districts and personnel are taken to court (Shuran & Roblyer, 2012; Zirkel, 2014). Militello et al. (2009) suggested that even the threat of litigation can have ramifications on the way that educators interact with and teach their students. While this is a significant issue in schools, there is little information available about what happens or what should take place when special education legal disputes take place (Shuran & Roblyer, 2012).

Even though educational laws exist and govern what educators should do, most states do not require that their teacher candidates receive any education in school law before receiving their teacher certifications (Gajda, 2008). Delaney (2009) stated that educators should “possess a basic understanding of the laws that impact them and the concerns that frequently arise in education law” (pp. 120-121). It has been found that even principals have a low level of preparation and knowledge in the general area of school law (Grasso, 2008; Militello et al., 2009;

Shuran & Roblyer, 2012). One study found that most teachers learn about school law issues only from other teachers (Schimmel & Militello, 2007). Understanding the level of knowledge and preparation that these teachers had before having to take part in litigation adds to the literature in this area.

There is minimal data or literature concerning how school districts should react and conduct themselves when litigation takes place (Shuran & Roblyer, 2012). Despite the growing number of court cases, relevant recent literature was not available on the support or interactions of teachers and their superiors, districts, etc.

Kolb (1984) suggested that reflecting on experience allows for individuals to learn for the future. In two different studies, researchers found that gaining knowledge about legal issues changes the way in which an educator behaves and makes decisions (Militello et al., 2009; Schimmel & Militello, 2007). Asking the participants for their reflections allowed for an understanding of how litigious experience has impacted knowledge, decision making, and practice.

### **Research Plan**

A qualitative study was conducted using the transcendental phenomenological qualitative approach (Moustakas, 1994). This method was chosen because the intent of a phenomenological study is to reflect on the lived experiences and ascertain the meaning of a phenomenon (Moustakas, 1994). This design allowed the experiences of the individuals to be examined with intentionality to the researcher's biases and opinions (Moustakas, 1994). This method also allowed for meaning to be gained by recognizing common themes in the shared experience (Moustakas, 1994). In this case the phenomenon was the litigious experiences of the participants.

Once Institutional Review Board (IRB) approval was gained, the study was conducted by finding participants who had been involved in special education litigation as teachers and defendants. The participants were interviewed using a semi-structured open-ended method and were asked to reflect upon their experiences. In addition to gathering data from interviews, public record court documents, as well as personal documents, were sought. Unfortunately, many of the participants did not have personal documents from the time of the litigation and those that did were unwilling to share them as they contained protected student data. Codes, themes, and sub-themes were identified using significant statements from the participants (Moustakas, 1994). The data was then organized and discussed in narrative form (Moustakas, 1994).

### **Delimitations and Limitations**

The delimitations and limitations for this study are factors that limited the study's generalizability and transferability. For the participants of this study, these factors included geographic location, profession, and experience. Only individuals from South Central Pennsylvania were sought for this study. This enabled me, as the researcher, to be in close proximity to the participants and, in eight out of eleven interviews allowed for face-to-face interviews. The other two individuals were interviewed via phone conference but were individuals with which I had prior face-to-face contact. Another limiting factor was the fact that only teachers who had been through litigation for special education legal issues as defendants were interviewed. While not all were working as teachers at the time of the interview, they were all teachers at the time that they were involved in the litigation. It was recognized that administrators, school personnel, students, and parents may also have been involved in the

litigation; however, the purpose of the study was to examine the teachers' litigious experiences. Because of this, transferability to school personnel other than teachers was limited.

### **Definitions**

Within the field of education there are a number of acronyms, abbreviations, and education-specific words or phrases used in the vernacular. This is especially true in special education. Because so many of these phrases and acronyms are used within the context of this study, both in the literature and the data gathered from participants, a definition section has been included below. Many of the words or phrases are further described and explained in Chapter Two.

1. *Americans with Disabilities Act (ADA)* - This law protects the civil rights of individuals with disabilities and prohibits discrimination in “employment, State and local government services, public accommodations, commercial facilities, and transportation” (ADA, 1990, para 1).
2. *Education for all Handicapped Children Act of 1975 (EHA)* - This law mandated that any states receiving federal money for special education must provide students with disabilities with a free and appropriate education as well as a plan for that education (EHA, 1975).
3. *Elementary School (ES)* - The educational level that typically encompasses kindergarten through fifth or sixth grade.
4. *Free and Appropriate Education (FAPE)* - A provision within IDEA (2004) that ensures students with disabilities have access to a free public education that is appropriate to their educational level and meets their needs.

5. *General Education (Gen Ed)* - Courses provided to all students, not just those with disabilities.
6. *High School (HS)* - The educational level that typically encompasses ninth through twelfth grades.
7. *Individuals with Disabilities Education Improvement Act (IDEA)* - The current law that protects the educational rights of students with disabilities and includes provisions related to free and appropriate education, zero exclusion, least restrictive environment parents participation, and Individualized Education Program (IDEA, 2004).
8. *Individualized Education Program (IEP)* - A provision in IDEA (2004) which requires that each student with a disability be provided with a legally binding document with the student's current levels and goals for the future.
9. *Least Restrictive Environment (LRE)* - A provision in IDEA (2004) which requires students with disabilities be educated "to the maximum extent appropriate" with their peers who do not have disabilities (p. 31).
10. *Middle School (MS)* - The educational level that typically encompasses seventh and eighth grade, but may also include fifth and/or sixth grade.
11. *Specially Designed Instruction (SDI)* - A requirement within IDEA (2004) that students with disabilities receive instruction that is specifically tailored to meet their needs.
12. *Students with Disabilities (SWD)* - Any students who, as a result of a disability, require special education services (IDEA, 2004). According to IDEA (2004), the disability may include any of the following: mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness),

serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities (p. 6).

### **Summary**

I sought to give a brief explanation of the literature showing that, at present, there is a gap in the literature in the area of teacher knowledge of school legal issues, especially in the area of special education law (Call & O'Brien, 2011; Kessell et al., 2009; Militello et al., 2009; Shuran & Roblyer, 2012). In this study I sought to explore litigious experiences of special education teachers in South Central Pennsylvania. I explained that this was done by conducting a qualitative transcendental phenomenological study exploring common themes that educators in South Central Pennsylvania discussed as a result of their experiences of being involved in special education litigation. The intent was to address the problem of having educators largely unaware of school law and specifically special education legal issues (Call & O'Brien, 2011; Kessell et al., 2009; Militello et al., 2009; Shuran & Roblyer, 2012). My hope as the researcher of the study was that this study could be used to share these common themes and experiences with educators to inform teacher preparation and professional development in the area of understanding special education school law in the future.

## CHAPTER TWO: LITERATURE REVIEW

### Overview

The intent of this study was to examine the special education teachers' litigious experiences. This study sought to look at the experiences before litigation to ascertain levels of preparation in the area of school law. The study also looked at the experience during litigation to examine themes in how school districts handle these issues. Finally, the study examined if the participants had any reflections or knowledge that they gained from the experience. This study was viewed through the theoretical framework of David Kolb (1984) and utilized his Experiential Learning Theory in order to examine and make meaning of the participants' lived experiences in the area of special education litigation.

In order to effectively examine the litigious experiences of special education teachers, literature was reviewed pertaining to the subject. The gap in the literature was readily apparent as much of the information found on the topic was dated and no studies could be found that examined litigious experiences of teachers in the area of special education cases. Foundational to understanding the litigious experiences was a basic understanding of special education law, especially the Individuals with Disabilities Education Act (2004) and its origins. Within this chapter, important provisions of the law are highlighted and explained. This also includes information concerning Individualized Education Programs (IEPs).

Other topics in the literature must also be considered for the purpose this study. Because the first research question looked at experience before litigation, literature concerning teacher and administrator preparation in the area of school law is included. Perceived knowledge, actual knowledge, and school law decision-making is discussed as well because much of the literature highlights a lack of formal training in this area (Gajda, 2008; Gullatt & Tollett, 1997; Kessell et

al., 2009; Sze, 2009). Finally, because the study sought to understand the experience during litigation, court cases involving school law and special education specific cases are examined.

### **Theoretical Framework**

The Experiential Learning Theory was created by David A. Kolb (1984). In Kolb's theory he stated that "learning is a holistic process of adaptation to the world" (p. 31). His theory stated that "learning is the process whereby knowledge is created through the transformation of experience," and he believed that this process of learning is ongoing and takes place throughout the entire lifetime of an individual (p. 38). While Kolb is the author of the theory, he relied on a few constructs and models from different theorists. He was heavily influenced by both John Dewey and Karl Lewin's theories and used them in order to explain the process by which experience becomes knowledge (Kolb, 1984).

Four constructs explain the way that this transformation of experience to knowledge takes place in the Experiential Learning Theory (Kolb, 1984). These learning constructs, Kolb believed naturally have tension or conflict. First, the individual has what Kolb called a *concrete experience*. This is a new experience that the learner opens him or herself up to in some way (Kolb, 1984). The concrete experience is one that the individual experiences wholly and allows him or herself to be affected (Kolb, 1984). Having this experience, Kolb said, is critical for the individual to be able to learn and develop new knowledge and is the first step in the model.

After the learner has had the concrete experience, he or she performs what is called *reflective observation* on these experiences (Kolb, 1984). The reflective observation is something that must take place from multiple perspectives in order to be most effective, in Kolb's view. This means that the learner would attempt to reflect on the experience in a way



that acknowledges views other than his or her own (Kolb, 1984). In this stage of learning, the individual primarily focuses on “understanding as opposed to practical application” (p. 68).

The third stage takes place when the initial experience and the observation combine to become the foundation for the *abstract conceptualization*. In this stage the individual begins to process the reflections and “integrate their observations into logically sound theories” (p. 30). It is at this point in the learning process that the individual moves from having an understanding of the situation to creating an explanation or theory about the experience (Kolb, 1984). Kolb went on to explain that this stage is most focused on the abstract ideas behind the experience rather than on the varying perspectives examined in the previous stage.

The fourth stage takes place when the individual begins *active experimentation* with the new knowledge that he or she has gained throughout the process, putting what has been learned into practice through decision making (Kolb, 1984). Once active experimentation takes place, the individual has fully interacted with the new knowledge in four differing ways (Kolb, 1984). The theory explains that, “in the process of learning, one moves in varying degrees from actor to observer, and from specific involvement to general analytic detachment” (p. 31). While fully entering into active experimentation is the ideal end of the cycle, Kolb recognized that this can be a difficult stage to achieve fully and not all learners will effectively practice active experimentation.

Kolb’s (1984) theory connects well to this study, though participants were in different stages of the learning process. Additionally, Kolb explained that different learners may be more inclined to focus on different aspects of the learning process, though they all may have similar experiences. In this study, the litigation experience was the concrete experience for the participants. It was recognized that the participants of this study would likely not all be in the

active experimentation phase. It was thought, though, that the participants would be able to communicate abstract conceptualization or, at the very least, demonstrate reflective observation on the experience.

## **Related Literature**

### **Special Education Legal Provisions**

**Individuals with Disabilities Education Improvement Act of 2004.** In order to understand special education litigation issues, it was first important to examine laws surrounding it. The primary source of special education law is the Individuals with Disabilities Education Improvement Act of 2004, also known as IDEA (Kessell et al., 2009; Weber, 2009). While IDEA was passed in 2004, many of its provisions have their origin in the Education for all Handicapped Children Act of 1975 (EHA) and later in the Individuals with Disabilities Education Act passed in 1997 (Individuals with Disabilities Education Improvement Act [IDEA], 2004; Weber, 2009). The original EHA law mandated that any states receiving federal money for special education must provide its SWD with a free and appropriate education (FAPE) (Weber, 2009).

The original law was a part of civil rights legislation and is also linked closely with the Americans with Disabilities Act (ADA) of 1990 (Shuran & Roblyer, 2012; Weber, 2009). Shuran and Roblyer (2012) made it clear that prior to the passage of these acts, SWD were not provided with the same access to an education as their peers who did not have disabilities. Osgood (2008) explained that the early laws were aimed at helping teachers who had very large class sizes at the time rather than students. He explained that the students who had disabilities were often seen as a distraction to the other students and, since the law was focused more on helping the teachers who needed assistance in managing these large classes, the SWD were

viewed as removable in order to ensure efficiency in the regular education classrooms (Osgood, 2008). Shuran and Roblyer (2012) echoed this, stating that “students with disabilities were usually pushed aside to make way for the ‘productive’ citizens of society” (p. 45). It is asserted by several authors that this series of mandates was incredibly important both for individuals with disabilities and also for the civil rights movement overall (Grasso, 2008; Shuran & Roblyer, 2012; Weber, 2009).

The mandate was expanded and renamed in 1997 with the original IDEA law. It was slightly expanded again and reauthorized in 2004, and the word *improvement* was added to the name, though it is still commonly referred to as IDEA. Some of the major provisions of IDEA require that students, regardless of disability, are guaranteed a free and appropriate education, often called FAPE, an education with zero exclusion, in the least restrictive environment (LRE), parents are given permission to participate in all education decisions (IDEA, 2004). Additionally, students are provided with an Individualized Education Program, also known as an IEP, which is a legally binding document with the student’s current levels and goals for the future (IDEA, 2004).

**Free and appropriate education.** The provision of IDEA requiring a free and appropriate education for students is often misunderstood by all stakeholders, including parents, teachers, and administrators and can be a source of contention and litigation as a result (Grasso, 2008; Sze, 2009). What FAPE does provide is access to a public school education without charge for all students, regardless of a disability (IDEA, 2004). This education is available for individuals for preschool, elementary school, and secondary school (IDEA, 2004). The FAPE provision requires that this education takes place and aligns with the student’s IEP (IDEA, 2004).

**Zero exclusion.** In addition to being provided a FAPE, students with disabilities are also

covered by the zero exclusion clause of the law (IDEA, 2004). The zero exclusion clause of IDEA (2004) states that “all children, however severe their conditions, are entitled to an appropriate education” (Weber, 2009, p. 728). The reason that this provision and several of the others exist is that prior to passage of this law, most children who had disabilities were separated from those in regular education courses and often put in institutions or forced to stay home (Osgood, 2008; Shuran & Roblyer, 2012). The thought was that the child with disabilities could be given special attention, but it also was intended to shield the regular education students from their peers with disabilities (Osgood, 2008; Shuran & Roblyer, 2012).

**Least restrictive environment.** The intent of the LRE provision appears to be straightforward. It requires that students with disabilities be educated “to the maximum extent appropriate” with their peers who do not have disabilities (IDEA, 2004, p. 31). This provision says that students may be removed from regular education courses and placed in special education specific environments “only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily” (IDEA, 2004, p. 31). The determination of LRE for each student is left to the schools to decide and is done in conjunction with the creation or reevaluation of the student’s IEP, and thus involves the parents of the student (IDEA, 2004).

**Individualized education program.** Individualized education programs, commonly referred to as IEPs, provide just what their title suggests, a program specific to each student and his or her educational goals and needs (IDEA, 2004). The IEP is constructed once a student has been identified as being eligible for special education services, typically through a psychological or medical evaluation (IDEA, 2004). This evaluation can take place every one to three years (IDEA, 2004). The IEP is written in conjunction with a team of individuals which often includes

regular education teachers, special education teachers, special service providers, and parents (IDEA, 2004). The IEP must be reevaluated every year and appropriate revisions must be made based on the student's current levels (IDEA, 2004).

Once the IEP is written, it becomes a legally binding document of which the schools and other provided services must adhere (Grasso, 2008). Should the school or the parent decide that something needs to change, the IEP must be modified and signed by all parties (IDEA, 2004). Parental consent is required not only for the evaluation of the student but also the creation and revision of the IEP (IDEA, 2004).

**Parent participation.** One other important feature of the law is the requirement for parental participation. The requirement of parent participation was a significant change in the legislation. Osgood (2008) explained that prior to the current laws, parents were often viewed as being a part of the problem since a disability was viewed as a hereditary issue. Prior to current legislation, decisions about education were typically viewed as issues for professionals rather than the parents, despite parents being the primary caregivers for the children (Osgood, 2008). With the passage of IDEA (2004), this had to change.

Stated clearly, the law says,

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by...strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home. (p. 3)

IDEA (2004) makes certain that the parents or guardians of the student have the opportunity to be actively involved in the education of their child. In order for the student to even be evaluated by psychological or other services to determine whether he or she would benefit or qualify for

special education services, the parent or guardian must first be notified and give consent for the testing (IDEA, 2004). As previously stated, notification and consent of parents or guardians is also required for the creation of the IEP as well as any IEP revisions and reevaluations (IDEA, 2004).

**Schools and special education.** Shuran and Roblyer (2012) discussed the fact that many of the provisions in IDEA are outlined in the law, but are left to the specific districts and buildings to interpret for each individual case (IDEA, 2004). Many schools or districts have a special education director who is tasked with overseeing all of the special education needs in a district or building. These individuals report a desire for increased support at the district level because there are so many elements of the law that are left to interpretation (Shuran & Roblyer, 2012). In many cases, the special education director is left to both enforce policy and handle violations, which can be a daunting task when faced with litigation.

Problems also arise because numerous studies have shown that many educators are not fully aware of all of the provisions and requirements of many aspects of special education laws, a concept that will be discussed at length in later chapters (Call & O'Brien, 2011; Grasso, 2008; Kessell et al., 2009; Shuran & Roblyer, 2012; Sze, 2009). Kessell et al. (2009) even said, based upon their research, "Over 100 years of research has shown that teachers are ill-prepared to meet the needs of special education students in general education classrooms" (p. 1). Not only are teachers uninformed about all of the specific disabilities and teaching strategies for each exceptionality, they also lack knowledge concerning what the law requires of them as they teach their students who have special needs (Call & O'Brien, 2011; Kessell et al., 2009; Shuran & Roblyer, 2012; Sze, 2009).

### **Important Court Cases**

While IDEA (2004) is the piece of legislation that created the current special education requirements, several court cases have also influenced special education law and its interpretation over the years. Zirkel (2005) identified five different areas that had been impacted by Supreme Court decisions. All of these court cases addressed issues in the original EHA of 1975 and have provisions still included in IDEA of 2004 (Zirkel, 2005). While these are certainly not the only cases decided by the Supreme Court in the area of special education litigation, Zirkel suggested that these ten cases gave a primer of the “Top 5 core concepts” of special education court decisions (p. 62).

While Zirkel’s (2005) article may appear dated, the details of the cases and IDEA (2004) have not changed, making this a relevant piece of literature to this study. The decisions made in these cases still impact current decisions because they set precedent in special education legal decisions and also because no explicit changes were made to IDEA (2004) to address or make changes to the court decisions. This means that in order to best understand special education law, one must have varied understanding of provisions. Understanding of special education law requires knowledge of both IDEA (2004) as well as the court cases that set precedent for the interpretation of the provisions that are left up to the schools to apply to the diverse students and situations that they encounter.

**Appropriate education.** As previously stated, one major provision in IDEA (2004) was that of a FAPE provided to all students, regardless of disability. While *free* is a straightforward term, *appropriate* is a term left to the interpretation of the school or district (Alexander & Alexander, 2012; Zirkel, 2005). In 1982, while the EHA (1975) was still the presiding law for special education, the case of *Board of Education of Hendrick Hudson Central School District v.*

*Rowley* (1982), or *Rowley*, was decided by the Supreme Court. This case set precedent that still impacts decisions on this issue presently (Alexander & Alexander, 2012).

The issue brought before the Supreme Court in *Rowley* (1982) was focused on what the term *appropriate* actually required of the school (Zirkel, 2014). Amy Rowley was a student in the Hendrick Hudson Central School District who was deaf (*Rowley*, 1982). While Amy was deaf, she was able to read lips well and had some residual hearing (*Rowley*, 1982). During her kindergarten year Amy wore an FM hearing aid and her teacher wore an amplifier that allowed Amy to hear what was being said (*Rowley*, 1982). These accommodations allowed for Amy to be successful during her kindergarten year (*Rowley*, 1982). When Amy entered first grade, her parents requested that the district provide an interpreter for their daughter (*Rowley*, 1982; Zirkel, 2005). The district denied the Rowley's request because it was determined that the student was able to achieve success with the current accommodations that did not include the use of an interpreter (*Rowley*, 1982; Zirkel, 2005).

The Rowley family took the district to court arguing that their child deserved an equal education to her hearing peers and the case eventually reached the Supreme Court (*Rowley*, 1982; Zirkel, 2005). It was held in a 6-3 decision that the school district was not required to provide an interpreter for Amy Rowley under the FAPE provision in the law (*Rowley*, 1982; Zirkel, 2005). In so doing, they set precedent that the school is not required to "maximize the potential of each special needs child" (Alexander & Alexander, 2012, p. 577).

Zirkel (2005) succinctly explained that the decision provided two important points for the interpretation of FAPE, saying, "[f]irst, the school district must provide procedural compliance with the Act. Second, the substantive standard is that the eligible child's IEP must be reasonably calculated to yield educational benefit" (p. 62). Furthermore, as Alexander and Alexander



(2012) stated, the decision noted that “the Act, as currently interpreted by the Supreme Court, requires no substantive measures regarding the level of education; therefore, the state does not have to maximize the potential of the child, only provide a program that benefits the child” (p. 573). In this case, the accommodations in use were shown to be benefitting the child and it was determined that she did not require the interpreter (*Rowley*, 1982; Zirkel, 2005). While Alexander and Alexander (2012) explained that some more recent cases had been decided differently using *Rowley* (1982) as precedent, the case allows for the school to determine the benefit for each student’s individual needs. Because no definitive standard was set for what constitutes “benefit” in the *Rowley* (1982) decision and also the fact that the idea was not clarified in IDEA in 2004, this area does bring about significant litigation to this day (Alexander & Alexander, 2012; Zirkel, 2005).

**Related services.** FAPE has several different provisions included within it; two of which are the previously discussed *free* and *appropriate* education aspects. Also included is a clause explaining that *related services* must be covered as well (IDEA, 2004). According to IDEA (2004) these related services include:

The term ‘related services’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation

purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. (p. 11)

The exception to such related services set out in the law is any “medical device that is surgically implanted, or the replacement of such device” (IDEA, 2004, p. 11). In two separate cases, *Irving Independent School District v. Tatro* (1984), referred to as *Tatro*, and *Community School District v. Garret F* (1999), referred to as *Garret*, the Supreme Court gave further ruling on the definition of the term *related services* and how it is to be applied to the schools.

In the *Tatro* (1984) case, Amber Tatro, an 8-year-old student in the Irving Independent School District had spina bifida and part of her treatment required a procedure called clean intermittent catheterization or CIC. In Amber’s case, the CIC needed to take place every three to four hours (*Tatro*, 1984). This process does not require a medical professional and can be done by an individual with less than an hour of training, the family explained in their complaint (*Tatro*, 1984). The school district was unwilling to have an individual trained to do this and would not put it in the IEP.

The case eventually reached the Supreme Court where it was decided that catheterization does indeed fall within the related services provision of the law, which at that time was still the EHA (1975), though IDEA (2004) follows the language of the original law (*Tatro*, 1984). The Court decided in a 9-0 decision that the CIC process is not a medical service and does not fall under the exclusion clause (Alexander & Alexander, 2012; *Tatro*, 1984). Further adding to its decision, it was noted that the district was not being asked to provide any equipment for the student and only requested a qualified school employee rather than a physician to provide the related service (*Tatro*, 1984; Zirkel, 2005).

