

A QUANTITATIVE ANALYSIS OF VIRGINIA PUBLIC SCHOOL SPECIAL EDUCATION
DUE PROCESS CASES AND THEIR RESOLUTIONS FROM 2004-2016

by

Valerie A. Beaudoin-Saunders

Liberty University

A Dissertation Presented in Partial Fulfillment

Of the Requirements for the Degree

Doctor of Education

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ABSTRACT

Special education-related lawsuits are a concern to school systems. They are time-consuming, expensive, and contentious. School and parental relationships become strained when litigation is involved. This study analyzed data from the Virginia Department of Education's due process database over a 12-year period of time to note common disabilities involved in special education litigation. Specific characteristics from each case were noted to determine if there was a trend in the frequency of due process cases: the sex, grade, age, disability, and outcome. The data was obtained from the Virginia Department of Education's Office of Dispute Resolution and Administrative Services. The purpose of this descriptive content analysis study was to see if the total frequency of types of disability due process cases and outcomes were the same over the last 12 years in the state of Virginia among K-12 public school students. The types of disabilities examined came from the 13 categories of special education as defined by IDEA. The categories were autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment, including blindness. The data collected was in the form of frequency counts that were analyzed using a frequency tables and trend charts. Results showed that parents were less likely to win their due process case than the local education agencies.

Keywords: disabilities, disputes, due process, IDEA, outcomes, special education

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Dedication

This study is dedicated to my husband, Monty and to my children: Carter, Christa Ann, Michaela, Olivia, Gabriella, Monteanna, Preston, and Jesse, who lovingly encouraged me throughout the doctorate process. Without their love, support, patience and belief in me, I would not have been able to finish. Thank you for always believing in me and for encouraging me to finish “no matter what”. I could not have completed this process without you all!

I also want to give a shout out to my sister, Denise, and to my parents, Joseph and Jane, for their unending support throughout this process. Even though they were kept in the dark about my doctorate journey; my sister learned of my study a few months before defense; my mom did not know I was working on a doctorate degree until she received a phone call saying I passed my dissertation defense; and my dad only learned of my pursuit three months before graduation, they inadvertently helped me to succeed through their never ending encouragement of me in all that I did.

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List of Abbreviations

Administrative law judge (ALJ)

Americans with Disabilities Act (ADA)

Applied behavioral analysis (ABA)

Attention deficit/hyperactivity disorder (ADHD)

Autism spectrum disorder (ASD)

Center for Disease Control (CDC)

Code of Virginia (COV)

Education for All Handicapped Children Act of 1975 (EAHCA)

Education for All Handicapped Children Act (EHA)

Elementary and Secondary Education Act (ESEA)

Emotional disturbance (ED)

Free Appropriate Public Education (FAPE)

Independent educational evaluation (IEE)

Individuals with Disabilities Education Act (IDEA)

Individualized Education Program (IEP)

Institutional Review Board (IRB)

Intellectual disability (ID)

Least Restrictive Environment (LRE)

Local Education Agencies (LEA)

Multiple disabilities (MD)

National Education Association (NEA)

No Child Left Behind Act (NCLB)

Office of Civil Rights (OCR)

Office of Special Education and Rehabilitative Services (OSERS)

Other health impairment (OHI)

Specific learning disability (SLD)

Speech or language impairment (SLI)

Virginia Department of Education (VDOE)

Virginia Office of Protection and Advocacy (VOPA)

CHAPTER ONE: INTRODUCTION

Overview

Chapter One of this study describes the research background, which is based from archival information found on the Virginia Department of Education (VDOE) website. The section entitled problem statement describes the context of this study while discussing why parents of students with disabilities file due process. The purpose statement expresses the goals and definitions for this study while the significance of the study states the importance of this archival study for school systems and parents of students with disabilities. Chapter One of this study concludes with research questions and special education definitions.