In the *Garret* (1999) case, the student, Garret F was bound to a wheelchair he controlled using a straw and a computer and required a ventilator. For five years his family provided an individual to attend to his health care while at school (*Garret*, 1999). This included having a member of the family help at the school for one year and then using their money to provide for a nurse to come in and work with the student (*Garret*, 1999). Eventually, the family requested that the Cedar Rapids Community School District provide a nursing service for Garret while he was at school (*Garret*, 1999). The district refused, the family took it to court, and the case eventually reached the Supreme Court (Zirkel, 2005).

The Supreme Court ruled in a 7-2 decision that continuous nursing services qualify as a related service and must be provided under the law (Alexander & Alexander, 2012; *Garret*, 1999). The court cited the previous *Tatro* (1984) decision and stated that the *Garret* (1999) case did not require the use of a physician, only a nurse, which was reasonably able to be provided by the district. They also explained that the exclusion clause relating to medical services in the school has a different definition than what may be considered medical services in different arenas (*Garret*, 1999; Zirkel, 2005). These two cases, therefore, set the precedent that, unless it requires the use of a physician, medical services are indeed covered for students with special needs under the FAPE provision of IDEA (2004).

**Tuition reimbursement and stay-put.** There is a provision in both the EHA (1975) and IDEA (2004) that is commonly referred to as the *stay-put* provision (Alexander & Alexander, 2012). The stay-put provision is also related to FAPE and “requires the child to remain in their pending placement upon either party filing for a due process hearing and until the disputed issue is resolved” (Zirkel, 2005, p. 62). Zirkel looked at two cases, *Burlington School Committee v. Department of Education* (1985), or *Burlington*, and *Florence County School District v Carter*

(1993) or *Carter* since both set precedent for how the courts review tuition reimbursement issues and how they apply the stay-put provision in IDEA (2004).

In *Burlington* (1985), Michael Panico was a student who had both high intelligence and a significant learning disability, though the family and the school disagreed on the specifics of the disability. Michael's parents opted to put him in a private school believing that was best for their child (*Burlington*, 1985). The district and the family went to court over who should be responsible for the tuition cost of the private school (*Burlington*, 1985). A court battle took place for eight years over the tuition reimbursement before the Supreme Court stepped in and made a 9-0 decision that set precedent allowing parents to place their children in private schools and requesting tuition reimbursement if they do not agree with the school's handling of the IEP (*Burlington*, 1985; Zirkel, 2005). Throughout the process, Michael was able to stay in the private school under the stay-put provision (*Burlington*, 1985).

The *Carter* (1993) case was very similar and involved a young girl, Shannon Carter who had a learning disability. Shannon's parents made the decision and enrolled her in a private school because they were dissatisfied with her IEP and the proposed progress she was to make (*Carter*, 1993). In a very similar 9-0 decision, the Supreme Court held that the school district was required to pay for her tuition to a private school that was better equipped to address her needs and thus the proper least restrictive environment for the student (*Carter*, 1993). These two cases set precedent that allowed for parents to enroll their children who have disabilities in private schools and petition the court for tuition reimbursement after the fact (Zirkel, 2005). The court will grant tuition reimbursement only when it is determined that the public school is refusing to meet the student's IEP needs (Zirkel, 2005).

**Discipline and stay-put.** The stay-put provision influences discipline as well as tuition reimbursement (IDEA, 2004; Zirkel, 2005). The provision protects special education students from being suspended and thus excluded from their education for more than 10 consecutive days when the problematic behavior is a result of the student's disability (Alexander & Alexander, 2012; IDEA, 2004; Zirkel, 2005). It also allows for the IEP to be revised or reconsidered during this period of suspension (Alexander & Alexander, 2012; IDEA, 2004; Zirkel, 2005). One case, *Honig v. Doe* (1988), which will be referred to simply as *Honig*, has been used for more than 25 years as precedent for the interpretation of the stay-put provision as it applies to discipline (Alexander & Alexander, 2012; Zirkel, 2005).

In *Honig* (1988), two students who used the pseudonyms John Doe and Jack Smith in the court proceedings took their district to court. John Doe had exhibited explosive behavior and had choked another student and was suspended for it (*Honig*, 1988). Before his suspension was over, the family was informed that he was to be expelled and was to be suspended until the expulsion hearing took place, which the family believed to be in violation of the stay-put provision of EHA (1975), the law at the time (*Honig*, 1988). Similarly, Jack Smith exhibited disruptive behavior due to his disability and was suspended from the school for making inappropriate comments (*Honig*, 1988). The school took the same actions and extended the suspension until the expulsion hearing could take place (*Honig*, 1988). The Smith family heard about the impending lawsuit brought by the Does and the Smiths opted to join the Doe family in their lawsuit against the school (*Honig*, 1988).

In a 6-2 ruling, the Supreme Court stated that the school district had indeed violated the stay-put provision in their decisions by removing the students from the school for an indefinite period of time while they were awaiting an expulsion hearing (*Honig*, 1988). They upheld the

fact that the school district could suspend the students for up to 10 days and could revise the IEP during that time in order to find a more appropriate placement for the student (Alexander & Alexander, 2012; Honig, 1988; Zirkel, 2005). They also stated that, should the schools need more than the 10 day period to change the IEP and make arrangements for a different placement, the school could petition the court for an injunction on a case-by-case basis, provided that they met the standards set out by the court (Alexander & Alexander, 2012; Honig, 1988; Zirkel, 2005). When IDEA (2004) was created, it upheld the principle stated in Honig (1988) and provided specific ways for the school to determine whether the behavior was related to the disability (Alexander & Alexander, 2012; Zirkel, 2005).

**Section 504.** In addition to IDEA (2004), there is also the Rehabilitation Act of 1973, which contains a provision called Section 504. This provision applies to any agency, including workplaces receiving federal funding, but also applies to schools (Alexander & Alexander, 2012). In the school it provides protections similar to those in IDEA (2004) regarding a free and appropriate education for students who may have a disability but do not meet the criteria to be protected by IDEA (2004) or previously, EHA (1975) provisions (Alexander & Alexander, 2012; Zirkel, 2005). In the school setting, Section 504 applies to students who are educated in the general education classroom, but require services that are often temporary such as occupational or physical therapy (Alexander & Alexander, 2012). Zirkel (2005) noted that there were numerous overlapping provisions of Section 504 and IDEA (2004) that schools must consider and apply appropriately when they are dealing with students who have disabilities.

Zirkel (2005) cited several different cases including *Southeastern Community College v. Davis* (1979) or *Davis, Sutton v. United Airlines* (1999), *Toyota Motor Manufacturing v. Williams* (2002), and *PGA Tour v. Martin* (2001) where the courts made decisions impacting the

application of Section 504. Because the provision applies to any entity receiving federal funding, several of the cases included workplaces rather than schools (Zirkel, 2005). The most influential of these for schools was the case of *Davis* (1979).

In the case of *Davis* (1979), a student by the name of Frances Davis applied for admission to Southeastern Community College in Iowa. Frances had a hearing disability, and while she wore a hearing aid, she also needed to read lips in order to understand what was being said (*Davis*, 1979). Her application for admission to the school and its nursing program was denied twice because the school did not believe it safe to admit her to program because of her disability (*Davis*, 1979).

In a unanimous 9-0 decision, the Supreme Court decided on the part of the school. They stated that the Section 504 provision was intended to protect individuals who have a disability but who are otherwise qualified for whatever they are applying to be part of (*Davis*, 1979). They did not believe that this applied to Davis (*Davis*, 1979). Zirkel (2005) summarized the court's points saying "Section 504 requires educational institutions to provide 'reasonable accommodation,' not substantial modification to students who meet the three-pronged definition of disability: (1) physical or mental impairment, (2) substantially limiting, (3) a major life activity" (p. 63). Furthermore, Zirkel (2005) noted that in the recent cases the court had given more definition to how the second and third prongs of disability should be interpreted not only by schools, but also by other agencies receiving federal funding.

### **Teacher Preparation**

**Special education.** Because the LRE clause exists in IDEA, many students with special education diagnoses and IEPs are being educated in regular education classrooms and may receive modifications in those classes (IDEA, 2004; Weber, 2009). As long as the special

education student is able to be educated appropriately within that regular class with or without the use of supplementary services or devices, the regular classroom is considered the least restrictive environment and is the appropriate placement for that student (IDEA, 2004; Grasso, 2008; Weber, 2009). As a result of this, many regular education teachers who do not have special education backgrounds or training have students in their classes with IEPs or 504 plans, an accommodation similar to the IEP (Grasso, 2008; Weber, 2009). Those teachers are required by law to follow that programming set out in the IEP even if they do not have the training (IDEA, 2004; Kessell et al., 2009; Weber, 2009).

Sze (2009) found that the most important factor in teachers being able to effectively interact and educate SWD was understanding them. Furthermore she suggested that poor attitudes held by teachers toward SWD is indicative of a lack of training, knowledge, and preparation for educating special education students (Sze, 2009). Kessell et al. (2009) stated that “over 100 years of research has shown that teachers are ill-prepared to meet the needs of special education students in general education classrooms” because of a lack of preparation and knowledge (p. 1).

**Teaching without preparation.** In a recent study conducted by Nahal (2010), the author sought to examine why so many teachers leave the field within the first several years. He found that one reason for frustration with the field was that many teachers were being asked to teach outside of their area of expertise and found that “a disparity occurs because preparation programs only prepare new teachers on how to plan lessons within the specialty area of the undergraduate degree obtained” (p. 6). This idea also connects to the ideas expressed by Kessell et al. (2009) and Sze (2009) about a lack of overall preparation and understanding when relating to special education services for students as regular education teachers are being asked to teach SWD.



Furthermore, these teachers are being held to laws and procedures for which they may have received little or no training in their preparation programs (Gajda, 2008; Gullatt & Tollett, 1997; Kessell et al., 2009; Sze, 2009).

**Preparation course requirements.** Preparation program requirements for teacher certification vary from state to state (Gajda, 2008). In many cases, teachers are not being prepared in areas relating to school law or special education (Gajda, 2008; Gullatt & Tollett, 1997). In an article by Gullatt and Tollett (1997), the authors lamented that very few states required school law courses for teacher certifications and that various reports had found that of teacher preparations in the nation, only 18 or 19 offered specific courses for teachers on school law. School law courses for teachers have been suggested for several years, but now fewer states are requiring them (Gajda, 2008; Gullatt & Tollett, 1997). In fact, as of 2008 when the study was published, only one state, Nevada, was found to require that any teachers had taken any specific courses in school law in order to obtain certification (Gajda, 2008).

While only Nevada required a school law specific course for certification, many other states required that school legal issues be addressed in required coursework (Gajda, 2008). It was found that only 21 of the 50 states had standards that “explicitly address and articulate knowledge and skills that teachers must have in” special education law (Gajda, 2008, p. 10). Gullatt and Tollett (1997) stated that this was a concerning trend because “considerable time, money, and effort are expended by someone aspiring to become a teacher, yet teachers may not be prepared for an event that could jeopardize an entire career” (p. 133).

**School law course benefits.** School law courses have been found to have numerous benefits for teachers (Delaney, 2009; Gullatt & Tollett, 1997; Wagner, 2012, Zirkel & Machin, 2012). Violations of school law can lead to extremely costly court cases for the schools or the

educators who were involved in the violation (Gajda, 2008; Gullatt & Tollett, 1997). Special education court cases account for the majority of the cases involving schools (Zirkel & Machin, 2012). In the study by Gullatt and Tollett (1997) done nearly 20 years ago, the authors found that the number of court cases had risen 200% in the ten years before the study was published. While it is difficult to pinpoint just how high the current number of cases has risen, it is conceivable that the number has only grown in the last 20 years. Having knowledge of the current laws and requirements allows teachers to avoid making mistakes that could lead to litigation and potentially jeopardize their entire future and career as well as negatively impact their schools or districts (Gullatt & Tollett, 1997; Wagner, 2012).

Wagner (2012) and Delaney (2009) both suggested that having knowledge of school law makes educators more fully aware of what their duties are and give them the ability to make decisions based on this understanding. In addition, knowledge of school law also helps educators to understand what rights they have as teachers or administrators (Delaney, 2009). Having courses on law, morality, and ethics allows for teachers to convey those values and teach them well to their students (Wagner, 2012). It was found that some of the benefits of having a school law course included teacher candidates who left the course feeling more confident, professional, and informed than their colleagues who did not have a school law education course (Delaney, 2009). Some of those surveyed did share that they felt some increased pressure and anxiety from taking those courses because they felt an increased responsibility to uphold the laws that they now knew existed (Delaney, 2009). Many of those same educators who had been surveyed after taking school law courses suggested that all teachers would benefit from taking a similar course (Delaney, 2009).

## Legal Knowledge

**Perceived knowledge.** A few recent studies have looked at the perception that educators have of their knowledge of school law in general or specific aspects of the law. These studies have examined preservice or student teachers and administrators (Call & O'Brien, 2011; Grasso, 2008; Kessell et al., 2009). In one study that focused on school law relating to First Amendment rights of students, it was found that preservice teachers were most confident in their knowledge about an aspect of school law when they had experienced something similar, but their perception of their knowledge was not always accurate (Call & O'Brien, 2011). When asked how confident they were about the accuracy of each question regarding their knowledge of law, the preservice teachers had a mean score of 2.78 (Call & O'Brien, 2011). This score was based on a scale of 1.0, meaning Not at all Confident, to 4.0, meaning Extremely Confident (Call & O'Brien, 2011). Many of the respondents reported that their rationale in answering many of the questions was their personal belief in right and wrong instead of their knowledge of the law in those areas (Call & O'Brien, 2011). While this study focused on the legal impact of the First Amendment rather than special education law, it did show that in areas that directly impact them, teachers lack knowledge on school legal issues.

Kessell et al. (2009) examined the knowledge and preparation that student teachers had concerning special education and IDEA. They found that 74.5% of those surveyed felt as though they were prepared with adequate knowledge to teach SWD (Kessell et al., 2009). Interestingly, only 58% of those individuals had taken a course in special education (Kessell et al., 2009). While the study did not report whether those student teachers had taken any school law courses, none of them came from states requiring a school law course for teacher certification (Gajda, 2008; Kessell et al., 2009).

A separate study was done of school administrators, all of whom were required to take at least one school law course in order to obtain their administrative certification (Grasso, 2008). It was found that the administrators believed that they had been given enough preparation and had the required knowledge to answer questions on IDEA and its provisions and applications (Grasso, 2008). This was based on a rating scale that Grasso (2008) used to have the respondents rate from 1 to 4, with 1 being that they strongly agree, 2 being that they agree, 3 being disagree, and 4 being strongly disagree that they were prepared and had knowledge. The mean score for the participants was 2, showing that they agreed that they had knowledge and preparation to answer questions related to special education law (Grasso, 2008).

**Actual knowledge.** Perceived knowledge only tells how much the individuals think that they know. This is why it is important to contrast the perceptions that many educators hold with their actual knowledge. Generally speaking, based upon the aforementioned studies, educators tend to have higher perceived knowledge of school law than actual knowledge (Call & O'Brien, 2011; Grasso, 2008; Kessell et al., 2009).

Call and O'Brien (2011), interestingly, did not give the actual data on how many of the students answered the questions correctly. They did emphasize the fact that the preservice teachers in their study were grossly overconfident (Call & O'Brien, 2011). They discussed the fact that had those preservice teachers been forced to make the real-life determinations based on the given scenarios, many of them would have violated the First Amendment rights of their students (Call & O'Brien, 2011). Despite this, the respondents did not see a need for school law courses for teacher candidates and, instead, thought that the information should simply be integrated into the already existing courses that preservice teachers must take for initial certification (Call & O'Brien, 2011).

In the study by Kessell et al. (2009), where 74.5% of students felt confident in their ability to answer questions relating to IDEA, it was found that only 43.1% of preservice teacher participants scored more than 60% on a test concerning how that law applies to teachers. The number of 60% was used since that is the percentage used in many schools for a passing score (Kessell et al., 2009). Kessell et al. (2009) used this data in order to show the large disparity that existed between the perception of knowledge and the actual knowledge concerning teachers and school law.

Grasso's (2008) study similarly found a discrepancy between the perception and actual knowledge of administrators. The study examined seven different provisions of special education law to determine administrator knowledge of situations involving those provisions (Grasso, 2008). Based upon Grasso's scoring process, the results were significantly low in five of those seven provisions. This showed that the administrators had significantly low knowledge of a majority of the provisions of special education law (Grasso, 2008).

Schimmel and Militello (2007) only looked at actual knowledge and did not examine perceived knowledge of teachers. They gave teachers questions on several different legal questions relating to student rights and found that the mean score was a mere 41.18% correct (Schimmel & Militello, 2007). When questioned on teacher rights, the mean score was even lower with a 39.23% correct (Schimmel & Militello, 2007). Despite the fact that Schimmel and Militello's study did not examine the perceived knowledge, the findings concerning educators' actual knowledge aligned with the results of the studies from Call and O'Brien (2011), Grasso (2008), and Kessell et al. (2009).

**Developing knowledge.** The literature has established that educators are, for the most part, not receiving their knowledge in school law in their college teacher preparation courses

(Caskie, Holben, & Zirkel, 2009; Delaney, 2009; Gajda, 2008; Gullatt & Tollett, 1997; Militello, et al., 2009; Schimmel & Militello, 2007). This is largely because there are few school law courses or even professional development classes available for teachers (Gullatt & Tollett, 1997; Schimmel & Militello, 2007; Wagner, 2012). It is important then to look at where teachers are gaining the information needed to make decisions in these areas since they are not receiving it in school.

In two separate studies it was found that teachers tend to get information about school law from peers, even if those peers have not had formal training or course work of any kind in school law (Militello et al., 2009; Schimmel & Militello, 2007). Two studies emphasized the fact that educators do not know about the law because they have not been trained in it, not necessarily because they do not want to know about the law (Militello et al., 2009; Schimmel & Militello, 2007). Unfortunately, many other issues that demand educator attention are seen as more pressing professional development needs by those educators, though, such as finding effective ways in which to monitor student progress or evaluate instructional programs (Spanneut, Tobin, & Ayers, 2012).

**Decision making.** Interestingly, Caskie et al. (2009) and Militello et al. (2009) discussed the fact that research had shown that teachers do not have much preparation or knowledge in school law. Most do not have fear of litigation, though, and have not been threatened with it and are, therefore, not swayed by this idea in their decision-making (Caskie et al., 2009; Militello et al. 2009). This is especially true of student discipline issues (Caskie et al., 2009). Militello et al. (2009) found that when litigation is threatened, this does have a tendency to influence the decisions of both administrators and teachers. In the same study Militello et al. (2009) found that a better understanding of school law would impact the way in which many educators make their

various decisions. In fact, 85% of the participants in the study expressed that they would have changed their decisions or their behavior had they been correctly informed about the legality of the questions they had been given to consider (Militello et al., 2009).

Findlay (2007) suggested that having knowledge of school law makes educators more accountable and effective as leaders. Bain (2009) made the important point though, that for educators, “ignorance of the law does not mean exemption from possible penalties,” meaning that teachers can and often are held accountable for mistakes made due to lack of understanding of legal provisions (p. 47). Similarly, one of the participants in the study by Delaney (2009) pointed out that for some teachers “ignorance is bliss,” but the participant also stated that this ignorance does not give educators the excuse to act “unprofessionally or inappropriately” in their jobs (p. 137).

## **Litigation**

**Education litigation.** Numerous studies have noted that education litigation continues to rapidly grow (Gullatt & Tollett, 1997; Militello et al., 2009; Schimmel & Militello, 2007; Shuran & Roblyer, 2012; Zirkel, 2014; Zirkel & Machin, 2012). As previously discussed, Gullatt and Tollett (1997) found a huge increase in cases from 1985-1995. They suggested that society was changing and turning to the courts for decisions and change rather than waiting for new legislation (Gullatt & Tollett, 1997). Osgood (2008) suggested that one of the reasons for this increase in legislation was the fact that parent participation has increased with the passage of IDEA (2004). He stated that parents have become more aware “that they needed to advocate strongly and persistently for their disabled children in order to get schools, government, the judiciary, and the public truly engaged in ensuring those rights and implementing the provisions of the law” (Osgood, 2008, p. 131). Findlay (2007) reported a similar recent trend in court cases

involving schools in Canada and suggested that this may also be due to the fact that plaintiffs who bring the cases see the school districts as having a great deal of monetary wealth. The thought is that these individuals then sue the school in hopes of benefitting from the district's wealth should they win (Findlay, 2007). Teachers and administrators can also now be held personally responsible for certain legal violations that take place in the school (Bain, 2009; Delaney, 2009; Findlay, 2007; Schimmel & Militello, 2007).

Militello et al. (2009) reported that one in five school principals will have to deal with some kind of litigation during his or her time in administration. This litigation can be extremely expensive, and one dated report stated that it costs school districts \$200 million per year (Gullatt & Tollett, 1997). While a current report could not be found, due to inflation and the fact education litigation has continued to grow in the years since that study, it is conceivable that the current cost to school districts would be significantly higher than what Gullatt and Tollett (1997) reported in their study. Shuran and Roblyer (2012) emphasized that it is critical for districts to find a way to prevent the disagreements that lead to litigation because of a variety of factors, including the cost and reputation of the district.

**Special education litigation.** As previously stated, the primary reason that schools go to court is for special education litigation (Shuran & Roblyer, 2012; Zirkel, 2014; Zirkel & Machin, 2012). This has especially been true over the last 30 years since that is when special education law truly began (Zirkel, 2014). Shuran and Roblyer (2012) found in their study of special education litigation in the state of Tennessee that parents were the ones who most often brought the lawsuits against the school districts. Only 12% of the time did an entity other than the parents, the Department of Children Services, file a lawsuit against the schools (Shuran & Roblyer, 2012). The authors also identified the characteristics of “lack of training, poor



communication, and lack of certain kinds of support” as the primary issues that lead to cases resulting in litigation (Shuran & Roblyer, 2012, p. 61). They suggested that these characteristics can be addressed directly by schools in order to keep future lawsuits from taking place (Shuran & Roblyer, 2012).

Zirkel and Machin (2012) referred to special education case law as an iceberg because much of it is hidden below the surface. The authors also expressed that due to the size of special education case law, it is quite difficult to effectively study the entirety of the previous cases (Zirkel & Machin, 2012). Zirkel (2014) also pointed out that much of the literature that exists on special education case law is difficult to follow. Because there are so many court cases that have been heard on the topic of special education law, Zirkel (2014) suggested that literature reviewing the law should focus on one specific provision or violation of the law or a specific level of the court that the case was heard in. He believed that the way in which special education litigation information is reviewed does not help educators to understand and learn from the issues that have taken place in the past (Zirkel, 2014). Making changes to the way in which literature is presented could assist teachers in understanding and applying important legal decisions that have an impact on their practice (Zirkel, 2014).

**Handling litigation.** According to Shuran and Roblyer (2012), information is not readily available concerning how schools should handle special education litigation. Zirkel (2014) stated that often those who have expertise in special education law or general school law tend not to publish their work and findings in places generally accessible to teachers, especially special educators. Therefore, those writing in special education journals seldom discuss law or do not have expertise that would be valuable for educators to learn from in order to deal with or avoid litigious situations (Zirkel, 2014). This also helps to explain the earlier issue discussed where

teachers primarily gain information about school law from their peers (Militello et al., 2009).

Zirkel (2014) suggested that it would be beneficial to incorporate many of the authors and reviewers of professional journals who have expertise in school law into the educational journals. He believed that would be beneficial in helping to inform educators of legal issues relating to the school and special education (Zirkel, 2014).

A due process hearing or litigation is the final step that parties have to resolve disputes in the area of school law and not all cases reach this point (Shuran & Roblyer, 2012; Zirkel, 2014). The parties are able to begin the process by filing a complaint against the school with the special education office of the state (Shuran & Roblyer, 2012). At that point the school has 15 days in which it must schedule a meeting with the parents and possibly other stakeholders in order to try to find a workable solution (Shuran & Roblyer, 2012). They then meet for a mediation, and if a solution is found and is agreeable to all parties, they sign a legal agreement detailing that solution (Shuran & Roblyer, 2012).

It is preferable for both parties to have the case solved through the mediation process as the next stage of the process can be more difficult (Shuran & Roblyer, 2012; Zirkel & Machin, 2012). In Zirkel and Machin's (2012) recent study, they found that nearly 60% of the cases in their sample were settled through mediation or were voluntarily dismissed by the plaintiff. This is an increase from the statistic that Gullatt and Tollett (1997) reported when they found that approximately one-third of the cases involving schools were settled out of court. They reported that this often happens when the school district individuals in question were grossly at fault and the school and or its insurance provider knows that due process will most certainly find against them (Gullatt & Tollett, 1997).

If, however, the mediation between the two parties is unsuccessful, the parties then pursue a due process hearing with a hearing officer who decides whether the case should be dismissed or heard (Shuran & Roblyer, 2012). Zirkel and Machin (2012) noted that even cases that are settled amicably through mediation or dismissed may be published online or in some database, a change that has occurred in recent years with the rise of the internet. They noted that previously, only cases that went to due process and required a judge's decision could be found published in databases (Zirkel & Machin, 2012).

There is conflicting data on whether schools or parents tend to win a majority of the cases that actually go to due process (Militello et al., 2009). In the cases surveyed by Shuran and Roblyer (2012), the authors stated that the court found in favor of the parents 70% of the time while Militello et al. (2009) reported that the court found in favor of the schools the majority of the time, though a specific percentage is not given in the latter study. Regardless of the conflicting data, one article discussed the fact that while a school may win a case in a due process hearing, it may still be damaged by the case because of a number of potential issues including bad publicity, a negative impact on morale, monetary issues, etc. (Militello et al., 2009). This shows why litigation is typically seen as the last resort when issues arise (Militello et al., 2009; Shuran & Roblyer, 2012).

### **Summary**

Currently, there are a few things that are known about educational law. Special education law has grown and evolved over the last 40 years, and these changes have led to additional protections for students who have disabilities (IDEA, 2004). It is understood from a number of studies that litigation involving schools has been growing significantly in the last 20 to 30 years, not only in the United States, but also in Canada (Findlay, 2007; Gullatt & Tollett, 1997;

Militello et al., 2009; Schimmel & Militello, 2007; Shuran & Roblyer, 2012; Zirkel, 2014; Zirkel & Machin, 2012).

Special education litigation is the primary reason that schools are taken to court and this, too, is a growing trend (Gullatt & Tollett, 1997; Militello et al., 2009; Schimmel & Militello, 2007; Shuran & Roblyer, 2012; Zirkel, 2014; Zirkel & Machin, 2012). This is, in part, due to the fact that there are areas concerning IDEA (2004) that are left to the schools to interpret (Zirkel, 2005). In order to best understand special education law, it is crucial to look at the cases that have been heard by the Supreme Court which sets precedent for how certain provisions should be interpreted and applied in various situations (Zirkel, 2005).

It is also documented that most states do not require individuals to take school law courses in order to become teachers and little professional development is available in this area (Delaney, 2009; Gajda, 2008; Gullatt & Tollett, 1997). While studies determined that educators found legal knowledge to be valuable, many believed that they needed other professional development opportunities before they needed the opportunity to learn about school law and perceived their knowledge about school law as higher than it was (Call & O'Brien, 2011; Delaney, 2009; Grasso, 2008; Militello et al., 2009). There is little information on teacher interaction with school law, especially in litigation and how districts handle these situations (Shuran & Roblyer, 2012). Much of the literature that is available on special education litigation is not accessible to teachers in special education journals or other publications frequently examined by educators and, therefore, is not being passed along to those who could most benefit from understanding it (Zirkel, 2014; Zirkel & Machin, 2012).

There is also a large gap in the literature describing teacher experience with school law in the area of special education litigation. Delaney (2009) affirmed this idea when he stated that

“[a]lthough there is no dearth of writing on educational law, there appears to be a gap in that literature on exactly how educational law affects the daily practice of educators” (p. 120). This study sought to fill that gap by examining teachers of special education students and their experiences before, during, and after litigation.

## CHAPTER THREE: METHODOLOGY

### Overview

The purpose of the study was to explore litigious experiences for special education teachers in South Central Pennsylvania. This chapter will explain how the study was conducted. This includes an explanation of the qualitative transcendental phenomenological design as well as an explanation of the participants, setting, and procedures. A personal biography of myself as the researcher is also included. Finally, this chapter explains how the data was collected and subsequently analyzed.

### Design

This study utilized a qualitative transcendental phenomenological design. The purpose of a phenomenological study is to examine a specific lived experience that the participants had and to express it in a narrative manner that shows the themes of the experience (van Manen, 1990). Moustakas (1994) alternately explained an early definition of phenomenology as “knowledge as it appears to consciousness, the science of describing what one perceives, senses, and knows in one’s immediate awareness and experience” (p. 26). The phenomenon is something that creates a foundation for understanding and “generating new knowledge” (p. 26). In this case, the experience with litigation was viewed as the phenomenon and I, as the researcher, sought to create themes to generate new knowledge based on the commonalities of the various participants’ lived experiences.

There are two distinct forms of phenomenology: hermeneutic phenomenology and transcendental phenomenology (Creswell, 2013). Hermeneutic phenomenology takes what van Manen (1990) called a “wholistic approach” and allows the researcher to incorporate his or her own experiences into the understanding the phenomenon (p. 94). Transcendental

phenomenology, on the other hand, requires that the researcher identify what his or her beliefs, experiences, etc. are and then remove them from the analysis (Moustakas, 1994).

Transcendental phenomenology was chosen for this study because my beliefs as the researcher were bracketed out and only the described or documented experiences of the participants were included within the study (Moustakas, 1994). Moustakas (1994) stated that the value of bracketing oneself out of the research and only examining the experience as it is stated or documented allows for the researcher to be objective in the various facets of the study.

### **Research Questions**

The following research questions directed this study:

**RQ1:** How do special education teachers in South Central Pennsylvania describe their litigious experiences?

**RQ2:** How do the special education teachers describe their experience prior to litigation regarding preparation and self-perceived knowledge of special education law?

**RQ3:** How do the special education teachers describe their experience during the process of litigation regarding support from supervisors and other representatives of the district?

**RQ4:** How do the special education teachers describe what, if anything, they learned from the litigation process?

### **Participants**

According to Creswell (2013), a phenomenological study should have 5-15 participants. This study included 11 participants. A total of 14 potential participants were identified, contacted, and volunteered to be in the study, but scheduling conflicts or work-related issues prevented four of them from participating. Purposeful snowball sampling was used as the intention of snowball sampling is to find the information-rich cases (Patton, 2002). While there

have been more than 15 cases involving special education litigation in South Central Pennsylvania, these participants were selected using personal contacts of the researcher. These personal contacts included teachers and administrators in various districts. Connections were previously made through work experience and professional development opportunities. The recruitment form in Appendix B was sent to the potential participants. The hope in using snowball sampling was to find participants who would be open to discussing this potentially sensitive topic. This was beneficial in certain situations because my personal connection to someone that the participants knew created a basis for trust and initial interactions. All participants were either current or former teachers who were involved in special education litigation as teachers and defendants and who have teaching certifications in the state of Pennsylvania. Maximum variation sampling was used to identify cases that were different from one another in the grade level of the student, type of school, and years of experience that the participants had at the time of the litigation. This provided a diverse look at the subject. While demographic information was recorded, it was not the primary focus of sampling. In the case of this study, multiple males were contacted and invited to join the study, but only one actually participated, making the male to female ratio of the participants 2:9. Pseudonyms were used for participants as well as their school districts or agencies.



Table 1

*Participant Education and Professional Development*

<b>Participant</b>	<b>Education at time of litigation</b>	<b>School law courses taken for certification?</b>	<b>School law courses taken at any time?</b>	<b>School law professional development?</b>
Amy	Bachelor's degree	No	No	No
Beth	Bachelor's degree plus 24 credits	No	No	No
Carrie	Master's degree plus 30 credits	No	No	No
Donna	Master's degree	No	No	No
Ellen	Master's degree	No	Yes	No
Fiona	Bachelor's degree plus <15 credits	No	No	Yes
Gwen	Master's degree	Yes	Yes	Yes
Hailey	Bachelor's degree	No	No	No
Ivan	Bachelor's degree plus 15 credits	No	Yes	Yes
Jeff	Bachelor's degree plus <15 credits	No	Yes	Yes
Karla	Bachelor's degree	No	No	No

Table 1 shows the various educational descriptors of the participants. The second column indicates the highest degree of education held by the participants at the time of the litigation. Each participant had a minimum of a bachelor's degree as that is what was required to hold a teaching certification in the K-12 education system in the state of Pennsylvania. The highest education at the time of the litigation was from Carrie and was Master's degree plus an additional 30 credits. The average education of the participants was bachelor's degree plus approximately 21 additional credits. Only one participant, Gwen, took any school law specific courses for certification. Of the 11 participants, 7 had never had a course in school law at any

time. The same numbers apply to the number of participants who had never been offered any professional development in the area of school legal issues.

Table 2 shows the experience of the 11 participants. The participants had an average of 14.4 total years of experience and 8.1 years of experience prior to the litigation. Of the 11 participants, 3 of them had less than one year of experience prior to the litigation. The column titled, Levels Taught During Career, details the grade levels that the participants worked in during their career up to the point of the interview. The abbreviations represent elementary school (ES), middle school (MS), and high school (HS). Most of the participants had taught at more than one level. Only three have only taught in only one grade level. While the participants came from a variety of levels, eight of them experienced litigation at the middle school level or in a setting that included middle school.

Table 2

*Experience of Participants*

<b>Participant</b>	<b>Total Experience</b>	<b>Experience at time of litigation</b>	<b>Levels Taught During Career</b>	<b>Level taught at time of litigation</b>
Amy	6 years	<1 year	MS, HS	HS
Beth	20 years	18 years	MS	MS
Carrie	10 years	10 years	MS	MS
Donna	25 years	18 years	ES, MS	MS
Ellen	19 years	10 years	ES, MS	MS
Fiona	14 years	7 years	MS, HS	Secondary (grades 7-12)
Gwen	23 years	15 years	ES, MS, HS	MS
Hailey	2 years	<1 year	ES	ES
Ivan	15 years	8 years	ES, MS, HS	HS
Jeff	14 years	2 years	ES, MS, HS	MS
Karla	10 years	<1 year	ES, MS	MS

**Setting**

The setting of the study was South Central Pennsylvania. This location was initially chosen because it was a loosely defined area that included a large number of schools and districts. Harrisburg and Philadelphia, two metropolitan areas, as well as smaller towns were included in the same region. When the setting was chosen, it was believed that a sufficient amount of information-rich cases would be found in this area because there had been a large number of lawsuits involving special education in recent years, and this proved to be true. There was a large number of special education teachers in the area who worked directly for school

districts as well as four intermediate units that largely served students with special education needs that could not be met in school districts. The funding for these intermediate units is provided by the state, making them public school teachers. There were 29 intermediate units in the state, which typically served two or more counties. The participants came from three different counties. While individuals in urban school districts were contacted for participation, the participants were all from school districts considered rural or suburban, though many did have urban areas in the district. Two of the participants were from intermediate units.

In addition, Pennsylvania had stringent requirements concerning certification for all teachers and had recently been heralded as an ideal place for educators to work (Neese, 2015). As previously stated, the participants were certified teachers in the state of Pennsylvania, meaning that they had met all of the requirements for preparation and certification to become teachers in the state of Pennsylvania. The setting also allowed for me to have the opportunity to interview most of the participants face-to-face rather than at a distance, which was beneficial for the study. Two participants were interviewed via phone interview because of family or work scheduling issues that arose; however, I had multiple face-to-face interactions with those individuals prior to the interview. Pseudonyms were used rather than specific district or building names, and the county, town, or intermediate unit of each participant is not mentioned.

Table 3 gives additional relevant information concerning the setting. While diversity was sought in the type of schools that the participants came from, 8 of the 11 experienced litigation while working in suburban schools. Only Jeff was in a rural setting, and Fiona and Karla were in agency settings, though Karla was in an urban setting within the agency. An explanation of the educational agencies is provided in Fiona and Karla's individual profiles. Table 3 also shows the

percentage of students in the district who received special education services and the number of students who were considered economically disadvantaged.

Anaheim High School (HS), the school where Amy worked, was in a suburban public school district. There were approximately 1,500 students at Anaheim HS, the building where Amy was working when she was involved in the litigation (Pennsylvania Department of Education, 2015). The building served students in grades 9, 10, 11, and 12. Approximately 10% of the students in the district received special education services (2015). Within the district, 25% of the students were considered economically disadvantaged (2015).

Billington Middle School (MS), the school at which Beth worked, was located in Billington School District, a suburban district in South Central Pennsylvania. Billington MS had approximately 890 students in grades 7 and 8 (Pennsylvania Department of Education, 2015). Approximately 10% of the students in the district received special education services (2015). Within the district, 27% of the students were considered economically disadvantaged (2015).

Carrie taught in Cavalier School District, a suburban school district known to be one of the wealthier districts in South Central Pennsylvania. Only 17% of the students in the district were considered economically disadvantaged (Pennsylvania Department of Education, 2015). Cavalier Middle School had approximately 850 students (2015) in grades 6, 7, and 8. In the district, 11% of the students received special education services (2015).

Donna worked in Dillon Middle School (MS), which contained grades 5, 6, 7, and 8. According to the data from the 2014-2015 school year, Dillon MS had approximately 875 students (Pennsylvania Department of Education, 2015). Dillon School District was a suburban school district and 35% of the students were considered economically disadvantaged (2015). Within the district, 19% of the students received special education services (2015).

Table 3

*Setting Information*

<b>Participant</b>	<b>Type of School</b>	<b>Percent of SPED Students in District</b>	<b>Percent of Economically Disadvantaged Students</b>	<b>Location of Interview</b>
Amy	Suburban	10%	25%	Library
Beth	Suburban	10%	27%	Library
Carrie	Suburban	11%	17%	Participant's home
Donna	Suburban	19%	35%	Participant's home
Ellen	Suburban	19%	35%	Participant's home
Fiona	Agency	n/a	n/a	Phone
Gwen	Suburban	10%	27%	Library
Hailey	Suburban	17%	36%	Participant's classroom
Ivan	Suburban	17%	36%	Phone
Jeff	Rural	13%	38%	Researcher's classroom
Karla	Agency/ Urban	n/a	n/a	Participant's classroom

Ellen worked for Emerson School District. She worked at Emerson Middle School (MS) which contained grades 5, 6, 7, and 8. Emerson MS had approximately 875 students (Pennsylvania Department of Education, 2015). Emerson was a suburban school district within the district with 19% of the students having received special education services (2015). Within Emerson, 35% of the students were considered economically disadvantaged (2015).

Fiona was employed by Falling Rock Educational Agency, a public school agency that received funding from the state of Pennsylvania. One of its main functions was to provide

special education services that are more intensive than district placements. Districts pay for students to attend one of Falling Rock's programs when necessary. Falling Rock also provides trainings and other services to districts in addition to direct education. The programs that Fiona has worked in with Falling Rock contained grades 7-12.

Gwen worked at Glendale Middle School (MS), located in Glendale School District, a suburban school district in South Central Pennsylvania. Approximately 27% of the students in Glendale were considered economically disadvantaged (Pennsylvania Department of Education, 2015). Within Glendale School District, approximately 10% of the students received special education services (2015). Glendale MS had approximately 890 students and served grades 7 and 8 (2015).

Hailey worked at Howard Elementary School within Howard School District. Howard Elementary School had approximately 300 students in grades K-6. The district was large and had both suburban and rural areas. Within the district, 36% of the students were considered economically disadvantaged. Special education services were provided to approximately 17% of the students within the district.

At the time of the litigation Ivan taught at Ingram Middle School, but the litigation had come from the prior year when he was at Ingram High School. At the time of the interview the high school had approximately 1,670 students in grades 9-12 (Pennsylvania Department of Education, 2015). Within Ingram School District there were rural and suburban areas. Approximately 36% of the students in Ingram School District were considered economically disadvantaged (2015). Nearly 17% of the students in the district received special education services (2015).

By the time the litigation took place, Jeff had moved to a different district, but the litigation took place in Jonestown Middle School in the Jonestown School District, a rural school district in South Central Pennsylvania. At the time of the interview, Jonestown Middle School had approximately 480 students in grades 7 and 8 (Pennsylvania Department of Education, 2015). Within the district, 38% of the students were considered economically disadvantaged (2015). Approximately 13% of the students within Jonestown School District received special education services (2015).

Karla worked for Killian Educational Agency, which is a public school agency that operated the same way that Falling Rock Educational Agency operates.

### **Procedures**

The first step in the study was to obtain Institutional Review Board (IRB) approval. After gaining this approval, individuals who fit the criteria of having been involved in special education litigation as teachers and living in South Central Pennsylvania were identified through my personal contacts and local administrators. These potential participants were contacted and invited to participate in the study. In many cases, the initial contact was made by my personal contacts who mentioned the study and asked the participants if he or she could give the researcher the potential participant's phone number and/or email. If a phone number was given, I, as the researcher, called the individuals, introduced the study, and then requested an email address. At that point, email communication was initiated using the letter in Appendix B. Once the initial contact was made, I set up interviews at the location of the participants' choosing. The preferred location was the participants' school or home, though a local library with private study rooms was also used if the participant preferred. The location was chosen by the participants because Moustakas (1994) explained that the researcher "is responsible for creating a climate in



which the research participant will feel comfortable” (p. 114). Having the participants choose the location allowed them to select a place where they were comfortable rather than a location strictly convenient or comfortable to the researcher. The library location was a neutral area for both the researcher and the participant.

Participants signed the consent form found in Appendix C prior to the interview. It is important to note that the title was changed after data analysis but was approved by the IRB. The preliminary title is reflected on the document in Appendix C. I then conducted open-ended, semi-structured interviews with the participants. The interviews were audio recorded and later transcribed by myself, the researcher, or a professional transcriber. Additionally, public record court documents and artifact evidence from the participants were sought. Participants were asked whether they had any personal or public record documentation they were comfortable sharing. Most of the participants stated that they did not have any personal documentation. In two instances, the participants stated that the only personal documentation that they had was specific to student work or meetings and would violate confidentiality, and were, therefore, not comfortable sharing it. It was explained to the participants that pseudonyms would be used both in the interviews and the data collected. I also searched for public record documentation. The data was then examined and coded to determine common themes of the experience according to the process described in the data analysis section. The subsequent findings will be discussed in Chapter Four.

### **Role of the Researcher**

As the researcher in this study, it was important to include some biographical information to make known my relationship to the topic. My undergraduate degree was in Political Science. While pursuing this degree, I developed an interest in law and took several law-related courses.

When I entered the field of education I was surprised to find that many teachers and other school personnel were largely uninformed concerning the laws governing education and their jobs. In several different settings I noticed educators not following various facets of school law. While it appeared that their choices were out of ignorance, these choices left the schools open to lawsuits. The particular instances that I witnessed did not go to court, and I, the researcher did not witness any of the situations that led to the litigation of which the participants were a part. Having said that, because the interviews relied on coding and themes chosen by me, it was important to note my own personal experience with the issue.

Because I worked in many different school districts as a substitute teacher and counselor, I worked with some of the participants in some capacity. At no point did I have any supervisory role over them prior to or during the course of the study, though. When I encountered individuals that I knew or worked with, attention was paid to adhere to the interview questions and bracket out any personal knowledge of participant, student, or schools involved in the cases. Occasionally, a participant would allude to my knowledge of an individual or program because they knew of my experience. In each instance, I endeavored to restate the information that the participant had stated as a question in neutral terms. It is important to note that I had not had any interaction with the individuals at the time when they were going through the litigious experience.

### **Data Collection**

When conducting phenomenological research, the primary mode of data collection is the interview (Moustakas, 1994, van Manen, 1990). Every effort was made to conduct face-to-face interviews for each participant. In two instances, because of family or work scheduling issues, a phone call was used instead. Therefore, this study utilized an open-ended, semi-structured

interview technique, with all questions relating to the purpose, which was to explore litigious experiences for special education teachers in South Central Pennsylvania. My personal experiences were bracketed out of the questions. Additionally, document analysis was attempted in two different ways. Public record court documents were examined and, while participant documents from the process were sought, none of the participants had them to share or chose to share them.

### **Interviews**

In phenomenological research, interviews are the primary form of data collection as they allow for participants to reflect on their own lived experiences (Moustakas, 1994; van Manen, 1990). This study also relied heavily on interviews for the majority of the data collection. The interviews were conducted through face-to-face interviews or through phone calls and included open-ended, semi-structured questions (see Appendix A) designed to allow the participants to provide their own descriptions of their experiences (Moustakas, 1994; van Manen, 1990). I, as the researcher, avoided using leading or biased questions and sharing personal information with the hopes of reducing bias in the interviews. These are called bracketed questions because I, as the researcher, removed personal experience from the question (Moustakas, 1994). In transcendental phenomenology, Moustakas (1994) explained that the list of interview questions developed prior to the interview may be changed or the researcher may opt not to use some of them when conducting the interview if they are not necessary to gather a comprehensive description of the experience. This took place in several instances as certain answers needed more clarification or participants had already answered a question or part of a question when explaining their experiences. The interviews were audio recorded and were then transcribed by myself or a professional transcriber.

The first question was designed to simply get information about the participant and give him or her a chance to give background information that he or she felt was relevant. It was less structured than the other questions and allowed the participant to ease into the interview before having to answer questions about a potentially sensitive issue. Questions two through seven were designed to get more information about the teacher preparation program and pre-litigious experiences of the participant. Research shows that most states do not require school law courses and teachers report getting their legal knowledge from other teachers (Gajda, 2008; Militello et al., 2009; Schimmel & Militello, 2007). These questions helped to relate the participant's experience to recent literature.

The second set of questions, which included questions eight through eleven, discussed the actual litigious experience of the participant. Shuran and Roblyer (2012) discussed the fact that there is little to no information available to schools concerning how they should handle litigation when it arises. These questions provided insight into how districts had chosen to relate to teachers involved in the litigation in spite of this lack of information.