Background

Prior to the 1970s, states were allowed to deny children with disabilities access to a public education because they were not protected under the law. A study conducted by McGovern (2015) suggested it was not long ago that children with a disability were not allowed to be educated in the same class with their non-disabled peers. Students with disabilities were either totally excluded from public schools or did not receive an education that was appropriate to their needs (Katsiyannis, Yell, & Bradley, 2001). A Senate report regarding Public Law 94-142, the Education for All Handicapped Children Act (1975) noted that parents of students with disabilities had begun to realize that their children were being denied services guaranteed under the Constitution. Beginning in the early 1970s, lawsuits from advocates of students with disabilities, including the parents, began to crop up. The assertion was that schools were either excluding students with disabilities or violating their rights to an appropriate education (Turnbull & Turnbull, 2000). The first law that specifically focused on students with disabilities and their needs was the Education of the Handicapped Act of 1970 (EHA). The EHA guaranteed children

with disabilities and their families access to a free appropriate public education (FAPE) and special education and related services tailored to each students' special needs. Since that time, special education law has not only been revised four more times but has also become more comprehensive and has included more parental involvement. By 1972, two landmark special education cases changed the law forever, which paved the way not only for students with disabilities to be educated with their non-disabled peers, but also gave a voice to parents to challenge the way their child with a disability was being educated in school. These right-to-education suits required school systems to offer an individualized education program (IEP) for all students with a disability in the least restrictive environment (LRE). By 1975, the consent decree in the landmark special education cases was organized on the governmental level and became known as the Education for All Handicapped Children Act (EAHCA). With the enactment of EAHCA, the law now mandated that students with disabilities be given the right to an education, from preschool through secondary school, at public expense which met the standards of the state education agency and in accordance with a specially designed IEP (Katsiyannis et al., 2001). At that time, Congress also began to recognize that parents were beginning to advocate for educational services for their children with disabilities by filing legal action to challenge denied educational services. The EAHCA responded to the parents' concerns by creating procedural safeguards that ensured a free appropriate public education (FAPE) for each child with a disability (Mead & Paige, 2008).

In 1990, EAHCA was amended and changed to the Individuals with Disabilities Education Act (IDEA). IDEA revamped some wording in the EAHCA and added some wording to the original act, but it did not increase parental rights nor did it directly impact the rights as specified in the amended EAHCA. IDEA was amended in 1997 and, for the first time, impacted

the parents' rights to their child's Individualized Education Program, including placement. IDEA 1997 not only included parents as decision-makers in their child's IEP, but parents were now listed as the first participants who must be included in the creation of their child's Individualized Education Program. IDEA was reauthorized in 2004, which both positively and negatively impacted parental rights. Even with all the rights afforded to the parents of a child with a disability and the child, conflicts continually arise between local education agencies (LEA) and the parents, which often caused the parents to sue their LEA based on the requirements of IDEA (2004).

Several issues may lead to due process hearings, which can cost time, money, and relationships trying to resolve. Shuran and Roblyer (2012) conducted a study on the characteristics of special education litigation in Tennessee schools. According to Shuran and Roblyer (2012), special education litigation was a consistent and growing concern between school systems and parents, which resulted in requests for litigation to resolve the disputes. The most often contested issues noted by parents of children with disabilities in Tennessee were a lack of training and preparation for educators in the area of special education, miscommunication between parents and the LEA, and a lack of administrative support at their child's school. Though their study was limited to the special education population in Tennessee, their findings suggested that work needs to be done to prevent parents of children with disabilities from suing school systems. Virginia experienced several due process hearings in special education from 2004-2016, which was costly to the school system and the parents, not only monetarily but also in time and relationships.

In Virginia, over 250 due process cases have been brought before the Office of Resolution between 2004-2016. The implications of these cases suggest that parents and school

systems are not on the same page when it comes to interpreting special education procedural safeguards and a child's IEP, and thus require mediation in order to resolve the misunderstandings. This content analysis study investigated several K-12 public school students' due process cases in the state of Virginia to determine the total frequency regarding types of disability due process cases, most frequently violated FAPE rights, and the outcomes of the due process cases over the last 12 years.

Problem Statement

Litigation for resolving disputes has significantly increased over the past 30 years (Zirkel, 2007). Special education is no exception. Since the time President Gerald Ford enacted Public Law 94-142, the Education for All Handicapped Children Act of 1975 (EAHCA), which is now known as the Individual with Disabilities Act of 1990 (IDEA, 2004), there has been no shortage of lawsuits against school districts. According to Katsivannis et al. (2001), "there is perhaps no area of educational law that has been more highly litigated than the education of students with disabilities" (p. 326). Shuran and Roblyer (2012) noted that school districts do not intentionally set out to neglect requirements associated with IDEA. Several reasons may contribute to special education litigation are misinterpretation of special education requirements, lack of parental involvement, lack of preparedness on the part of the educators, poor Individualized Education Programs (IEPs), and the increased incidence of autism spectrum disorder (Shuran & Roblyer, 2012). The problem is that there is not enough information, specifically information which identifies a common factor among Virginia K-12 public school students with disabilities, that determines why the school systems and parents have gone to due process hearings over the last 12 years.