The final set of questions was intended to examine the participant's reflection on his or her experiences. Because research shows that teachers have higher perceived knowledge than actual knowledge, these questions helped to show how experience changed the knowledge (Call & O'Brien, 2011; Grasso, 2008; Kessell et al., 2009). Additionally, Militello et al. (2009) found that understanding could change the way in which educators conduct themselves. The final question helped to show whether the understanding gained through experience changed teacher practice.

### **Public Record Document Collection**

As previously stated, what Moustakas (1994) called the “long interview” is the primary form of data collection in transcendental phenomenology (p. 114). In this case I also used public record documentation to assist in gaining a comprehensive understanding of the lived experience. Document collection began by gathering public record documents that were available concerning the specific cases in which the participants were involved. Public record documents included court records. These records were available for 9 of the 11 participants. In spite of consulting the library, as well as various legal resources, no public record documentation could be found for the remaining two cases. In both cases, one or two professionals who knew of the situation were able to corroborate the existence of the case and vague details.

I also sought newspaper articles and blogs, but they were not available for these cases. Having this information allowed for me to corroborate some of the details that the participants shared, or, in some cases, simply confirmed the existence of the case. This data was collected online, using several different records databases. Participants were also asked if they had public record documentation that they would be willing to share for this purpose, but none of them had information to share. In most cases they had not kept any of that data, but a few of them were unwilling to share what they did have because of concerns of violating their students’ privacy. Pseudonyms were used for all parties when reporting the information, despite the fact that it is public record, in order to protect both the participants of this study as well as those involved in the case.

### **Participant Document Collection**

A second form of document collection was attempted and proved to be unsuccessful in this study. It involved asking for personal information and documentation from the participants

themselves. The participants were asked for copies of personal documentation such as journals/diaries, emails, text messages, etc. The desire was to have these documents show how the participants personally reflected on the experiences as they were taking place (van Manen, 1990). Unfortunately, most of the participants did not keep any personal record of the experience. Most of them were in different positions from where they were when they experienced litigation and no longer kept anything anecdotal that related to the case.

### **Data Analysis**

Once the data was collected, it was analyzed through a process outlined by Moustakas (1994). Phenomenological research is analyzed by creating themes, which are the ways in which the main point of the common experience of the phenomenon is expressed in a simpler manner (Moustakas, 1994). The process of finding these themes utilized the model that Moustakas (1994) modified from van Kaam.

### **Interviews**

The process began by first examining the recorded and transcribed interview data in its entirety and groups were created by listing “every experience relevant to the experience,” also known as horizontalization (Moustakas, 1994, p. 120). The analysis program *Atlas.ti* was used to assist in this process and in tracking meaning statements later in the process. By using horizontalization, all of the statements concerning the experience were initially seen as equal (Moustakas, 1994). During this process, codes were assigned to the meaning statements which were one word or a short phrase describing what was shared. A total of 45 unique codes were created that aligned with the meaning statements. The data was then examined further and elements of the research that were not critical for describing the experience were eliminated, including those that were “overlapping, repetitive, and vague expressions” (p. 121).

By eliminating some of the statements, this left what Moustakas (1994) called the invariant horizons, which were those that were identified as being unique to the experience. Using *Atlas.ti*, the data was then clustered into four distinct themes and the statements of meaning were reexamined until only those elements that were crucial to the themes of the study remained (Moustakas, 1994). Textural and structural descriptions were constructed and written in narrative form in order to describe the examined experience (Moustakas, 1994).

### **Public Record Documentation**

When analyzing the public record documentation gathered for this study it was compared with the interview data that had been analyzed using horizontalization. By comparing relevant data, it enabled me, as the researcher, to examine the larger picture, and once again, I used bracketing to remain objective in gathering this data (Moustakas, 1994). Additionally, the public record documentation was examined to determine if it was needed to supplement and fill in any gaps in the information given by the participants in order to give a more complete description of the experience. While Moustakas (1994) did not specifically address this type of document collection, he did advocate using research to gain a complete picture of the experience. Because the documentation was used to do this, it aligned with Moustakas's (1994) transcendental phenomenology. These documents were reviewed by me, the researcher, after the interview. The information found did not contradict what was explained by the participants nor did it give additional insight that aligned with the research questions. In the end, the public record documentation was used simply to increase the trustworthiness of the study in the form of triangulation of the data.

## **Participant Document Collection**

The participant document collection was unsuccessful; therefore, there was not any data to analyze in this area. The lack of available data was used in discussing the third theme that emerged throughout the analysis process.

## **Trustworthiness**

### **Bracketing and Memoing**

In order to increase trustworthiness, several methods were used. The first strategy in increasing trustworthiness was establishing researcher bias at the onset of the study. Because I had the opportunity to take law and school law classes, assumptions could have been brought into the study concerning what teachers should have known about legal issues. In an attempt to bracket these assumptions out, they were listed so that I, as the researcher, was aware of them. This allowed for me to only focus on the objective reality of the interview, as Moustakas (1994) suggested.

After conducting the initial research for this study and beginning the bracketing process, I discovered that I developed an underlying assumption that litigation largely came about because the research showed that teachers were ignorant of school legal issues (Call & O'Brien, 2011; Kessell et al., 2009; Militello et al., 2009; Shuran & Roblyer, 2012). Interestingly, just before obtaining IRB approval, I was informed that a school that I had been affiliated with was being sued and that my name was included in some of the accusations. In this case, I personally knew much of the accusations to be contrived, but felt firsthand the emotions that many of the participants discussed when speaking about litigation they had been involved in. It then became important that I bracket that out as a personal experience as well. Because my training was in school counseling, which relies greatly on empathy, it was essential that I noted the potential for



personal bias and stay with the interview script rather than using empathetic experiences or telling the participants that I could identify with them.

Memoing allowed me to list ideas, observations, and examine emerging themes throughout the process of data collection (Creswell, 2013). Patton (2002) suggested that the researcher should identify the important phrases or descriptions used by the participants and then interpret the meaning. Memoing was useful in identifying and interpreting the meaning statements. Additionally, the participants' interpretation of phrases should also be considered, when possible, leading to the next method: member checking (Patton, 2002). Memoing was done at least once a week, though more frequently when multiple interviews were done in one week. A document was kept to identify observations, descriptions, phrases, etc. that were seen as the process took place. A sample of this document can be found in Appendix D. Memoing was also beneficial because it gave me as the researcher a way to share and keep track of emergent themes and made me aware of them so that I did not unintentionally integrate them into the questions or feedback in subsequent interviews since the semi-structured interview format allowed for me to ask additional questions to clarify what the individuals were saying. For example, it became clear that many of the participants were using language indicating that they were guarded in interactions or teaching post-litigation. Because I used memoing, I was able to avoid using the word "guarded" when asking for participants to clarify or elaborate, thus avoiding influencing the results.

### **Member Checking**

Member checking was also used within the study, meaning that the participants were provided with the transcribed interview documents and were asked for their feedback (Creswell, 2013). This was done through emailing the participants and inviting them to express any

concerns or to give their approval after the interviews had been transcribed. They were also provided with initial themes as well as their perceived level of support. Samples of these emails can be found in Appendices E and F. It was stated that the participants had two weeks to express any questions, concerns, or feedback, and that not responding within that time frame was treated as giving approval. Of the 11 participants, 3 gave active approval to the transcription while 8 gave passive approval by simply not responding. Moustakas (1994) explained that participants may be able to give additional insight into the analysis that the researcher did not initially consider. Participants did not give any feedback expressing concern over the transcripts, themes, or levels of support, and therefore the feedback did not change the themes or analysis. It did give participants the opportunity to give me, as the researcher, more understanding concerning the findings.

### **Peer Review**

Peer review was also used throughout the data analysis process. It came in the form of conferencing with the dissertation committee about all elements of the study and gaining approval. The professional who transcribed multiple interviews also provided feedback through reading all of the transcripts that I had transcribed as well and corroborating the initial themes that I, as the researcher, had identified in the data analysis process. Like member checking, the intent in peer review was to increase trustworthiness by gaining additional perspectives on the themes and data analysis process.

### **Triangulation of Data**

Throughout the process, it was recognized that there was the possibility that different types of data could have been in conflict with one another. Participants invariably included their opinions and feelings related to their experience. Public records were examined to ensure that

they aligned with the facts of how the participants shared their experiences. For this reason, triangulation of data sources was attempted, meaning that all three data collection sources were sought, and the two that were found were used to corroborate the themes that were discovered (Patton, 2002). It is important to note, once again, that public record documentation was only available for 9 of the 11 participants, but brief discussion with their colleagues did align with the information given by the participants.

### **Ethical Considerations**

At the onset of the study, before any data was collected, approval was gained from the IRB to ensure that the study aligned with the proper institutional and ethical requirements. Prior to data collection, the participants signed consent forms approved by the IRB and were informed that the study was voluntary and they could withdraw at any point in the process. Due to the confidential nature of the subject matter and interviews, all data was stored using password protected databases and locked file boxes. Consent forms were kept in a separate locking file box from the documents containing pseudonyms. Participants were given pseudonyms and any characteristics that could identify specific individuals was omitted. At all stages of the study precautions were taken to ensure confidentiality of both the participant and his or her school district, etc. Data was carefully reported so as to not cause any harm or otherwise negatively impact the participants. The purpose of the study was made clear at the onset to all participants, and I, as the researcher, was aware of the fact that was a potentially sensitive topic for the participants.

### **Summary**

I sought to explain how, in this study, I used Kolb's (1984) Experiential Learning Theory in order to examine the special education litigious experiences of teachers. In order to do this, I

interviewed 11 participants who had been involved in special education litigation as teachers. I explained that I also examined existing public record court documents in order to get a complete picture of the experience. Data analysis was thoroughly explained and included transcribing, coding, and analyzing the interviews along with the public record documents. The four themes that emerged included: internalized stress, lack of confidence in present knowledge, lack of personal responsibility for the litigation, and guarding against the possibility of future litigious experiences. These themes will be further discussed in Chapter Four. I sought to explain how I ensured the trustworthiness of the study by utilizing memoing, member peer review, and triangulation of data. I also discussed ethical considerations, stating that care was taken to protect the participants by using pseudonyms and ensuring that the data was kept in a secure location.

## CHAPTER FOUR: FINDINGS

### Overview

The purpose of this phenomenological study was to explore litigious experiences of special education teachers in South Central Pennsylvania. The problem guiding the study was that educators have been found to be largely unaware of school legal issues, especially in the area of special education law (Call & O'Brien, 2011; Kessell et al., 2009; Militello et al., 2009; Shuran & Roblyer, 2012). The qualitative study was conducted using the transcendental phenomenological qualitative approach (Moustakas, 1994). Throughout the process of data collection and analysis I used bracketing and journaling in order to remove or bracket out my own assumptions and examine only the experience of the participants. The primary data collection was the semi-structured interview in which the participants had the opportunity to share their experiences before, during, and after their litigious experience. Public record court documentation was also examined and aligned with the experiences that the participants discussed.

The theoretical basis for the study was Kolb's (1984) Experiential Learning Theory. The theory explains how individuals take a concrete experience and derive meaning from it. The participants were each in various stages of experiential learning, but they were each able to reflect and share some of the meaning or theories related to the experience. This is further discussed later in this chapter.

This study was driven by four research questions. The following research questions were addressed throughout the course of this study:

**RQ1:** How do special education teachers in South Central Pennsylvania describe their litigious experiences?

**RQ2:** How do the participants describe their experience prior to litigation regarding preparation and self-perceived knowledge of special education law?

**RQ3:** How do the participants describe their experience during the process of litigation regarding support from superiors, the district, etc.?

**RQ4:** How do the participants describe what, if anything, they learned from the litigation process?

In sharing their experiences through the interviews, the participants gave a picture of their experiences and answered each of the research questions. This chapter gives a portrait of the participants as a group as well as individuals. In addition, the stages of experience are identified and described for each of the participants. Finally, throughout the course of the research, four themes emerged, each of them connected to one or more of the research questions. The themes discussed include: internalized stress, lack of confidence in present knowledge, lack of personal responsibility for the litigation, and guarding against the possibility of future litigious experiences.

### **Group Profile**

Table 4 shows the perceived level of support that each participant described in the interview. The individuals' perceived level of support was rated as being High, Medium, or Low. Participants were rated as having a "High" level of support if they used statements such as "totally supported" and affirmed that they felt they had an adequate amount of support from those in their district and building. Participants were rated as perceiving a "Medium" level of support if they agreed that they had adequate support from either their building or district, but identified one or more minor ways that they wished they had been given more support. Participants were listed as having a "Low" level of perceived support if they stated that they did

not feel that they had been adequately supported and/or were able to articulate major ways that they wished they had been given more support.

The final column shows that only two of the participants, Carrie and Hailey, were still in the positions they were working in when the litigation occurred. Most of the participants who moved to different placements after or at the time of the litigation were careful to mention that the change in positions was coincidental to the litigation. Beth was the only participant who noted a link between the litigation and the change in position. In her case, Beth explained that she was the one who initiated the change.

### **Individual Participant Profiles**

#### **Amy**

**Pre-litigious experience: background information.** Amy is a secondary special education teacher. She worked at a suburban middle school, but at the time of the litigation she was teaching special education in Anaheim School District at the high school level. At the time of the interview she stated that she was three credits shy of a master's degree in education, but at the time of the litigation, she simply had a bachelor's degree. Her bachelor's degree was in special education and came from an accredited private college in Pennsylvania. She had never had a course on school or special education law. She stated that there were a few vague discussions of school legal issues in her certification program, but could not remember any specifics. Amy had never been offered professional development in the area of school legal issues in Anaheim School District or her subsequent district. The litigation that Amy was involved in happened her first year of teaching, and the inciting issues had taken place before she was at the school.

Table 4

*Participant Support Level*

<b>Participant</b>	<b>Perceived level of support</b>	<b>In Same Position?</b>
Amy	High	No
Beth	Low	No
Carrie	Low	Yes
Donna	High	No
Ellen	Low	No
Fiona	Medium	No
Gwen	High	No
Hailey	High	Yes
Ivan	Medium	No
Jeff	Low	No
Karla	Low	No

**Pre-litigious experience: teaching reflections.** When reflecting on her teaching prior to the litigation, Amy stated that she worked as an itinerant learning support teacher. She had a caseload of 55 students who would come when they needed help but did not receive direct instruction in her classroom. She stated that her classroom was “a very student-driven environment.” She also stated that she considered herself to be a “highly relational” teacher, especially prior to the litigation process.

**Litigation: initial.** Amy was initially informed about the litigation in a face-to-face conversation with the special education consultant for the district, who was her district-level



supervisor. Amy was informed that despite the fact that the issue leading to the litigation had taken place prior to her coming to the school, she would need to be involved because the student was presently on her caseload. She recalled the special education consultant explaining the issues leading to the litigation during this time.

**Litigation: preparations.** Amy remembered having preparation meetings with the special education consultant, director of pupil services, as well as the school lawyer and, at times, the school psychologist. Building level administrators were not very involved in the preparation process. The preparations included asking Amy for current student data as well as preparing her for the types of questions that would be asked and how to best structure her answers.

**Litigation: support.** Amy reported that she received an adequate amount of support. As Table 4 shows, it was classified as a high amount of support. She explained, referring to the district level personnel involved that “there was a lot of support from them from a relational standpoint” and that she felt as though she was made to feel comfortable with the process. She stated at one point “I really felt like they prepared me well for what I was going to face.” In her situation, Amy did not interact very much with building level administrators, so she did not receive any specific support from them regarding the litigation.

**Post litigation reflection: what was learned.** Amy stated that the primary thing that she learned throughout the process was that details matter. She expressed that she quickly understood what happens when IEPs are not followed correctly or when details are not properly documented. She stated that she wished she had understood

to take more time to record and document anecdotal things in the classroom. Even as far as, I had a phone conversation with this parent at this time, it was just, those things

happen, kind of so haphazardly sometimes, and we don't think much of it. But looking back, keeping track of all those little things that you do, because at the end of the day, some of those detail matter. And they mattered in the decision-making, you know the final decision that was at hand.

**Post litigation reflection: student and parent interactions.** When reflecting back on the impact on parent and student interactions, Amy expressed feeling a need to guard herself. She explained that she was a relational teacher and cared deeply for her students but that she had to work on “finding the balance of caring for kids and letting them know that they are valued and loved and respected, but also understand that there's got to be some level of guarding there that takes place.” The litigation took her off guard and affected her emotionally, so she explained that she subsequently felt the need to be more guarded in interaction with students.

In addition to personally guarding herself, Amy explained that in that position and in subsequent positions she had, she tried to have her students take more responsibility for their education. She stated that she wanted her students to take ownership of their education and to learn to advocate for what they feel that they need. When speaking to parents, Amy explained that she learned to document communication heavily. Additionally, though, Amy said that she liked to work with parents to help them understand their child's IEP and education. She felt that this was an important part of her role as a special education teacher.

**Post litigation: using the experience professionally.** When discussing how this experience had impacted her professionally, she cited the need to work more as a team. She no longer taught at the high school level and explained that in her position now it is easier to work in a team mentality. She explained

when the day came, and we sat before the judge, and there's like twenty-five people sitting around in a room for one student having a firm understanding that we are a team and each person has to bring their best every day to be a part of that team. For stuff like this, things are going to fall through the cracks and stuff like this is going to happen. So the understanding that it's just a team mentality. Whether it feels like you're on an island or you're actually a part of a committed team, you're still on a team.

She now makes an effort to work with her colleagues and make sure that each member is doing what he or she needs to do. Not only did she not want to experience litigation against herself, but knowing the stress and what all it entailed, she did not want to see others have to do the same thing. She explained that going through litigation made her feel more confident in confronting her peers or helping them in areas that could become problematic. She had not done any formal training for colleagues in the area of special education litigation, but said she frequently had informal conversations about school legal issues. She had those conversations both in Anaheim School District and at her subsequent district.

### **Beth**

**Pre-litigious experience: background information.** Beth was a middle school teacher in Billington School District. At the time of the litigation, she worked as a special education teacher, but had since moved on from that role. She cited the litigation in special education as a whole as a factor that led to her choosing to change roles. She began her career out of the state, but had been teaching in Pennsylvania for eight years. At the time of the litigation she had a bachelor's degree plus 24 credits as well as 18 years of teaching experience. Beth had never had a course in the area of school law, nor had she had any formal professional development in this area. She stated that there were occasional reactionary meetings when certain situations arose

within her current district and lawyers may present information concerning the situation or trends that they saw within the district. She also noted that IEP writing and progress monitoring had changed drastically since she received her teaching certification.

**Pre-litigious experience: teaching reflections.** Prior to the litigation, Beth taught in a variety of settings for Billington MS, including learning support, emotional support, and alternative education. She explained that there were numerous times that she had students on her caseload that she would not actually work with in person. Her role was to ensure that the IEP was being followed and to be the case manager for that student. In addition, she also had students who she taught that were not on her caseload. She was involved in two separate litigious situations where the students were not on her caseload, but she was one of their teachers.

**Litigation: initial.** Beth was informed of the litigation by the student's case manager, another special education teacher within the building. In addition to speaking with the case manager, she also received a phone call from her district level supervisor. In one situation she was informed that they were heading in the direction of litigation. In the other situation she was informed after the district had been formally served.

**Litigation: preparations.** Beth remembered the preparations for the litigation mostly consisting of gathering data. She was told to hand over progress monitoring data and other data that she had related to the cases. In one case, during the preparations she was told to cease communication with a parent and forward all emails from the parent on to her superiors. This was due to the way in which the parent was responding, not because Beth had done anything wrong, as she explained. She was also involved in a few additional meetings and discussions in the preparation stage.

**Litigation: support.** When asked what support she received from the district, Beth initially responded with “none.” She then thought about it for a moment and added that her supervisor taking charge of communication with the one parent could be considered support. That was all that she identified as support from both district and building level personnel. She went so far as to divulge her feelings saying, “I ended up feeling like push came to shove, I was gonna go down for it and nobody else.”

**Post litigation reflection: what was learned.** Beth disclosed that one of the major things that she learned from the process was to document everything. She said she wishes that prior to the litigation she had kept better notes regarding student behavior or work completion in some of the classes that she taught. She also explained that not only did she now make certain to document, but she also focused more on the content of the IEPs as well as progress monitoring. She stated,

I do pay more attention. I was paying more attention to IEPs and exactly how they're written because you always know it's a legal document and you always know it can be revised. But I guess there's more weight on them. I hold onto everything for three years, because I know that at any point ...if one of those parents decides to file due process, within the next three years, I'm held accountable, even three years later.

**Post litigation reflection: student and parent interactions.** When asked how her experience impacted how she taught her students, Beth replied, “Sometimes you teach them kind of guarded.” She went on to explain that in at least one of the cases she was involved in, the student would lie about what took place in the classroom. She went so far as to make sure that there was another teacher in the room when she taught that student. Once again she spoke about the importance of documentation when interacting with both parents and students. She spoke

about trying to have a good relationship with parents and working with them. She also explained that she felt that she needed to guard herself by saving emails or documenting the communication because she had been blindsided by litigation brought about by parents in the past.

**Post litigation: using the experience professionally.** Beth further spoke about the need to guard herself when she spoke about how her experience impacted her interactions with her colleagues. She explained that she had to work with them and ensure that they were correctly completing their progress monitoring or adhering to the IEPs of students on her caseload. Beth reported “that can cause some major stress between gen ed teachers and special ed teachers, and a lot of times, I think we're in position where we have to play bad guy, whether we want to or not.” She did use this experience to do an inservice workshop within the last few years to help general education teachers better understand how to work with students who have IEPs.

### **Carrie**

**Pre-litigious experience: background information.** Carrie was a sixth grade inclusion teacher who primarily taught Social Studies. Previous to her current position she was a Spanish teacher. She had been teaching for 10 years. In her teacher certification program she remembered having a conversation about school legal issues, but stated that it was

[n]ot a very memorable conversation. I don't remember what class it was. I don't remember anything about it, but I do know that we were always warned document and don't ever be alone with students. Those were the only 2 things I came away with.

She remembered this taking place just prior to her student teaching. She had not been offered any professional development in the area of school legal issues since becoming a teacher 10 years ago.

**Pre-litigious experience: teaching reflections.** When asked about her teaching experience prior to litigation, Carrie quickly responded saying,

I was willing to go out of my way and do pretty much anything for students who were willing to learn and I invested a lot of time and money willingly and happily to my students. And I was willing to get creative to try to get kids to be successful.

In Carrie's case, the litigation took place less than one year prior to the interview. She explained that the passion for teaching and creativity had been changed through the process because she feared her creativity "being construed as not following the letter of the IEP."

**Litigation: initial.** Carrie disclosed that she was informed of the litigation through an email from the director of special education who had simply forwarded the email from the family's lawyer. This took place during Pennsylvania System of School Assessment (PSSA) testing week, which is when students take the Pennsylvania standardized tests for the year. She explained the process saying it was an email "telling us that all of our files were being subpoenaed and there was paperwork on the way over and we had 24 hours to sign." No further communication took place until the teachers involved requested more information. Carrie remembered that the email came on a Monday and she and her colleagues were given no additional information until that Friday afternoon, after they had been told to hand over files and sign paperwork.

**Litigation: preparations.** Carrie explained the preparation process reiterating that she and her colleagues involved in the case had to request meetings with the principal, special education director, and union representatives.

It was frustrating that no one came to us without us being like "Can we talk about this?" Some people were more vague than others and at points it felt like we were going to get

thrown under the bus. Just the evasiveness of the answers and the fact that sometimes the answers changed depending on who you are talking to.

She also remembered having at least 17 different IEP meetings during the school year for the student before the case went to litigation. Most of the preparation that Carrie was a part of involved simply gathering documents and data.

**Litigation: support.** Carrie spoke positively about her colleagues and the camaraderie that was built during this time. She also stated that she did feel as though her building administrator was supportive. She explained that he had been through the process at another point and that she and her colleagues felt as though he believed that they were not at fault in the situation. According to Carrie, there was very little support from the district level. During the litigation process she discovered that the district had been aware that litigation was likely for several months but did not indicate that at all to the team of teachers working with the student. She also felt as though there were many times where she was asked by the family's lawyers to sign certain documents and did not receive support from her superiors to help her understand what she should have been signing and what she did not need to do. "I felt like, as the district, they should have had a check and balance system instead of requiring me as the teacher to go through and figure out, is this something that I am really supposed to do."

**Post litigation reflection: what was learned.** The primary lesson that Carrie stated she learned was about documentation and data collection. Carrie was able to articulate the nuances of what she learned about data collection regarding sole possession notes versus notes taken and shared with the group. This changed how she took notes in meetings and what she chose to share with her colleagues. Additionally, as an inclusion teacher, Carrie was not responsible for creating IEPs, but was legally bound to follow them. She credited the litigation with helping her



better understand how to read and carry out IEPs. Carrie also expressed that she learned the necessity of setting boundaries with her work because of the stress that she felt she brought home with her throughout the process.

**Post litigation reflection: student and parent interactions.** Carrie shared that she believed the litigation profoundly impacted her teaching. In her own words she said, “I definitely keep more of a paper trail for myself. I share less with other people. It has diminished some of my enthusiasm for being creative and doing anything to help kids.” She also reported that she was more careful about what she said to students because she was always concerned about how it would be repeated or interpreted by parents. When she communicated with parents she explained that she preferred to use email because she was able to have documentation of the conversation should she ever need it in the future.

**Post litigation: using the experience professionally.** Carrie recalled the stress of the process and had used what she learned to help her colleagues. She explained that this was informal and simply consisted of her explaining to others about how to say or document different things. “[J]ust like, ‘hey, if you ever do get subpoenaed and have to surrender all your records, you may not want to do this and this.’” She stated that she did not feel that she had the experience or knowledge to do any formal training, but did want to do what she could to help her colleagues through conversations or advice should they ever experience a similar situation.

## **Donna**

**Pre-litigious experience: background information.** Donna was presently retired from teaching. She began her career teaching primary and then took a number of years off to raise her own children. When she returned, she went to the middle school level where she finished out her career with a total of 25 years of experience. When asked whether she had any courses or

discussions on school law in her certification program, Donna responded with “Not any. Not a word.” Prior to the litigation she had earned her Master’s degree, but explained that she did not have any discussions of school law in those classes either. She was never offered professional development in the area of school legal issues.

**Pre-litigious experience: teaching reflections.** Donna had approximately 18 years of experience teaching prior to the litigation. She did not have any specific reflections she wanted to share about her teaching experience prior to the litigation.

**Litigation: initial.** Donna remembered that she was informed of the litigation by the head of special education for the district. She was told about the litigation in a face-to-face conversation. Donna explained that the family was “a thorn in the school’s side since kindergarten. And finally in 6th grade they decided to press on and do the litigation.”

**Litigation: preparations.** Donna recalled having about four preliminary meetings with the team of individuals that worked with the student as well as the district level special education personnel. The school lawyer also attended the meetings. She stated that during the meetings they spent a great deal of their time compiling data through explaining interactions with the student and family and looking at documentation from all of those involved. They also spent time learning what things they should and should not say when they testified.

**Litigation: support.** Donna recalled feeling a high degree of support throughout the process. Much of this support came from the district level, but she also remembered the building level administrator stopping in from time to time in the meetings. She explained that the team involved in the litigation began to feel like a “little club.” Donna also felt a great deal of support from her colleagues: “I had sympathy from all my colleagues. I mean they would stop in and

say, ‘Oh, we’re so sorry you have to do this, but you’re challenging them. Go for it!’ So I had my own little cheering committee.”

**Post litigation reflection: what was learned.** Donna explained that she learned about the importance of documentation throughout the litigious process. She recalled a situation in the litigation that arose due to her documentation and ignorance to the litigation process. She took documents up to the stand with her to assist her in remembering some of the details. The proceedings were then halted because the parents demanded to have a copy of all of them, despite the fact that they were papers they had already signed and sent back in to the teacher.

**Post litigation reflection: student and parent interactions.** Donna did not recall the litigation impacting her interactions with students or her teaching style at all. She did choose to allow a particular student some leeway by not requiring that the student’s books or papers all be kept in the desk like all the others. This was based on the student’s personal preference and Donna did not want to cause any additional issues with the parents once she knew that they were suing the school.

The impact that it had on her interaction with parents centered on the need to keep documentation of conversations as well as student work. Donna explained that she preferred to email parents after her experience because it gave her documentation of conversations. She also explained that the process did help her to better understand the rights of both parents and teachers. When asked how her ideas of the rights of parents and teachers changed, she stated,

Actually I hadn’t given it any thought, not having experience with the legalities. You go in, you teach, and you come home. And that was it. And now suddenly you’ve got a parent challenging the system and it was “woah, okay, they can do that.” They have the

right to do that. But I have the right to give my opinion and to stand up for the right of this child.

**Post litigation: using the experience professionally.** Donna had the support of many of her colleagues throughout the process, but explained that when the process concluded, her attitude was “[i]t was over, done with, and we moved on.” She did not recall using her experience to help her colleagues. Donna was involved in subsequent litigation, so she did use her knowledge to help herself and the district in those proceedings.

### **Ellen**

**Pre-litigious experience: background information.** Ellen began her career as a teacher at the middle school level, then went to the elementary level, and eventually returned to middle school. She taught for 16 years before moving into a role as a middle school counselor. She held two master’s degrees and at least 30 credits beyond those degrees. Her undergraduate degree was done through a private, Christian college. While earning her teaching certification she had no discussions or classes on school law. She did obtain her principal’s certificate later and had to take a course in school law for that certification. She did not take that course until after her litigious experience. Ellen had never been offered professional development in the area of school legal issues.

**Pre-litigious experience: teaching reflections.** At the time of the litigation, Ellen had been teaching for approximately 10 years. She had moved up to the middle school level at that point and, as she explained it, her teaching was “more content specific.” She primarily taught content courses at the time of the litigation. Ellen did not express anything characteristic of her teaching style before or after her litigious experience.

**Litigation: initial.** The director of special education formally made Ellen aware of the litigation. Prior to the formal notification, one of the itinerant special education teachers had made her aware of it in a conversation. She remembered receiving a phone call telling her of the impending litigation, but could not recall whether that was actually from the director of special education or from the secretary.

**Litigation: preparations.** Ellen explained that the team only had one meeting to prepare for the hearing. The meeting also involved the director of special education, the school solicitor, school psychologist, and the other teachers on the team. Within that one meeting the individuals were told what the hearing would look like and how to answer the questions they were asked. Ellen recalls being told to keep her answers short and not to elaborate.

**Litigation: support.** There was very little support throughout the entire process, Ellen shared. The pre-meeting was the extent of the support prior to the hearing and that really only involved the special education department. The building administrator was not very involved in the process. That pre-meeting was not ideal, in Ellen's eyes either.

It was rather short. I think you were fearful you would say the wrong thing. There was not a lot of help other than keep it short. I remember through the whole process questioning what I was going to say and if it was going to be twisted or turned in a certain way.

Ellen also remembered one of the other teachers on the team shaking her head when a question was asked of Ellen while she was on the stand "and it was, 'objection your honor, she's leading the witness.' It was very much a big deal. And I suppose that they forgot to prep us on don't move during the experience or whatever."

In addition, she wished that she had been given more information concerning what caused the situation. She also recalled a brief follow-up meeting, but did not really feel that she knew how to move forward. Because the student was still in her class, she felt that she needed more information than what she had been given in order to educate him properly.

**Post litigation reflection: what was learned.** The primary thing that Ellen learned through the process was about documentation. The incident had begun because of a simple comment from another teacher on a report card in a prior year. Ellen was reminded of the need “to be very careful specifically about what you put in writing when you are talking about a child’s ability or comments on a report card or comments in an email” because that is what was used to start the issue. Ellen did not feel that she learned anything specific about school law through the process. She did explain that if she had to go through the process again, she would ask many more questions.

Ellen did share a unique perspective on trends she had seen in special education with regard to how administrators respond to concerns about potential litigation.

I feel like nowadays so much effort is put into not getting to that point. So much effort. And I’m not sure that the effort put into it is always in the best interest of the school, the child, even. I think a lot of decisions are made based on keeping the district out of litigious experiences. And in the long run I question if it’s beneficial for the child...And I think that just comes from experience with more and more special ed folks bringing advocates to meetings. The district will cave or bend on certain items in order to avoid it going any further.

**Post litigation reflection: student and parent interactions.** Ellen did not feel that the litigious process impacted the way that she taught or interacted with her students while she was a

teacher. She explained that she had to be very conscious about not allowing it to impact the way that she taught the student who was the subject of the litigation because she continued to have him as a student after the process was over. The experience did impact her communication with parents, though. She moved toward using objective comments in her communication rather than giving her opinion about the reasoning behind a behavior, for example. She explained that she preferred face-to-face meetings or phone calls with parents rather than emails because she felt that email could be easily misconstrued.

**Post litigation: using the experience professionally.** The issues that began the litigation were still relevant to Ellen in her role as a school counselor. She had used her experience to have conversations with her colleagues on what they could and could not say or how to word something best so that it did not negatively impact the educator or school. She had not conducted any formal training but instead preferred to have informal conversations when she felt they were needed.

### **Fiona**

**Pre-litigious experience: background information.** Fiona began her career working in a private high school as a science teacher. She eventually joined Falling Rock Educational Agency in an alternative education placement. While working for Falling Rock she earned her teaching certification in special education and moved into a special education position when her alternative education placement was eliminated. At the time of the interview she had been working for Falling Rock for 14 years. She held a master's degree as well as a reading specialist certification in addition to elementary, science, and special education certifications. She did not have any courses in school law, and there was little school legal information discussed in her

undergraduate courses. Falling Rock had provided some mandatory professional development to those in Fiona's program periodically on an as-needed basis.

**Pre-litigious experience: teaching reflections.** At the time of the litigation Fiona was teaching in an alternative education placement that did not typically have students with IEPs. She had not had very much exposure to working with students with IEPs simply based on the nature of the program. She explained that this was a unique situation to the program.

**Litigation: initial.** Fiona was informed of the impending litigation in a face-to-face conversation with her direct supervisor. She recalled, "I said, 'Okay, what does that mean?' Because that was not really part of our...anything. We just happened to have a student who was alternative ed, but he was really special ed. I had no knowledge, no experience."

**Litigation: preparations.** In preparing for the litigation, Fiona explained that Falling Rock worked in conjunction with the student's home district to gather and compile data. They held several meetings prior to the hearing in order to prepare. She recalled that the Falling Rock and the district helped her and the others involved to understand the types of questions they would be asked so they would understand what they were going to need to do.

**Litigation: support.** Throughout the litigious process, Fiona felt as though she was well supported by Falling Rock and the student's home district. In Table 4 she is listed as feeling a medium degree of support, however, because of a distinction she made in the interview. She explained that, while she felt supported through the litigation, she did not feel that it was fair for her to have been put in the situation that led to the litigation in the first place. Fiona believed that the entire issue could have been avoided, though she was complimentary of how Falling Rock dealt with it and supported her once they were in the litigious process.



**Post litigation reflection: what was learned.** Fiona reported that, in her current role, she took data and progress monitoring very seriously.

Whether they have a reading goal, math goal, comprehension goal, fluency goal, any kind of goal, I make sure I know what I'm supposed to be doing with them and I make sure it gets done. And my records are wonderful as far as I'm concerned. I have documentation. I have physical proof. I enter information into IEPs. I enter information into the data recording system that we use weekly. There is no way you can tell me I'm not doing what I am supposed to be doing. And it's a lot of work.

She did not feel that she had a great deal of understanding about school law, even after the litigation. Fiona expressed that her primary concern was simply following what the IEP stated because she knew it was a legally binding document.

**Post litigation reflection: student and parent interactions.** Fiona explained that she did not feel her interactions or teaching style with her students had changed as a result of the litigation. She did divulge that, at times, she would use a student's progress monitoring in her interactions with him or her.

[I]f the student is giving me a hard time about progress monitoring, I can say, "look this is part of your IEP. And I need to monitor this and it's very important that you do what you've got to do." And more times than not they are very receptive.

Among the participants of the study, this strategy was unique to Fiona. She also explained that she did not think that the litigation impacted her relationship or interactions with parents. "If you're asking me if I'm more careful, no, not necessarily. I'm careful to begin with, but not any more careful." She also revealed that her primary method of communicating with parents was phone calls, simply because she did not have the email addresses of many of them.

**Post litigation: using the experience professionally.** Fiona explained that in her program, they all looked out for one another and tried to help each other with what they needed to know. She stated that they all knew what needed to be done for progress monitoring, and the supervisor was good about making sure everyone was doing what they needed to be doing. Fiona explained that they were all open to helping one another and accepting help if needed. She did not believe that she knew enough about school legal issues to ever do a formal training, but she, along with the other teachers in the program did informal check-ins.

### **Gwen**

**Pre-litigious experience: background information.** Gwen began her career as a high school special education teacher, moved into an elementary position, and then settled at the middle school level. She had been teaching for a total of 23 years. She earned her teaching certification in the state of New York where she did take a school law course in her undergraduate studies. The school no longer offered an undergraduate school law course, though, there is a course required for special education majors that did include discussions of legalities and case studies. She had two different litigious experiences, both within Glendale School District. At the time of the first litigious experience she had her master's degree in education and 15 years of experience.

**Pre-litigious experience: teaching reflections.** Gwen recalled that prior to the litigation her focus was on how to educate the whole child. She was teaching inclusion at the time. Her primary focus was on specially designed instruction or SDIs and helping the regular education teachers understand how to adapt for the special education students in their classrooms. While she was now in a different role, she explained that educating the whole child was still her focus.

**Litigation: initial.** The district-level special education director initially informed Gwen about the first litigation. In the second litigious experience, the student's case manager informed her. In both situations the information was delivered in face-to-face conversations. The information concerning the second litigious experience came during a meeting while the first was simply a conversation.

**Litigation: preparations.** Gwen recalled two very different preparations for the two situations. In the first one they had two preparation meetings and spent their time examining what was happening in general education courses. They had to compare SDIs to the actual adaptations being made. In the second situation "it was 'give me all your paperwork and everything that you have from that child.'... 'Make copies and give us everything you have.'" Gwen was not involved in any additional preparation meetings for the second situation. She remembered that they had an idea that the first one might be coming, but that the second one was a complete surprise to everyone involved.

**Litigation: support.** Gwen affirmed that she felt highly supported throughout both litigious experiences at the district and building level. During the first experience she explained that she felt, "[w]e all had the same goal" when working with those at the district level. In the second one she was simply told to hand everything over and the district would handle it from there. At the building level she stated,

They were very good about going through the process and making you feel like this is okay, we're going to see how we can make this better or fix it or whatever. So they were very supportive at the building level.

**Post litigation reflection: what was learned.** Gwen revealed that the primary thing that she learned throughout the process was "Documentation. At all times. Even when you think it's

not a big deal. Any contact you make, any observations you make, to document it all.” She explained that she learned this through the first experience and believed that it helped her to have all the necessary documentation when the second litigation occurred. She did not feel that she learned much about school law in general because it was something that changed so frequently. She did feel that it taught her to look more closely at IEPs.

**Post litigation reflection: student and parent interactions.** Gwen explained that she did not feel her teaching style with students really changed as a result of the litigious experiences. As previously stated, she still looked at trying to educate the whole child. She did reveal that she was more cautious in some of her interactions with her students. “Where something you would have said 10 years ago, you might not say now. And usually it’s not something bad, but you just think a lot more before you say something or before you give something out.” She also shared that she was more cautious in her interactions with parents, especially because the second litigation was such a surprise. She expressed that she preferred to communicate with parents through email because she had documentation of the conversations should she need it.

**Post litigation: using the experience professionally.** Gwen had used her experience to inform colleagues in an informal manner and had advocated having professional development in this area for both special education and regular education teachers. She explained that when she met with teachers,

I try to remind them of the specifics of following an IEP and it’s a legal document. You can’t pick and choose what SDI you would like to use. Or you cannot use the excuse of “well, that’s not how I do things.” That doesn’t work anymore. And we’ve been told in so many words that if you’re not following the IEP and we’ve told you this, you’re

getting thrown under the bus whether you like it or not. You need to be aware of everything that goes on in that IEP. If you have questions, go to the people who know that IEP and let them be your resource, that's what they're there for. But to know that it's a legal document and it must be abided by.

She had received some resistance, but because of her experience in the position and her litigious experiences, she felt that her colleagues were more open to hearing what she had to say. She did make a point to go into the classrooms and help her regular education colleagues understand how to adapt their material to meet the SDIs for students. She did not feel that she knew enough about the law to teach any workshops, but she did see value in having them for all educators who work with students in special education.

### **Hailey**

**Pre-litigious experience: background information.** Hailey was a brand new teacher at the time of the litigation and had days, not years or months of experience. At the time of the interview she had less than two years of experience. She attended a school in a bordering state but was able to do all of her placements in Pennsylvania. She received a special education certification as well as an early childhood certification through the program. At the time of the litigation she held a bachelor's degree and had not had any courses or professional development opportunities in the area of school law or special education legal issues. She did recall several discussions of school legal issues in an educational foundations course.

**Pre-litigious experience: teaching reflections.** Hailey did not have any reflections to share prior to the litigation because she had very little experience before the process took place. While the student was technically on Hailey's caseload, she never actually met the student before or after the litigation. She did explain that she wished she would have had a chance to interact

with the student, whether teaching or observing prior to the litigation to get a better understanding of the situation.

**Litigation: initial.** Hailey was informed of the litigation during a face-to-face meeting during a beginning of the year inservice.

I was called into the office by my principal, the assistant director of students support services and the director of student support services and they sat me down and said that there was a case for a student who I had never taught, a student who I had never met, but I was going to have to be called as a witness for the case.

**Litigation: preparations.** Hailey explained that the family had actually called her to be a witness, hoping to show that she and the teacher who had been there previously were not qualified for their positions. She met with the lawyer, principal, and district level special education administrators at the district office twice. She explained that they coached her on the process. “They prepped me to be a witness. So they gave tips on what a good witness would do, things you should say, not giving more information than is asked.” The lawyer also gave her test questions to prepare her for what she might be asked from both sides.

**Litigation: support.** Hailey reported that she felt highly supported throughout the process and also felt sympathy from her colleagues who were aware of the situation as well as her superiors.

I mean you could definitely tell that they didn’t want that to be my first impression of working in the district. Afterward, like the day after the trial took place I got an email from the superintendent and the assistant superintendent all just thanking me and saying that they think I’m doing a good job, not to let this be something I hold my head on.

She did not feel that there was anything else the district could have done to support her, though she did express that she wished she would have had interaction with the student.

**Post litigation reflection: what was learned.** Hailey reported that the lawyers asked her many questions about how many times she reads IEPs, whether or not she watches the instructional videos that accompany the various curriculum used, the frequency at which she communicated with regular education teachers, etc. She explained that this helped her to gain a better understanding of what was truly required of her. She expressed that she now felt more comfortable if she had to go through the process again because she knew that she was now doing what was expected. Hailey also talked about the importance of making sure that everything was documented. She did not feel that she necessarily learned anything about the law throughout the process, though.

**Post litigation reflection: student and parent interactions.** Because Hailey was so new to teaching, she did not feel that the litigation changed much about the way that she taught or interacted with parents. She had nothing to compare it to prior to the litigation. She did share:

I definitely make sure that I take the time to, when I progress monitor my students I go in and look at exactly where their levels are. So I'm a little bit neurotic about every time I progress monitor I look at their goal, I see did they meet that goal? Are they making progress? Do I need to revise the goal? Is there something else I should be doing? If I'm not seeing progress in a month I'm calling my supervisors and asking if there's something else I should be doing.

When interacting with parents, however, Hailey explained that she did get nervous at times. If a parent expressed displeasure, she explained that she was constantly concerned about whether they would sue the school. She preferred to communicate with parents via email so that

she had documentation of the conversation. She also explained that she was careful not to answer rhetorical or hypothetical questions asked by parents regarding additional services that the district could be liable for in the future.

**Post litigation: using the experience professionally.** Hailey disclosed that she was constantly asking her administrators or former mentor questions regarding IEPs or student progress. She attributed this to her litigious experience. “I think I probably bug people more than I would have if it wasn’t for the case. But I don’t know if it’s a good thing or a bad thing. I haven’t decided that yet.” She had not used her litigious experience to inform her colleagues of school legal issues.

#### **Ivan**

**Pre-litigious experience: background information.** Ivan began his career in special education after nearly a decade of service in the United States Navy. He began working at the high school level, moved down to the middle school, and currently taught at the elementary level. At the time of the interview he had 15 years of experience in special education, all in Ingram School District and a master’s degree plus approximately 45 additional credits. At the time of the litigation he had a bachelor’s degree plus approximately 15 additional credits and eight years of experience. His teacher certification program was completed within the state of Pennsylvania and did not contain any courses specific to school law, though there were discussions of school legal issues in the area of special education. To obtain his master’s degree, he was required to take a school law course, which he had completed prior to the litigation. He also reported that Ingram School District did have mandatory professional development in which a lawyer came in and spoke to the special education department about IEPs and the law.



**Pre-litigious experience: teaching reflections.** Ivan did not identify any elements that were characteristic of his teaching style or any other reflections prior to the litigation. He explained that the litigation had nothing to do with his teaching and so he did not have any observations or reflections related to any changes. He also expressed that each of the locations and placements he had taught had been different from one another.

**Litigation: initial.** Ivan recalled that his district level special education supervisor was the one who informed him of the litigation. This was done through a face-to-face conversation. Ivan had recently moved to the middle school from Ingram High School, but the litigation was brought from a family whose students he had taught the previous year at the high school level. Additionally, he explained that he was told not to discuss the situation in email because the family was requesting all related emails.

**Litigation: preparations.** Ivan expressed that there were a few meetings prior to the litigation itself. During those meetings he gathered data and met with the lawyer. The lawyer prepared him for what he would face when called to the stand. “They talked to me about going on the stand and some of the questions. And essentially they just said to be honest. That was the most important thing.”

**Litigation: support.** Throughout the process Ivan revealed that he felt totally supported by the district. At the building level he also felt support, but he explained that he was not sure if that would have been the same had he still been at Ingram High School.

[t]hat could have been different, to be honest, if I was still in that building. And the reason I say that is because my principal was very understanding because of, you know, supporting the district. And he knew I really didn’t have a choice. But I’m not sure if I would have received the same support if I had stayed in that other building because the

principal changed when I left. So I'm not sure that I would have received the same support there.

For that reason, in Table 4 his level of support is classified as medium.

**Post litigation reflection: what was learned.** Ivan explained that he had always been very focused on data collection and following the letter of the IEP, but that increased after the experience. Additionally, he learned to be even more careful about any decisions or recommendations made regarding a student. After the experience he also became more focused on how he worded emails. He divulged that "I'm not very negative, but I'm very cognizant of the language that I use toward or about students in an email as a result." The primary thing that Ivan shared he took away from the experience was the importance of having a good rapport with parents.

**Post litigation reflection: student and parent interactions.** In Ivan's particular case he shared this anecdote:

I never had to testify. And the reason...and I think this is really important...the reason I didn't is because the parent called me the night before I was going to have to go on the stand. And she was worried that I was going to get in trouble. And I know this is going into the reflection a little bit, but I was really concerned. It was like, I didn't feel like there was any way that I could personally win by testifying. I really had a great rapport with the family and I felt by testifying I could destroy that rapport or it could cause problems at the district. I just did not want to do it. So essentially what happened was mom called me at my house and talked to me on the phone...I want to say for like an hour and a half. And the next day called and settled.

Because of that experience, Ivan expressed that he made sure to cultivate a good relationship with the parents of his students. “[T]he truth of the matter is that I think the result would have been different if I didn’t have the rapport that I did. So that encourages me to keep establishing rapport with parents.” Ivan expressed that he typically used phone calls to communicate with parents simply because he could talk to them using Bluetooth in his car during his drive home. He did not feel that his interaction with students or teaching style was impacted by the experience.

**Post litigation: using the experience professionally.** Ivan explained that he had used the experience to inform other colleagues of the importance of following the letter of the IEP. This had simply come in the form of informal conversations with the teachers. Most often, Ivan explained, he used this when speaking with general education teachers rather than his special education colleagues. He also used it when working with specialists such as occupational therapists to make sure that they were doing exactly what was stated, such as not doubling students up and creating group instruction when running behind if the students’ IEPs stated that they should have individual instruction.

## **Jeff**

**Pre-litigious experience: background information.** At the time of the interview Jeff had approximately 14 years of experience. He had taught elementary, middle, and high school and had been in full-time learning support, itinerant learning support, and supplemental resource placements. At the time of the litigation he was working in a supervisory special education position at the high school level and explained that he had a master’s plus more than 30 additional credits, a supervisory of special education, masters of education in teaching and curriculum, and was finishing his principal certification. As far as teaching certifications, he had

elementary, special education, English, and was highly qualified in each of the academic subjects.

He completed his teaching certification program in the state of Pennsylvania. During his certification program he did a course that contained a lot of case law discussion since the professor was a superintendent and used his experience to share with Jeff's class. When pursuing his supervisory certification he switched from one program to another because he wanted more courses in special education legal issues.

At the time of the litigation Jeff had a bachelor's degree plus less than 15 credits and approximately two years of experience. He had moved to a different school district when the litigation took place. Jeff did attend a mandatory professional development training from a special education representative from the Pennsylvania Department of Education prior to the litigation.

**Pre-litigious experience: teaching reflections.** When asked about his teaching experience prior to the litigation, Jeff expressed that he had a very positive experience. He also explained:

I've never been one person who thinks that I'm gonna make the difference in the child. *We're* gonna make the difference. That's where the IEP team component comes in to it. And the best piece of advice I had was: introduce yourself, talk to your parents, build a relationship with them. And I think that really allowed me to do some really cool things and creative things.

**Litigation: initial.** By the time the litigation took place, Jeff had moved to a different district, but the litigation took place in Jonestown Middle School in the Jonestown School District. Jeff was initially made aware of the litigation in the form of an email that had been

forwarded from the superintendent of Jonestown, to his current superintendent, and then to him. He revealed that he could still remember the month and date as well as many other details of when he received the initial email. He explained that he immediately called his building union representative who called the union president. “The president conferred with the superintendent and they just said ‘no, you’re fine. You have nothing to worry about. This is just part of their process.’”

**Litigation: preparations.** Jeff initially went to meet with the lawyer as well as his former supervisor and assistant supervisor at Jonestown. He explained that the initial meeting did not start off positively.

The lawyer just started on the offensive and started going at me and questioning all these things. “Why did you do this? How did you do this? Who told you to do this? Why did you do this?” I guess he went through the parents’ complaint and then went through what I had done with the student and then just started attacking me. I probably was in there for a good 45 minutes and then I got up and walked out. And I just was like, I didn’t come here to be belittled and berated. And then they brought me back in and they said the lawyer’s idea was to basically see what my temperament would be under fire. So after that it made it a little easier.

After the difficult beginning, he did have more preparation in which he gave the district his documentation and evidence of the student’s progress. In addition, they prepared him for how to answer questions asked by the lawyers on both sides. All of the preparation took place in one day of meetings.

**Litigation: support.** Because he was in a unique situation with both Jonestown and his new district, he did not feel very supported. When discussing the support from his new district he stated:

I guess I didn't really feel like there was a whole lot because it really wasn't their responsibility. I think that they just wanted me to do my due diligence, be honest, and just go about it that way. And that was always the scary part because you walk into a new district and you feel like you do a good job. You want to do a good job. You're a professional. But here you are, you're within your first year, and by golly you're under due process. And what's your supervisor going to think?

While he did not like the way in which the meeting with Jonestown went, he did explain that he understood and felt that it did prepare him. He simply did not feel as though they were overly supportive of him.

**Post litigation reflection: what was learned.** Jeff expressed that the primary thing that he learned was about communication and transparency. He explained that a colleague described education as being like customer service and that an educator needs to find how to balance the correct amount of communication. He stated:

So you always have to gauge the needs of the student, gauge the wants of the parents, and try to somehow come up with a compromise. And it starts with good communication. You can have too much communication. You can communicate with parents every week and they're going to push and push and ask. Or you can communicate with parents on a regular basis, try to do some positive, try to do some negative and just try to build that relationship that way.

**Post litigation reflection: student and parent interactions.** As previously mentioned, Jeff explained that he did not think his teaching style or interactions with students changed much because the legal issue was not related to his teaching. He expressed that his philosophy was, “I always feel like the kids are first. And you have a good rapport with them and you build your relationship and you build a relationship with the parents and everything else takes care of itself.”

He explained that he had seen the need for consistency when working with parents. He also made certain to keep open communication with parents. Jeff typically began the year by sending an introductory letter to the parents of his students and then preferred to communicate through phone calls. He stated that he did not prefer email simply because emails could be misinterpreted.

**Post litigation: using the experience professionally.** Now that Jeff was in a supervisory role, he used his experience to inform those under him of what could happen if IEPs or SDIs were not followed properly. He did explain that he tried to make things easier for his teachers and help them understand what needed to be done. He also affirmed that he believed there should be more discussions and courses in certification programs for both regular and special education candidates regarding school legal issues. In his present role Jeff did use his experience to speak in meetings or to his colleagues regarding school legal issues in special education.

### **Karla**

**Pre-litigious experience: background information.** At the time of the interview, Karla was in her 10th year of teaching with Killian Educational Agency. She began working for Killian after earning her certification in special education. She had taught at the elementary/early childhood level as well as the middle school level. The litigious case came

from a case that originated at the middle school level in an urban setting. At the time of the litigation she had less than a full school year of experience and a bachelor's degree. In her teacher certification program she did not have any discussions or courses on school law. At no point in her 10 years of teaching had she been offered professional development in the area of school legal issues, but she noted that she did feel that it would be beneficial to have training in that area.

**Pre-litigious experience: teaching reflections.** Karla joined Killian Educational Agency in the middle of the school year prior to the litigation. After that school year she moved to a new location within the program, simply because another teacher with more years of experience requested to move to that location. It was her understanding that she essentially inherited the litigation and that things had been taking place before she had been hired. Because she had less than a year of experience, she did not have any prior teaching reflections to share.

**Litigation: initial.** Karla was initially made aware of the litigation through an email from her direct supervisor. She could not remember the details, but was fairly certain that this was the way in which it was communicated. Because of the unique nature of Killian Educational Agency, she was housed in a district's building while her supervisor was located in a different location. While the student had been on her caseload during the previous year, the student was no longer with Killian at the point that the litigation began.

**Litigation: preparations.** Karla remembered having a lot of preparation for the litigation. The preparation entailed going through notes and making sure that there were dates, including school years for the information. She also remembered having to analyze some of the data and make sure that it was being interpreted correctly because, for the specific student involved, they were collecting additional data and had hand-drawn additional columns for data.



She also recalled having to include other items of documentation, such as incident reports and communication logs.

**Litigation: support.** Throughout the preparation process Karla felt she received adequate support from Killian Educational Agency as well as the student's home district. She affirmed that she felt as though she was well prepared for the litigation. She did express that she felt isolated throughout the process. She explained:

I didn't have anyone that I could talk to and say, you know, hear their side or their experience of going through it. It was just like me, my mentor's like "Well, I'm sorry I can't help you because I've never been through this." And, I mean, I hope not many people have to because it's not a very fun experience. So I mean, there was really no one to, like, talk to and consult with. You're kind of out there by yourself.

**Post litigation reflection: what was learned.** Karla revealed that the primary lesson that she learned through the process was to pay close attention to data and documentation.

You just have to be very cautious and make sure everything's clear and well-labeled. Even with just this past situation making sure, you know, you have - just everything needs to be, like, labeled and dated correctly, you know, because years can kind of go, you know. A student could be with you for a couple of years and you need to know what year this was versus the month, um and uh, yeah. Just being - making sure you have interventions when needed if a student has been, you know, not making progress for a couple of weeks.

Karla did report that she did not feel that she knew anything additional about school law or special education legal issues than she did before the litigation. After the experience, she

expressed that the program at Killian did not discuss the situation or use it to prepare other educators.

**Post litigation reflection: student and parent interactions.** Karla stated that she was more conscious of making sure that she was collecting data and trying interventions if a student was not making progress. She did not feel that the litigious experience impacted her teaching style or interaction with students, though. She explained that there were a variety of different parents and that she simply tried to keep communication open with all of them. In her litigious experience she felt that she had a good relationship with the parents, but they still pursued litigation. Her primary form of communication was through a communication log that was sent back and forth with the student each day. She did note that she made copies of the log and kept them for her records.

**Post litigation: using the experience professionally.** Because Karla did not feel that she had any additional knowledge in school legal issues than she did when she went into the experience, she had not really used her experience to help educate others. Her program was unique at Killian because she was extremely spread out from her colleagues and did not interact with them on a daily basis. She explained that she communicated with other individuals such as speech therapists or occupational therapists that worked with her students. She also affirmed that if someone in her program were to go through a situation similar to what she did, she would want to offer support because she did not have that in her experience and did not want another individual to feel the isolation that she felt.

## **Participant Experiential Learning Stages**

### **Concrete Experience**

Kolb's (1984) theory of Experiential Learning was foundational to this study. By the design of the study, each of the participants had already had the concrete experience. The concrete experience was one or more litigious experiences. The litigation was viewed as a concrete experience because it forced the participants to open themselves up to a new experience (Kolb, 1984). Within the interview they were asked questions that allowed me to better understand and later analyze their experience. Each of the participants was deeply impacted by the litigious experience, which was evident throughout the interview process. Table 5 shows the different stages of experience that each of the participants were found to be in at the time of the interview.

### **Reflective Observation**

Each of the participants was at least in the reflective observation phase. They were able to articulate the experience based on their personal thoughts and feelings regarding the experience. In addition to articulating their own observations, the participants were able to understand and articulate the other aspects and perspectives that existed in the experience. For example, Fiona was able to articulate the underlying issue of a student being in the wrong placement. She was able to see that the support she received was adequate in spite of the situation because she was in the reflective observation stage of the experience (Kolb, 1984). Amy explained that the experience allowed for her to experience some of the inner workings of the district in which she was employed and gain an understanding of other facets of her job. As previously discussed, during the stage of reflective observation, the focus of the participants was "understanding as opposed to practical application" (Kolb, 1984, p. 68).

Table 5

*Stages of Experiential Learning*

<b>Participant</b>	<b>Concrete Experience</b>	<b>Reflective Observation</b>	<b>Abstract Conceptualization</b>	<b>Active Experimentation</b>
Amy	x	x	x	x
Beth	x	x	x	x
Carrie	x	x	x	
Donna	x	x	x	
Ellen	x	x	x	x
Fiona	x	x		
Gwen	x	x	x	x
Hailey	x	x	x	x
Ivan	x	x	x	x
Jeff	x	x	x	x
Karla	x	x		

**Abstract Conceptualization**

Of the 11 total participants, 9 of them appeared to have reached the abstract conceptualization stage. Within this stage of the experience, the participants were able to take the understanding that they had from the experience and translate that into a theory that helped to guide practical applications (Kolb, 1984). Donna was able to articulate how the experience changed her perspective on the rights of parents and teachers.

You go in, you teach, and you come home. And that was it. And now suddenly you've got a parent challenging the system and it was "woah, okay, they can do that." They have the right to do that. But I have the right to give my opinion and to stand up for the right of this child.

Ivan was able to connect the fact that something that he was doing already was critical to the case he had been involved in and had a theory that led his future practice.

I think one of the most important things I learned is how important us having a rapport with parents is. And students. Because I think, you know, I was telling [building principal] this, she said I was tooting my own horn, and maybe I was. But the truth of the matter is that I think the result would have been different if I didn't have the rapport that I did. So that encourages me to keep establishing rapport with parents.

Fiona and Karla were not classified as being in the abstract conceptualization phase of the experience simply because, while they were able to understand their experience, they relied primarily on their supervisors to direct them rather than constructing their own theories on the experience.

### **Abstract Experimentation**

Of the 11 participants, 7 appeared to have moved into the active experimentation phase. This is the phase in which the individuals take the theory that has been constructed and the knowledge that has been gained and put it into practice, in this case, when working in their respective jobs as educators (Kolb, 1984). Of those who appeared to have reached abstract conceptualization, only Carrie and Donna did not appear to be in the active experimentation stage based upon their answers to the interview questions.

Carrie's litigious experience was very recent and she did not appear to have fully moved to the point where she was able to completely put the knowledge she has gained in practice. She appeared to be moving toward that stage as she explained a few of the changes she plans to make. Donna was no longer an educator because she retired and she was reflecting back on her years as a teacher. She did not give a large amount of information explaining how she used the knowledge that she gained in practice. For this reason they were both excluded from the active experimentation phase.

Jeff is one example of an individual who was in the stage of active experimentation and had taken what he learned and was seeking to improve the way things were done now that he was in an administrative role.

I try to be honest with teachers. And especially those teachers who don't want to necessarily hear it. You know, it's troubling, in any school you're going to find teachers, nay-sayers, teachers who don't act or follow protocol or IEP procedures or specially designed instructions in the IEP the way they are supposed to. What I've tried to do is streamline processes. Become more efficient for people in my department for writing paperwork and whatnot. But for teachers, also try to instill in them best practices. And you still fight it.

Another example of active experimentation is the way in which Hailey took what she learned from her experience and developed a specific way of communication with parents.

I am very specific with the way I interact with parents. I don't just give them progress monitoring updates all the time. I give them when I'm supposed to or when I'm asked. I do make sure that I stay in constant communication with parents if I'm noticing something or if I'm concerned. I always, when a student makes progress or meets a goal, we make a really big deal out of it because I want the parents to know that they are making progress. If parents send me emails and they ask me questions that are just kind of, they don't require an answer, I don't answer them.

### **Results**

After the data was analyzed, four themes emerged. Those themes included internalized stress, lack of confidence in current knowledge, lack of personal responsibility, and guarding against the possibility of future litigation. Those four themes corresponded with one or more of

the four research questions that guided the study. The four themes are discussed at length in the next section and illustrate the ways in which the participants reflected and gained knowledge after having the concrete experience of their litigious experiences. Each of the participants, no matter their experiential learning stages, identified in some way with each of the four themes.

## Themes

### Theme 1: Internalized Stress

The first theme that emerged as the data was analyzed was the fact that, regardless of the level of support offered to the participants from their building or district, most of them internalized a notable level of stress. This theme addresses the first and third research questions, RQ1 and RQ3, as it describes how the participants described their overall experience as well as the experience with support during the process of litigation. The stress impacted some of the participants differently but was a definitive theme in their descriptions of the overall experience. Some of them spoke of general stress, while others discussed the feeling of isolation, doubting themselves, or feeling disillusioned in their profession. While stress and the level of perceived support did not appear to impact one another, the participants' experiences with stress have been differentiated by their perceived level of support to illustrate this.

**Stress in participants with high levels of support.** Amy, Donna, Gwen, and Hailey all had high levels of perceived support throughout the process; however, each discussed a level of stress that accompanied them throughout the process. New to her position, Hailey felt as though she had to suddenly defend herself to both the family as well as her district.

I think the toughest part for me was that I went through four years of school to become a teacher. And I had finally gotten a degree, I'd gotten my certification, passed all the tests, and then I got my job. And then right after I got my job I then had to sit in front of

all the people that just hired me and prove once again that I was qualified for my position.

So that was just kind of awkward to have to do. And uncomfortable.

Despite feeling a high level of support, she still became concerned when there was even a hint of a family pursuing litigation. She recalled a recent example of this saying,

I had one parent who mentioned they possibly wanted to get an advocate- which isn't always a bad thing. It may just be for the parent's understanding. But for me, it scared me. And for three days all I could think about was this parent and they wanted an advocate. So that piece does affect me.

When asked about the level of support she received, Amy prefaced her response with "it's stressful. And it's, it's, scary and it's intimidating no matter how you look at a situation like this."

Amy internalized a level of personal hurt through the process because she felt that she had a good relationship with the family, which further added to the level of stress she experienced, especially in the hearing itself.

But it was, it was like personally hurtful to sit in...sit in a room and feel attacked by a family that I had worked closely with and had felt like I was successful and can kind of build a relationship with um along the way and so, what do I wish I had learned? Like what did I learn, what do I wish I had known before that? Just to guard my heart well.

She further explained that she felt the need to guard herself more with her students because of that hurt that she internalized from the experience. Both Hailey and Amy experienced litigation during their first years as teachers. Gwen and Donna had significantly more experience and the same level of perceived support, and still internalized levels of stress from their litigious experience. Even after nearly 20 years of experience, Gwen explained that



she ran through a number of questions in her head throughout the process, questioning herself as an educator.

I think it's daunting when it starts to occur. You start to question yourself and did I do everything that I could? Where is this coming from? Or what are we missing? Or are we missing anything? So it does make you question am I teaching something well? Am I not doing paperwork correctly? Am I missing things? And if I'm missing that, what else am I missing. So you start to reflect on- Am I doing the right thing for these kids? She also echoed the feeling of disillusionment throughout the stressful process saying, "I guess you start to get a little jaded because you go through the process." For Donna, on the other hand, the stress was about being cautious about what was said and how she interacted with the student who was involved in the litigation while it was taking place.

**Stress in participants with medium levels of support.** Fiona and Ivan were the only two participants who had a medium level of perceived support. Fiona was direct in sharing how she felt about the process, saying that she would do whatever she needed to in order to not have to go through the process that she described as "pretty nerve-wracking" again. She stated, "I had no knowledge, no experience, I never want to go to due process again. So if you tell me to hop on one leg, I'm going to do it. It's very stressful." And, later echoing that with "I don't ever want to do that again. So whatever my supervisor tells me to do, I will do it." Ivan also found the experience to be a stressful and frustrating one and revealed his feelings during the process saying,

I didn't feel like there was any way that I could personally win by testifying. I really had a great rapport with the family and I felt by testifying I could destroy that rapport or it could cause problems at the district. I just did not want to do it.

**Stress in participants with low levels of support.** Beth, Carrie, Ellen, Jeff, and Karla all perceived that they had low levels of support throughout the process and revealed the stress that they felt throughout the process. For Carrie, Jeff, and Karla, the stress included feeling isolated. Carrie explained “And so it kind of made me feel isolated from them when they would be like ‘I had a hard year’ I’d be like ‘yeah, don’t talk to me. You have no idea.’” Karla similarly communicated,

I didn't have anyone that I could talk to and say, you know, hear their side or their experience of going through it. It was just like me, my mentor's like “Well, I'm sorry I can't help you because I've never been through this.” And, I mean, I hope not many people have to because it's not a very fun experience. So I mean, there was really no one to, like, talk to and consult with. You're kind of out there by yourself.

Karla went on to say, “it’s pretty scary being a brand new teacher having to go through this, and not knowing anything.”

Jeff likened his experience to going through a battle. “It definitely gave me some war wounds and something to be able to say I survived this.” In Jeff’s experience, his stress and isolation was partially related to the fact that he was working in a new district while being involved in the litigation from his previous district. He revealed,

I definitely internalized it. I guess they did what they could, but it was such an odd situation. I mean who wants to lay claim to this guy? You know what I mean. The district doesn’t want him, the other district doesn’t want him- he doesn’t work here. So that’s why I felt like, at first, like it was all me, it was all my fault.

Beth explained feeling stressed because she felt as though she had to be defensive of everything that she did. She also felt frustrated because she was a teacher working with legally

binding documents and being held responsible for students' education, even when they were in their general education settings and she had no actual control over those teachers. "We are there to help; we can't do it for them. The problem is, when they don't do it, we get thrown under the bus." This stress actually led her to want to move into a different teaching role.

Yeah, it gets a little daunting. It does... So that's, in that respect, it starts making you doubt yourself, yeah. And you start doubting, um, why you're there. You do. And that's one of the reasons why so many people get out of special ed, from what I've talked to. A lot of the people have gotten out has been not because of the love or the drive to work with kids, um, in special ed. We all have a heart for it. But it's the legality part. It's just too much.

Ellen was similarly frustrated by the legality, though her frustration stemmed directly from her experience testifying. She described her support and preparation saying,

It was rather short. I think you were fearful you would say the wrong thing. There was not a lot of help other than keep it short. I remember through the whole process questioning what I was going to say and if it was going to be twisted or turned in a certain way.

Later, when discussing the actual hearing, Ellen used similar language to what Fiona had used, stating,

I would say, at the time it was a very nerve wracking experience because you feel that the weight of the whole trial is on your shoulders without a whole lot of prep. And one wrong move or head nod could derail the whole thing.

While each of the participants had unique experiences with the process of litigation, it was clear that this was a deeply stressful time for each of them. In certain cases they initially

questioned their own ability while in others they felt as though they were completely alone in the process. Even high levels of perceived support did not take away the personal stress and impact of the process.

### **Theme 2: Lack of Confidence in Current Knowledge**

As previously mentioned in the group profile, of the 11 participants, 7 of them had never had any courses specific to school legal issues or professional development in that area. Gwen, Ivan, and Jeff were the only participants to have had both school law courses and professional development. Ellen took a course on school law, and Fiona had professional development on current legal issues. These factors addressed RQ2: How do the special education teachers describe their experience prior to litigation regarding preparation and self-perceived knowledge of special education law?

While the participants were largely uneducated in the area of school legal issues, each of them experienced one or more litigious experiences. In spite of this experience, the theme clearly emerged showing that participants were not confident in their post-litigation knowledge of school legal issues, even special education specific legal issues. Several of the participants did use what they learned within their litigious experience to inform colleagues on an informal procedural level.

**Participants' views of school law.** The participants expressed that they viewed the law as large, confusing, and constantly changing. Fiona shared, "my background for school law is very minimal. I make sure that if the IEP is saying to do this, I'm doing it. I've never taken a school law course, but it's a lot of law." Hailey simply explained that she did not know much about the law before the litigation and did not feel that she learned anything specific about

special education legal issues. In her case, Hailey was quick to note that she was only in the hearing for a short time as she was only present the day that she was required to testify.

Carrie recalled feeling frustrated because the families she was working with seemed to know more about their rights and the law than she did. She felt as though she was behind and needed to scramble to figure out what she was required to do.

I think it would be good for teachers to have some kind of background knowledge of terms. Because parents who want to seek the legal route for special ed tend to have a vast knowledge to pull and terms to throw at you. And this is actually another family...well they both did it. They'd say "if you did this, we could do this..." Now most of the times it wasn't me denying their child an opportunity, it was me presenting options. But it seemed like they had a much larger knowledge base and legal terms to throw at me and I felt unprepared for this. And it's hard to have a conversation if you don't know what they are talking about...I'm like, "hold on, let me Google it. Hold on, let me compose a response."

Karla similarly expressed a frustration with not being informed about the various facets of school law issues.

I don't know the law, really. I wish I had more, um, information and knowledge on that but it's something that, you know, as a program we don't discuss. So I would say, I know nothing more than I - than the basics of what's out there.

She went on to explain that there was another potential litigious situation that came up in her program and, while those in the program checked in and talked about procedures, they did not discuss "the legal side of things."

While some of the participants expressed wishing that they knew more, several of them explained that they did not have a desire to go and take the initiative to learn more about school legal issues. When asked if she had taken the time to look at law as a result of the litigation, Gwen explained,

I think a little bit, but I find sometimes you feel bogged down by it and then my brain just goes to “I just want to teach. Can I just teach these kids? I’ve got a great idea for something and this is, you know, too much.”

Later she discussed whether she would want to give any formal training for her colleagues, since she had experience, education, and professional development.

Probably not me, per say. Just because I don’t feel I know enough. It’s more...it’s always changing and my focus isn’t trying to know what’s up and coming in the law because you get bogged down by living the dream, you know [laughs]. I’m in the trenches and I have to stay there and be focused on what’s happening with them. You’ll let me know when something changes, kind of thing.

Fiona similarly explained that she has learned to rely on what her supervisors tell her to do. Beth addressed the fact that she had been in several different districts and never offered professional development. Instead, lawyers had come in to reactionary special education meetings to provide guidelines for what teachers should be doing. Beth suggested a reason for lack of preemptive professional development saying,

I think part of it is that special ed law is constantly changing and it's special ed law- my understanding is it's set on precedent by the latest, greatest law suit. Because we have seen things change. Every year there's something different based on whatever the latest lawsuit is because there's so many loopholes in an IEP and because it's a legal document

and we are writing them, and we are not lawyers, um, once a parent gets a lawyer, it can be shredded. I mean, it's just torn apart. So that's, you know, maybe that's where some of what you're asking, as far as teaching teachers how to write legally.

**Using experience to educate colleagues.** While the participants were not confident in their current knowledge of school legal issues, even after the litigious experience, they did use what they had gleaned from the experience in order to informally assist colleagues. Amy shared:

I think it's given me some confidence to talk to my colleagues about the importance of following the details [of the IEP], and also kind of has allowed for them to ask questions and open the door for further conversations and honestly, again, to work as a team and include parents in that conversation.

Carrie explained that she did not feel that she knew enough about the law to really assist her colleagues, but has had a few conversations. She stated,

I have shared things like “hey, you don’t want to put that in writing. Or if you do put that in writing, don’t show that to other people.” So I have shared some of the lessons I learned so others don’t have to learn from their own mistakes, they can learn from mine.

Ellen also had conversations with her colleagues both when she was working as a teacher and explained that she has continued to do so as a school counselor. While Gwen expressed not wanting to do any formal training, she did explain that she has worked closely with regular education teachers in order to find solutions to specially designed instruction and IEPs. Ivan and Karla both expressed that they used their experience when working with specialists and ensuring that the IEP was being followed correctly.

Beth’s experience encouraged her to join a colleague and provide a workshop for regular education teachers on

the ins and outs of an IEP and what does it mean and what it doesn't mean, and how we were going to try and clean up some of the SDIs so that the kids are still getting what they needed, but um, it wasn't so daunting and more realistic.

She did not see that as formally using her experience to educate others, but it appeared to be a factor that prompted her to collaborate and offer assistance to others.

Jeff similarly took time in meetings to share with teachers. He said,

I explain my experience. I put it out there like this is nothing to laugh at. If you think that it's not gonna happen to you, that's when it will happen. And really try to prepare them for that. I don't try to use it as a scare tactic because it can be scary, but you try to use it as one of those things that you build on a foundation of your educational experiences. It's gonna come, it's gonna happen, and because of your actions you make the district liable for whatever is taking place. So you try to be a mouthpiece or a broken record to keep reminding. And in the end that's all you can do. They're in the classroom, they're at the front lines and are handling those situations.

### **Theme 3: Lack of Personal Responsibility for Litigation**

The third major theme that emerged when analyzing the data also addressed RQ3: How do the participants describe their experience during the process of litigation regarding support from superiors, the district, etc.? The third theme that emerged was actually related to how the participants did not describe their experience. At no point during the processes did any of the participants take personal responsibility for the litigation. Each of them noted that they did not have experience or education with school legal issues and each were deeply impacted by the stress of the experience, but they did not take on the responsibility or blame for the litigation. This was not viewed as a negative; rather, the participants recognized that there were additional



factors that may or may not have been in their control that contributed to the litigation. Some of the participants wrestled with questions of what they could have done differently, but none came to the conclusion that they were personally responsible for the litigation. In addition, as discussed in Chapter Three, the participants did not have personal anecdotal journals or writings about the situation. While they experienced stress as a result of the experience, they did not keep or share personal documentation regarding their own responsibility in the litigious situation.

**Litigious situations.** Each participant's experience was different. Both Amy and Hailey inherited litigation that had begun before they were even hired. Amy shared frankly how she felt about taking on that situation when she was discussing what she learned throughout the process.

I was in a situation where I was defending something that I wasn't actually really a part of. So as a special educator, the implications of not following an IEP can have, um, major effects on the future for a school district, for a family, for a student...And I think on a personal level like accepting personal responsibility for things. It maybe this is a little anecdotal and um a stretch for me to say but it's no surprise that that particular teacher retired. I kind of wonder if they knew there was some impending issue, and it was time for them to go. But it in some sense seemed kind of unfair to not take responsibility for whatever, you know the issue at hand.

While Jeff's situation did not take place during his first year of teaching, he too inherited a contentious situation. The situation that led to the litigation had begun with the teacher who was in the role before him and was let go due to being unsatisfactory. In Jeff's case, he believed that the final straw for the parents was a change in the least restrictive environment. Jeff made sure to note that he did not have control over the student's placement. Similarly, Ellen shared her experience saying "The jam up with this whole thing happened the year before with this

student. It was the way a teacher worded a comment on a report card that was complimentary, but it backfired...” When the student came to Ellen the following year, the litigation began. Donna’s experience was also similar and felt that the situation she was involved in had begun long before she was the student’s teacher and she did not believe she had done anything to further harm the student or the case.

Those parents were a thorn in the school’s side since kindergarten. And finally in 6th grade they decided to press on and do the litigation. So I knew, and yet, when I taught the boy I treated him like every other child in the class. I saw great potential.

Some of the other participants did not take personal responsibility for the litigation for other reasons. Ivan flatly stated that the litigation was not related to his teaching at all, but he did take some responsibility for the family choosing to settle. Fiona shared that her superiors in the program had made decisions about the student’s placement that led to the litigation. Carrie explained that she and her colleagues had spent the year meeting with the family, revising the IEP constantly, and trying whatever the family asked. Her principal agreed that she and her colleagues had done what they needed to when working with the student. She explained, “the principal was very supportive in the fact that he did not feel we were at fault and he completely was going to stand behind us.”

Beth explained that the student involved in the litigation was the one making choices that were impeding his learning, and, like Carrie, she had done everything she could. She just needed to be able to prove that.

So it was a matter of me having enough information to show that, listen the lack of progress is choice, it's not based on us not providing the student with what they needed,

and providing the skills. Or the fact that we had not seen the student use that skill set correctly. It was just a matter of he didn't want to because he was autistic.

**Removing blame.** Several of the participants spoke about doubting themselves in the midst of the stressful experience. They shared their experience and how they came to avoid internalizing the blame for the situation. Karla communicated,

when that's being kind of slapped in your face, you really kind of look to yourself, well am I - was I doing the best I could? I feel like you shouldn't necessarily always be down on yourself just because of the situation. Be, like, proud of how far the child has come and know that you tried your best even though, um, the family is saying otherwise.

Throughout the process, Carrie shared that there was one major thing that she wished she would have understood.

[N]o matter what, it was still going to happen. I should have stressed less. There was nothing I could have done throughout the year that would have kept the end result from happening. So all those extra hours: unnecessary. I could have still done my job without worrying about so much. What was going to happen was going to happen.

She later shared her observation of the legal system as it relates to special education. "I realized that, unlike the traditional legal system, you are guilty until proven innocent in special ed law," she explained. Gwen shared that going through the process actually helped her to understand that the litigation was not her fault.

I realized, yeah, we did a lot here. There's a lot of things in this portfolio that were done, so I felt better about that. In the first one, I think it was more trying to figure out, could I have done something different? And after going through the process, realizing, no, we were doing pretty well with this. So I felt better about that. Really looking into myself

and looking at all the paperwork and documentation that we had, I felt like we were doing the right thing.

#### **Theme 4: Guarding Against the Possibility of Future Litigious Experiences**

The fourth theme that emerged when the data was analyzed addressed the fourth research question, RQ4: How do participants describe what, if anything, they learned from the litigation process? As previously discussed, the participants all experienced a notable level of stress and throughout the process did not feel that they were responsible for the litigation nor were they any more confident in their current knowledge of school legal issues. Nevertheless, it became clear that each of the participants returned to their positions and made choices and/or changes that were aimed at either preventing, preparing, and guarding against future litigation. Within the theme of guarding against the possibility of future litigation, three sub-themes appeared. The first two sub-themes included feeling increasingly guarded when communicating with parents and with students. These two sub-themes included 9 out of the 11 participants. The third sub-theme that emerged was that all of the participants expressed a new or renewed focus in documentation and data collection.

**Parents.** For most of the participants, their reaction to the litigation was to guard their interactions with parents and/or students in some way in hopes that would decrease the future litigious situations. Many of the participants felt that they needed to guard themselves when communicating with parents and spent time thinking through how parents would respond or what they wanted to see or hear. Hailey developed a prescribed way of communicating with parents so as not to give too much information, but to keep them informed of student progress. Jeff similarly explained that it was critical for him to find a balance in how he communicated with parents because it was possible to give too much information while trying to keep them happy

and informed. Ellen explained that in her previous role as a teacher, as well as her role as a school counselor, she made sure to only give objective, not prescriptive, communication to parents to protect herself as well as the district.

Carrie explained that she was very cognizant of her communication with parents and was very deliberate in the wording of what she sent.

Well, it's always taken like an hour to write an email to parents. Now it's just an hour and then someone else reads it, and then I ponder it, and then I send it. So sending a parent email can be a whole day endeavor. But I do like having things in writing so that my words cannot be twisted. And I've always been that way, but this just kind of affirms that there are things I would just prefer to have record of in writing so it can be seen exactly what I said and what they said and what was agreed to. And then it can't be changed.

Donna's perspective on emails that she sent to parents was very similar to Carrie's.

It just made me more cautious about what I say and promise, especially with email. You want to be very careful what you are typing to the parents. Whereas in the past it was, you would just have a conversation. But this made me think twice about stating something and then having the parent come back and say "well, you said...!" It can get you in trouble. So it just makes you a little more cautious...Be careful what you say. Always think about is it going to come back. And it didn't really happen that much. But there were certain parents that you just wanted to be a little careful around.

Gwen, too, shared feeling as though she needed to be guarded when emailing and working with parents of her students.

I guess you start to get a little jaded because you go through the process. So what you think “oh, these parents are on board, we’re going to work really well together.” I always think that in the beginning, but there’s always that little voice of “but just in case...I’m going to make sure I have all of this written down.”

Beth stated the same sentiment that Gwen expressed when she said, there’s that part of you that's, um, there's always that worry in the back of your head, like, I think I have a decent relationship with this parent, but are they really electing to come back? You know, there's - the one that surprised me with the lawyer, I had had pleasant back-and-forth, back-and-forth up until...the IEP...a week later, it's a different person and I'm being hammered right and left for, you know, one small phrase here, one small phrase there. And um, yeah, so that - it's, it's hard because you just - there's always that little part of you in the back of your head wondering "are they really on board? Are we really a team with helping their child?" Or are they keeping track?

**Students.** Participants also spoke about feeling as though they needed to guard themselves when working with their students because they feared that words they spoke could spark future litigation. Ellen disclosed that while she did not change her teaching style with the student, she kept the litigious experience in the back of her head when interacting with students, especially with the one who had been involved in the litigation. Fiona explained that she guarded herself and expressed, “I do the best I can to not end up in a situation where my teaching will be questioned.” Beth, on the other hand, explained that she was more guarded when she was teaching.

I think sometimes I teach them guarded. Because, um, it's, it's very hard and it makes you, it's very challenging because it's, you've got, um, in both those cases - when I did

social skills - I was extremely guarded teaching because both those students - well not both, I'm sorry, one of them would go home and lie.

She later clarified what she had to do in order to guard herself better.

I'm saying, like, when you get to the middle and high school, you get some of these kids because of their emotional state, they twist things. And, um, sometimes on purpose, sometimes not. So I started having to have a student, another adult in there with me at all times. Now when I taught the [emotional support] and the alternate education program that had the mix, there was almost always another staff in there anyway, but there have been plenty of times where they had to call both in, just to verify.

Carrie explained that she did not want to be as creative in her teaching after the litigation because she was constantly concerned that her creative lessons could somehow be interpreted as violating something within a student's IEP. Not only was she more guarded in her teaching style after the litigation, she also found herself being more guarded in how she spoke with her students. She disclosed:

It's always in the back of my mind. Not only what I say, but how they could interpret what I say to repeat back to their parents. So sometimes I do say less. And I do think twice before talking. You know joking around used to be great. But what is said and laughed about and when repeated back to a parent without the jest becomes something they can complain about. So kind of tone and situational stuff changed.

Gwen explained a similar feeling but explained that was something that she believed had changed as litigation had risen in her district in recent years.

Sometimes. I think because, within the district there has been litigation over all, I think we start to question ourselves "oh, I probably shouldn't say that because that could come

back to me.” Those types of things. Where something you would have said 10 years ago, you might not say now. And usually it’s not something bad, but you just think a lot more before you say something or before you give something out...Where a few years ago you might have said something and you’re joking with students and one student says “my teacher said this” and you get a call and say “no, no, I didn’t mean that. It was a sarcastic joke kind of thing. And you didn’t hear it that way did you?” So it’s more of, let me say this differently because some students may take it literally than figuratively.

Amy also spoke about feeling as though she needed to guard herself, though she spoke about it in terms of her relationship with her students, not necessarily her teaching style. She explained that her focus had been on “finding the balance of caring for kids and letting them know that they are valued and loved and respected but also understand that there's got to be some level of guarding there that takes place.”

Guarding against future litigation looked different for each participant. Some expressed that their focus was on making sure that the parents had the information that they needed to see that their child was doing well. Others were concerned about the things that they said to the parents or the students being misconstrued. For each participant, the need to guard themselves was linked with the specifics of how the litigation had taken place. Each participant who felt guarded had those feelings because they did not want to see the litigation take place. Most did not feel that the quality of their teaching suffered as a result of them guarding themselves, but Carrie did state that she felt that the quality of the instruction that she gave before litigation was higher than the quality of instruction after the litigation.

**Data collection and documentation.** The final way in which participants guarded themselves against future litigation was to focus on data collection and documentation. When



asked to reflect on what they had learned from litigation, each of the 11 participants spoke about the need for data collection and documentation in some way.

Of the 11 participants, 7 of them explained that they preferred sending emails or other written communication when communicating with parents. Of the four remaining participants, one did not express a preference and three stated that they preferred phone or face-to-face conversations. Those who preferred emails explained that their preference was based on the fact that the emails could be saved and used as documentation should any future litigation arise with those families. They felt that the emails were an easy way to ensure that they were covered for the future. The two that stated that they preferred phone conversations had different reasons. Ivan explained that his preferred way of communicating with parents was related to convenience. Ellen and Jeff both shared that they did not like using email because they each felt that things could be misinterpreted in the written communication. Each participant did speak extensively about email and understood its power as a form of documentation that could be used by either side in litigation.

For Carrie, changing her data collection was a matter of making sure that she was collecting notes for herself and not showing them to others so that they could not be subpoenaed. Ivan explained that the litigation highlighted the importance of documenting and following exactly what is in the IEP at all times. He also explained that he learned to pay a lot of attention to what was put in emails. Like Carrie, he came to understand that what was put in emails or shared with others could be requested in litigation. Donna and Ellen also learned to be more cautious about the notes that they took.

Amy shared frankly that in the beginning of her first year of teaching, before the litigation took place, she wished she would have known how important documentation was to her job.

I wish I had known to take more time to, like record and document anecdotal things in the classroom. Even as far as, I had a phone conversation with this parent at this time, it was just, those things happen, kind of so haphazardly sometimes, and we don't think much of it. But looking back, keeping track of all those little things that you - because at the end of the day, some of those detail matter. And they mattered in the decision making, you know the final decision that was at hand.

Beth, on the other hand, felt as though she took notes and documented things that were taking place, but she wished she had known to keep that documentation. She started keeping all of her documentation for three years after the students would leave. She shared,

I wish, with the social skills that I kept even better notes, I think. I did keep every day, at the end of the classes that I had them, I would do my anecdotal, and I was doing my - but I think also, I wish I would have kept some emails, because you know, you're done with corresponding with the parent, I would delete it because there was no need, everybody was resolved. Then I wish I would have kept some of those, kind of as proof to say "Hey, no you said this was, you were agreeing to this."

She also explained the change in keeping documentation saying,

I hold onto everything for three years, because I know that at any point - and this is one of the other reasons why, I think, we're losing a lot of special education teachers also - is even though a student, like I just had eighth graders go graduate to the high school. If one of those parents decides to file due process, within the next three years, I'm held

accountable, even three years later. And so I have to hang on, and that's one of the other things, we hang onto - we have boxes of progress monitoring that we have to hold onto for three years, because if they get angry about something that happens two years from now, I could still be called in three years later. Um, and so, I never, in the past, it was when they left. You want to make sure they make the transition, but then that was it. You've started focusing on your current student. Well now you're not; you're focusing on your current student, but you're keeping all those ones in the background and you're checking to see how they're doing, because there's a little part of you that's worried that if something goes caput at the high school, you're gonna be called accountable as well. Because it just trickles down. So there's a lot more weight to it. That's what I've learned.

Gwen agreed with Beth's sentiment of the need to document everything and keep it for potential future litigation. She explained that from the litigation she learned the necessity of "Documentation. At all times. Even when you think it's not a big deal. Any contact you make, any observations you make, to document it all." Fiona, like Beth and Gwen, used her documentation to make sure that she was doing what needed to be done. She explained that since she moved into a more intensive special education placement a few years after the litigation, she was very serious about the data collection aspect of her job.

I make sure I know what I'm supposed to be doing with them and I make sure it gets done. And my records are wonderful as far as I'm concerned. I have documentation. I have physical proof. I enter information into IEPs. I enter information into the data recording system that we use weekly. There is no way you can tell me I'm not doing what I am supposed to be doing. And it's a lot of work.

Hailey's method of data collection and progress monitoring also became very precise and detailed in order to make sure that the student was getting exactly what he or she needed. This, she communicated, came about because of her experience with litigation. She explained,

I'm a little bit neurotic about every time I progress monitor I look at their goal, I see did they meet that goal? Are they making progress? Do I need to revise the goal? Is there something else I should be doing? If I'm not seeing progress in a month I'm calling my supervisors and asking if there's something else I should be doing. I don't know that I necessarily would be as concerned about it if I hadn't gone through the case.

Jeff and Karla also stated that they learned the importance of using progress monitoring and documenting interventions. Karla shared her experience of having to go through her data in order to prove that in litigation.

Your data is very analyzed and scrutinized, and everything's up for interpretation. You just have to be very cautious and make sure everything's clear and well-labeled. Even with just this past situation making sure, you know, you have - just everything needs to be, like, labeled and dated correctly, you know, because years can kind of go, you know. A student could be with you for a couple of years and you need to know what year this was versus the month. Just being - making sure you have interventions when needed if a student has been, you know, not making progress for a couple of weeks and making sure you're labeling intervention line of what that was.

Each of the participants took the litigation that they had experienced and found some way that they wished they had documented or collected data differently. All 11 of the participants spoke about those lessons and how they changed their methods of documentation as a result of

their experiences. Much of the motivation for these changes was making sure that they had the correct data collection in place should they have another student go to due process.

### **Summary**

The experiences of each of the participants were shared through individual and group profiles. The group profile briefly presented the critical information regarding the specific levels of support, and information regarding current positions. The individual profiles gave a closer look at the specific details of each participant including descriptions of their education, schools, and unique experiences. In addition, a connection was made to Kolb's (1984) Experiential Learning Theory identifying the stage that each participant was in at the time of the interview. As was predicted, each of the participants were at least in the reflective observation phase, and therefore able to reflect back on the experience within the interview.

The participants' information was told, in part, in their own words using direct quotations in order to assist in understanding the individual experiences. In spite of varied litigious experiences, each participant had elements that they shared with one another. These themes emerged and described the way that special education teachers in South Central Pennsylvania described their litigious experiences. The themes included: internalized stress, lack of confidence in present knowledge, lack of personal responsibility for the litigation, and guarding against the possibility of future litigious experiences. The themes were explained in a detailed manner and also relied heavily on participant quotes in order to illustrate the experiences.

## CHAPTER FIVE: DISCUSSION

### Overview

The purpose of this phenomenological study was to explore litigious experiences of special education teachers in South Central Pennsylvania. The qualitative study was conducted using the transcendental phenomenological qualitative approach (Moustakas, 1994). The study relied on an epistemological philosophical assumption and a pragmatist paradigm. The problem guiding the study was that educators have been found to be largely unaware of school legal issues, especially in the area of special education law (Call & O'Brien, 2011; Kessell et al., 2009; Militello et al., 2009; Shuran & Roblyer, 2012).

### Summary of Findings

The study sought to answer the following research questions:

**RQ1:** How do special education teachers in South Central Pennsylvania describe their litigious experiences?

**RQ2:** How do the participants describe their experience prior to litigation regarding preparation and self-perceived knowledge of special education law?

**RQ3:** How do the participants describe their experience during the process of litigation regarding support from superiors, the district, etc.?

**RQ4:** How do the participants describe what, if anything, they learned from the litigation process?

In order to answer these research questions, teachers of special education students who had experienced litigation as teachers and defendants were sought. A total of 11 individuals participated in the study and were interviewed to gain an understanding of their experience. Most were interviewed face-to-face in a location of their choosing, though two of them were

interviewed over the phone. Each were asked for personal anecdotal documentation from the time of litigation; however, none of them had this documentation or were willing to provide it. In one case, a participant alluded to the fact that she might have some kind of anecdotal documentation, but that providing it would violate the student's right to privacy, while another shared that she had recently shredded the anecdotal documentation she previously kept. Court documents were examined to validate the fact that the participants had been in litigation. In addition, they corroborated the participants' stories of the events surrounding the litigious experience.

The data was then analyzed using the method set out by Moustakas (1994). Data was examined using horizontalization with the help of qualitative analysis software, *Atlas.ti*. Through extensive analysis, four themes emerged that addressed all of the research questions. Those themes included: internalized stress, lack of confidence in present knowledge, lack of personal responsibility for the litigation, and guarding against the possibility of future litigious experiences.

### **Discussion**

This section aimed to align the themes found in the study with both theory and recent literature. This study addressed a large gap in the literature as there was almost no research on teachers and actual experience with litigation. For this reason, not all of the themes wholly aligned with the literature that existed on this topic.

This study relied on the theoretical model of Experiential Learning set out by Kolb (1984). All of the participants had the concrete experience of having been involved in one or more litigious experiences. All participants had at least moved into the reflective observation phase. Of the 11 participants, 2 stopped at the reflective observation phase, 2 others stopped at

the abstract conceptualization phase, and 7 of them made it to the final stage, active experimentation. This meant that each of the participants was at least able to reflect on the experience and most were able to create their own theories and use those theories in their practice.

### **Internalized Stress**

The first theme that arose within the study was that the participants experienced a great deal of stress that they internalized throughout the litigious experience regardless of the level of support they perceived from their district or building level supervisors. Nahal (2010) examined reasons that teachers leave the field of education and found that one of the reasons was teachers having great frustration with the fact that they were being asked to teach outside of their area(s) of expertise. Of the 11 participants, only Gwen had taken any school law courses for certification, placing the area of special education legal issues outside of their area of expertise, aligning with both Gajda (2008) and Gullatt and Tollett (1997). In addition, special education is an area that is constantly changing and, as new court cases are decided, the law also changes. Beth shared that, while she was still going to be teaching, she was moving out of special education because of the legal issues that had arisen in her current position. These issues caused her great stress and made her want to make a professional change. She shared that she was encouraging her special education colleagues to do the same as she had seen the stress they had experienced and the toll it was taking on them. While most of the other participants did not discuss changing careers as a result of the stress, they were deeply, personally impacted by the stress of the experience. Interestingly, of the 11 participants, only 2 of them were in the same position they were when the litigation occurred, though there were various reasons for the



changes in positions. The litigious experiences in which those two individuals were involved were very recent, happening less than two years prior to the interviews.

### **Lack of Confidence in Present Knowledge**

As previously discussed, only one participant had a school law course for certification and three had taken subsequent courses in graduate school courses. This means that of the 11 participants, 7 never had any courses on school law. Professional development was offered to 4 of the 11 participants, but 6 of them had never had any courses or professional development in this area. This aligned, once again, with Gullatt and Tollett (1997) and Gajda (2008) who discussed the fact that teachers were not being required to take courses in school legal issues for certification. This also aligned with Spanneut et al. (2012) who explained the fact that administrators who are making professional development decisions see other content as more pressing for the limited amount of time they have to do professional development. Schimmel and Militello (2007) and Wagner (2012) also echoed the idea that there is little professional development available to educators in the area of school legal issues. As a result, Call and O'Brien (2011), Grasso (2008), Kessell et al. (2009), and Schimmel and Militello (2007) all found that both administrators and teaching professionals had low levels of knowledge in school legal issues.

Despite the litigious experiences, the participants still did not feel that they had a firm understanding of special education school legal issues. Several of them explained that they were involved in parts of the process, but not the entirety. Some only had one meeting before they were called to testify where they basically practiced questions. Hailey explained that she was only at the hearing on the day that she testified, despite the fact that it lasted for multiple days. Two of the participants noted that no one followed up with them on the implications of the

decision after the litigation. Overall, the participants each discussed the fact that they were not confident in their knowledge of special education school legal issues and they still did not feel confident in their knowledge after the experience.

### **Lack of Personal Responsibility for the Litigation**

The third theme that emerged was that the participants did not take personal responsibility for the litigation. Recent literature did not discuss teachers taking responsibility for litigious situations. Bain (2009), Delaney (2009), and Findlay (2007) did discuss that having knowledge of school legal issues made educators more effective, professional, and accountable for their decision-making and practice. As discussed in regard to the second theme, the participants did not come to the litigious experience with a great deal of knowledge in the area of school legal issues. Some of them did express that they questioned their practices or how they had handled the situation, but they each came to the conclusion that the primary blame did not rest on them in the end. That is not to say that all of the participants should have taken personal responsibility, though, as each case was different. In several cases, the participant essentially inherited part or all of the litigation as events had taken place before they had the student or even before they were hired.

### **Guarding Against the Possibility of Future Litigious Experiences**

The final theme that emerged was the fact that the participants found themselves guarding against the possibility of future litigious experiences. There were various ways in which this was done, including altering interactions with parents or students and paying attention to documentation and data collection. Because there was so little research in the area of school legal issues and teaching professionals, there was no research to reference in relation to this theme. Shuran and Roblyer (2012) and Zirkel (2014) discussed this gap in the literature,

explaining that it would be beneficial to have additional information on how schools respond to litigation. Because of the stress of the experiences, the participants explained that they had each done things a little differently in order to prevent or prepare for future litigation. Several of the participants also discussed the fact that they knew they could be held personally responsible for litigation that occurs, which is supported by the literature (Bain, 2009; Delaney, 2009; Findlay, 2007; Schimmel & Militello, 2007). For those reasons, the participants took what they had gained from the experience and applied that to the way in which they taught, interacted, progress monitored, and otherwise worked with their students. This supports the ideas of Kolb's (1984) Experiential Learning Theory and shows that many of the participants were at a point in the experience where they could take what they had learned and either construct theories or actually put the knowledge that they had gained into practice.

## **Implications**

### **Implications for Teachers**

This study addressed teachers of special education students and their experiences with litigation. As a result, the themes that emerged related specifically to teachers. As discussed in the third theme, the participants did not take personal responsibility for the litigation. In each case they identified different factors that led to the litigation that took place. In several cases the teachers inherited the entire litigation or a contentious situation. In addition, the participants largely lacked training on special education legal considerations. The implications of these findings are that teachers can experience litigation at any point in time whether it begins before they even have the students or whether it is something that their actions contributed to because of negligence or simply a lack of training and understanding. Jeff said it well when he explained how he conveys the experience to those he supervises.

I tell teachers now- I have 17 or 18 teachers underneath me and then I have a couple of [emotional support] teachers and I tell them that due process is nothing to- don't think you're invincible. When it happens it will rip open scabs that you didn't even know were there. I think that process prepared me. But, you know you can't be prepared for it. The only thing you can do, and to be quite honest it probably...I love special education and doing what I do, but sometimes you know when you are walking into hot water and into a mess.

In addition, participants largely noted that they wanted to improve their data collection methods and their understanding of IEPs so that they were prepared for any future litigious situations. Teachers who have not been involved in litigation can be mindful of the participants' experiences and proactively examine their own documentation and understanding of student IEPs. While this may not prevent a teacher from going through litigation, it can add a level of preparedness and professionalism. It may or may not give a teacher confidence in the situation as all participants expressed feeling significant stress, but learning from the participants' experiences can enable a teacher to at least have a higher level of self-assurance when entering into a litigious experience of his or her own.

### **Implications for Administrators**

The varied experiences of the participants included administrators who were supportive and gave encouragement throughout the process and those who did not engage the participants or give assistance until they were asked. Regardless of the level of support provided, each of the participants internalized stress about the situation. Administrators may or may not be able to take away the stress by being supportive. What they can do is be mindful of the impact that the

litigation could have on their teachers and do what they can to encourage when possible or find additional ways to minimize the stress.

Administrators also need to be aware of the fact that, while special education litigation continues to rise and is the leading cause of litigation in education, their teachers are not being educated in school legal issues (Gajda, 2008; Gullatt & Tollett, 1997; Zirkel, 2014; Zirkel & Machin, 2012). Not only were they unaware, even after going through a litigious experience, they still lacked confidence in their knowledge of school law. While time for professional development may be scarce, giving teachers training on how to properly read IEPs, progress monitor, or on current issues leading to litigation could be beneficial. While this would likely not eliminate all future litigation, it would enable teachers to have followed and documented proper procedures and potentially save the district money.

### **Implications for Higher Education**

As previously discussed, special education litigation continues to grow (Gullatt & Tollett, 1997; Militello et al., 2009; Schimmel & Militello, 2007; Shuran & Roblyer, 2012; Zirkel, 2014; Zirkel & Machin, 2012). Despite this growth in litigation, the literature in this area is sparse, at best. The participants' experience with education in the area of school legal issues was minimal, aligning with both studies by Gajda (2008) as well as Gullatt and Tollett (1997). The participants lacked both information and training in this area as well as confidence in their knowledge. Certification programs should be mindful of the trends in litigation and consider better preparing their students for the possibility of going through a litigious experience at some point within their careers, regardless of whether their actions contributed to it or not. According to the research, giving the teacher candidates this training could increase their professionalism as

well as decrease litigation in the future, making it beneficial training to provide (Delaney, 2009; Militello et al., 2009; Wagner, 2012).

Because there remains a large gap in the research available in the area of special education litigation, institutions of higher education should take steps to close the gap through encouraging future research in this area. The primary focus of the literature to this point has been on administrator experience and preparation with school legal issues (Findlay, 2007; Grasso, 2008). This study highlighted the fact that more research is needed in the area of teacher experience and preparation with school legal issues. In many cases, the teachers are the ones who have the daily contact with the students and therefore can be an integral part of the litigation. Researching this gap is critical in order to better equip teachers as well as understand the experiences surrounding special education legal issues.

### **Limitations**

Once the study was conducted, several factors arose that limited the generalizability of this study. These limitations included the geographic setting, type of school, and participant limitations.

#### **Geographic Setting**

As previously discussed, the setting of the study was South Central Pennsylvania, a loosely defined area within a single state. There were benefits to choosing this location, including the fact that I could conduct a majority of the interviews face-to-face. As a result, the participants only came from four different counties within the state of Pennsylvania. The geographic factor limited the ability to universally generalize the findings of the study.

### **Type of School**

A variety of contacts were utilized to find the participants for this study. As the researcher, I made contact with individuals in major metropolitan areas, farmland communities, and suburban settings. While I used my contacts in rural as well urban schools, the majority of the participants came from suburban settings. In several cases, the school that the individual was working in at the time of the interview was urban or rural; however, their litigious experience took place in a suburban setting. Once again, this limited the ability to universally generalize the findings of this study.

### **Participant Limitations**

The participants themselves were limiting factors in the study. Diversity was sought but was not the focus of the study. First, all 11 participants were white or Hispanic. Second, of the 11 participants, 9 of them were female. Finally, all of the participants were working as educators or had retired as educators at the time of the interview. Their viewpoints did not include having been asked to leave or fired from a position as a result of the litigious experience. These participant factors could also limit the ability to universally generalize the findings. It is unknown whether having a more gender or racially balanced group of participants would have impacted the results; however, these participants were not wholly representative of the education workforce in regard to those two factors.

### **Recommendations for Future Research**

While this study addressed the gap in the literature regarding teachers and experience with special education, the gap is still very large. This study was limited geographically, and additional studies could be done in different areas of the country to examine teachers' experience with special education litigation. Future studies could also be done paying attention to

demographics such as race or gender. This could give a greater understanding of the commonalities that teachers have when going through litigious experiences. It could be especially beneficial to conduct a study with two groups, one where all of the participants have had courses on special education school legal issues and another where none of the participants have had these courses in order to compare the experiences.

In the area of South Central Pennsylvania there are several districts that are notorious for having special education litigation. As a result, a few of them have restructured at the district level in order to address litigious situations as they arise. A case study in which one of these districts was examined could be beneficial in understanding how schools handle the rise in special education litigation and could provide a model for other school districts to follow or learn from in the future.

Within this study, 8 of the 11 participants were teaching at the middle school level or in a secondary building that included both middle school and high school at the time of the litigation. This may have simply been a coincidence, but future research could examine the level at which the majority of special education litigation occurs. This could enable school districts to have a better awareness of factors leading to litigation and could assist in addressing these issues before they become litigious and costly. It would be beneficial to not only look at the statistics in this area, but also to speak with the families bringing the litigation to gain a better understanding of the factors leading them to decide to proceed with the litigation against the school.

Due to the fact that internalized stress was a prominent theme for all participants, future studies involving teachers could benefit from using a stress inventory. This could be as simple as using a Likert scale to rate the stress at different times in the process. It could also be more involved and examine the stress and coping responses of the participants. In addition, it could be



beneficial to discuss whether the participants sought or received any counseling after their litigious experiences.

Because the gap in the literature is still so large, any additional research in the area of educators and special education would be beneficial. This research not only would address a gap in the literature but would also be informative to the practice of education. Special education litigation continues to rise, a trend seen by researchers as well as the participants of this study (Gullatt & Tollett, 1997; Militello et al., 2009; Shuran & Roblyer, 2012). Gathering and disseminating research in this area has the potential to assist districts, administrators, and teachers in educating more effectively and responding to situations in the best way possible.

### **Summary**

As the researcher, my greatest hope at the conclusion of this study is that others continue to do research in this area in order to better prepare and serve educators who experience litigation. This study only touched on the gap that exists in the literature concerning education litigation. Filling this gap is critical to address the problem of the growing trend of education litigation (Gullatt & Tollett, 1997; Militello et al., 2009; Schimmel & Militello, 2007; Shuran & Roblyer, 2012; Zirkel, 2014; Zirkel & Machin, 2012). Educators need to receive better training in order to help them avoid missteps that could lead to litigation. They also need to be better prepared for the fact that the litigation could happen regardless of how well they performed their jobs. In addition, educators need to be better supported as it was clear from this study that the process was a deeply stressful time for all of the participants. Many of the participants in this study were eager to have the opportunity to share their experience and allow others to learn from it. As discussed previously, this study did have implications for different groups in the field of

education. Because education litigation continues to grow, finding additional theoretical and practical knowledge in this area is critical to each of these groups

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## APPENDIX A: Interview Questions

### *Pre-Litigious Experience*

1. Please tell me a little bit about yourself.
2. What is your current level of education?
3. Please describe your teacher certification program.
4. Did it include any discussions of school legal issues or courses specific to school law?
5. What was your level of education at the time of the litigation?
6. Was professional development ever offered in the area of school legal issues? If yes, did you ever take advantage of professional development in this area?
7. Please describe your teaching experience before the litigation occurred.

### *Litigious Experience*

8. How did you become aware of the litigation?
9. Please describe discussions or preparations that you had with administrators, supervisors, or other district personnel throughout the process.
10. What kind of support did you have throughout the process from those in the district?
11. Do you believe that you received an appropriate amount of support from your district, school, or agency?

### *Post-Litigious Experience*

12. Do feel you learned anything from the litigation process? Please describe.
13. Has your knowledge of school law changed as a result of the litigation?
14. What do you wish you had known before the process occurred?
15. How has your experience impacted the way you teach your students?
16. How has your experience impacted the way you interact with parents?

17. How has your experience impacted the way you interact with those in your school?
18. Have you used your experience and current knowledge to inform colleagues and other professionals of school legal issues in the area that you experienced litigation



**APPENDIX B: Recruitment Form**

Dear [Recipient]:

As a graduate student in the School of Education at Liberty University, I am conducting research as part of the requirements for a doctoral degree in Educational Leadership. The purpose of my research is to explore litigious experiences of special education teachers, and I am writing to invite you to participate in my study.

If you have participated in special education litigation as a teacher, and are willing to participate, you will be asked to participate in a face-to-face interview and, if possible, provide anecdotal documentation that you have from your experience. It should take approximately 2 hours for you to complete the procedures listed. Your participation will be completely anonymous, and no personal, identifying information will be required.

To participate, please contact me to schedule an interview via email at xxxxxxxxxxxx@xxxxxx or by phone at (XXX)XXX-XXXX.

A consent document is attached to this letter. Please sign the consent document and return it to me at the time of the interview

Sincerely,

Shannon Madara  
Doctoral Candidate  
Liberty University

## APPENDIX C: Consent Form

The Liberty University Institutional  
Review Board has approved  
this document for use from  
5/27/15 to 5/26/16  
Protocol # 2223.052715

### CONSENT FORM

Special Education Teachers' Experience with Litigation:  
A Phenomenological Study  
Shannon Madara  
Liberty University  
School of Education

You are invited to be in a research study of current and former special education teachers and their experience with litigation. You were selected as a possible participant because of your experience with special education litigation. I ask that you read this form and ask any questions you may have before agreeing to be in the study.

Shannon Madara, a doctoral candidate in the School of Education at Liberty University is conducting this study.

#### **Background Information:**

The purpose of this study is to better understand the experience special education teachers have had before, during, and after being involved in litigation.

#### **Procedures:**

If you agree to be in this study, I would ask you to do the following things:

- Participate in an audio-recorded interview that will take approximately 1-2 hours in which you will answer questions about your experience.
- Provide any anecdotal documentation you are willing and able to share from your experience with litigation. This may include journals, notes, or other forms of documentation. By providing this documentation, you are giving the researcher the right to use the information provided in the study.

#### **Risks and Benefits of being in the Study:**

The study has several risks:

Due to the sensitive and potentially confidential nature of the topic, there is risk of negative social or legal repercussions. The researcher will take precautions by using pseudonyms, locking and password protecting the data, and encouraging participants not to divulge the confidential specific information about the court case(s) they were involved in to minimize these risks.

There is no direct benefit to the participants of the study; however, the indirect benefits include enabling other educators and teacher preparation programs to understand the experience of special education litigation and make changes to better their own practices.

#### **Compensation:**

There is no compensation provided to participants for this study.

The Liberty University Institutional  
Review Board has approved  
this document for use from  
5/27/15 to 5/26/16  
Protocol # 2223.052715

**Confidentiality:**

The records of this study will be kept private. In any sort of report I might publish, I will not include any information that will make it possible to identify a subject. Research records will be stored securely and only the researcher will have access to the records. Pseudonyms will be used for not only the participant, but any other individuals, schools, or entities discussed in the interview. Audio recordings of the interviews will be erased securely at the conclusion of the study. The transcripts will be stored securely for the required three years and then destroyed.

**Voluntary Nature of the Study:**

Participation in this study is voluntary. Your decision whether or not to participate will not affect your current or future relations with Liberty University. If you decide to participate, you are free to not answer any question or withdraw at any time without affecting those relationships. If you decide to withdraw during the study, any collected data, including recorded interviews will be destroyed upon your withdraw. You may contact the researcher, Shannon Madara at the contact information below if you have questions at any time or should choose to withdraw.

**Contacts and Questions:**

The researcher conducting this study is Shannon Madara. You may ask any questions you have now. If you have questions later, **you are encouraged** to contact her at XXXX@XXXX or (XXX) XXX-XXXX or her advisor, Dr. Andrea Beam at XXXX@XXXX or (XXX) XXX-XXXX.

If you have any questions or concerns regarding this study and would like to talk to someone other than the researcher, **you are encouraged** to contact the Institutional Review Board, 1971 University Blvd, Suite 1837, Lynchburg, VA 24515 or email at [irb@liberty.edu](mailto:irb@liberty.edu).

*Please notify the researcher if you would like a copy of this information to keep for your records.*

**Statement of Consent:**

I have read and understood the above information. I have asked questions and have received answers. I consent to participate in the study.

(NOTE: DO NOT AGREE TO PARTICIPATE UNLESS IRB APPROVAL INFORMATION WITH CURRENT DATES HAS BEEN ADDED TO THIS DOCUMENT.)

The researcher has my permission to audio-record me as part of my participation in this study.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Investigator: \_\_\_\_\_ Date: \_\_\_\_\_

## APPENDIX D: Sample Memoing and Journal

September

- Worked on identification of participants
- Most have been eager to assist → a few are concerned about selecting private location because of details of case
- Coded Interviews A and B
  - Found evidence that both became more guarded with students and more concerned about detailed documentation
  - Focus on trying to educate regular ed teachers on what they need to do regarding IEPs
- Contacted interviews C, D, E, F, G
- Interviewed C
  - Disillusionment evident in interview C.
  - Coming from work made it difficult to turn off the empathetic counselor attitude and focus on the research questions. Had to mentally keep myself from saying too much to emphasize feelings being stated. Did this by focusing on the specific wording of the questions.

**APPENDIX E: Sample Transcript Approval Letter**

Dear [Recipient]:

Thank you very much for participating in my dissertation and allowing me to interview you. Attached you will find a transcript of the interview. You are invited to review the transcript. Please inform me if you have any questions or concerns about the transcript. If I do not hear from you in the next two weeks, it will be assumed that you do not have any concerns and are approving of the transcript.

Please note, pseudonyms have been inserted for names, schools, etc.

Sincerely,

Shannon Madara  
Doctoral Candidate  
Liberty University

## APPENDIX F: Sample Theme Approval Letter

Dear [Recipient]:

Once again, thank you for participating in my dissertation study. To increase the trustworthiness and reliability of my study, I am sending you as the participant the preliminary themes of the study and inviting you to give feedback. Please keep in mind that the feedback may or may not impact the overall themes. You will find the preliminary themes below:

1. The educators carry out their jobs in such a way that they are preparing for additional litigious experiences. They operate as if this could happen again at any time by collecting data and collaborating.
2. Regardless of the level of support given by the district, school, or agency, each participant internalized some level of stress from the experience.
3. The participants did not take personal responsibility for the litigious experience. This is not a negative factor, rather the participants recognized that there were additional factors that may or may not have been in their control that contributed to the litigation. They may have wrestled with questions of what they could have done differently, but none came to the conclusion that they were personally responsible for the litigation.
4. None of the participants felt as though they were confident in their understanding of school legal issues, even after the litigation. Some have used their current knowledge to inform others on a procedural level, but there is still a lack of understanding among the individuals.

In addition, I am informing you of how your perceived support level was classified and the criteria that led to this classification.

**Perceived support level:**

**Criteria:** “Participants were rated as having a “High” level of support if they used statements such as “totally supported” and affirmed that they felt they had an adequate amount of support from those in their district and building. Participants were rated as perceiving a “Medium” level of support if they agreed that they had adequate support from either their building or district, but identified one or more minor ways that they wished they had been given more support.

Participants were listed as having a “Low” level of perceived support if they stated that they did not feel that they had been adequately supported and/or were able to articulate major ways that they wished they had been given more support.”

Please inform me if you have any questions or concerns about the themes or support level. If I do not hear from you in the next two weeks, it will be assumed that you do not have any concerns and are approving of the themes and support level.

Sincerely,

Shannon Madara  
Doctoral Candidate  
Liberty University