Purpose Statement

The purpose of this descriptive content analysis study was to examine if the total frequency of types of disabilities due process cases were the same over the last 12 years in the state of Virginia among K-12 public school students. This descriptive content analysis described the percentage of several variables: types of disabilities, sex, grade level, age, and outcome of due process hearing cases, in regards to local education agency (LEA) win versus parent win. The types of disabilities examined served as the independent variable in this study and included the categories of autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment, including blindness. The data collected was placed in the form of frequency counts that were analyzed using a frequency tables and trend charts.

Significance of the Study

Prior to 1970, children with disabilities were not provided the same educational opportunities as children without disabilities. They received an education that did not support their needs or were excluded totally from being educated with children without disabilities (Katsiyannis et al., 2001). During the early 1970s, parents of children with disabilities began to speak up about their children's exclusion from and/or inadequate public education by suing their states (Turnbull & Turnbull, 2000). In 1972, two landmark court cases, *Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania* and *Mills v. Board of Education* established laws that required states to provide children with disabilities an appropriate education as with students without disabilities. Since the time of the two landmark court cases, parents of students with disabilities in all states began to voice their dissatisfaction

with the way school systems were providing an education to their children, which resulted in the enactment of federal legislation that assured the educational rights of students with disabilities, including the right to have a free and appropriate public education (FAPE) (Turnbull & Turnbull, 2000). Over the course of several years, parents of students with disabilities have challenged the right to a free and appropriate public education many times throughout the court systems. Special education-related lawsuits have become a concern to school systems because they are time-consuming, expensive, and contentious (Shuran & Roblyer, 2012). Due process hearing cases are time-consuming because they can take several months to resolve. When parents file a due process hearing request, the district has 15 days to attempt to resolve the issue. If the issue cannot be resolved, then a 45-day due process hearing timeline begins (Office of the Superintendent of Student Instruction [OSPI], 2016). Due process hearings are costly to school districts. In a report titled *Rethinking the Special Education Due Process System* (Pudelski, 2016), Pudelski noted that the average legal fee for a district level due process hearing is over \$10,000; while attorney fees average over \$19,000, expenditures associated with the verdict average almost \$16,000 and districts who choose to settle with a parent prior to the due hearing averages close to \$24,000. School and parental relationships are strained when litigation is involved. Stress levels are high during due process complaints, hearings, or litigation, which can cause school personnel to leave their district (Pudelski, 2016). From the 1980s to the early 2000s, the due process system was really the only way parents would know if their school district was honoring IDEA. Due process hearings peaked during those years and were focused mainly on the desires of the parties as opposed to the educational needs of the child (Pudelski, 2016). However, with the No Child Left Behind Act of 2001 and the reauthorization of IDEA in 2004, both (federal and state education agencies), the U.S. Department of Education and state

departments of education began monitoring school districts to ensure they complied with special education statutes and regulations (Pudelski, 2016). Even with parents' increased involvement in and awareness of their child's special education program and the new accountability system put into action, parents in Virginia continue to file due process hearing cases against their school districts claiming a failure to provide FAPE. This study is important because by examining which types of cases are being brought to litigation and the frequency at which these cases are being brought before hearing officers, educators and stakeholders may have a better understanding of how to either prevent or reduce litigation.

Research Questions

RQ1: What are the frequencies of due process wins and losses for the local education agency (LEA) and the parents of the student with a disability from 2004-2016 in the state of Virginia among K-12 public school students?

RQ2: What are the frequencies of types of special education disabilities brought to due process from 2004-2016 in the state of Virginia among K-12 public school students?

RQ3: What trends emerge among the types of special education disabilities brought to due process from 2004 to 2016 in the state of Virginia among K-12 public school students?

Definitions

1. *Autism* - Autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engaging in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and

- unusual responses to sensory experiences (Center for Parents Information and Resources , 2012).
2. *Deaf-Blindness* - Deaf-blindness is concomitant [simultaneous] hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness (Center for Parents Information and Resources, 2012).
 3. *Deafness* - Deafness is a hearing impairment so severe that a child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance (Center for Parents Information and Resources, 2012).
 4. *Due process hearing* - A due process hearing is a formal hearing in which both parties have the right to subpoena, examine, and cross-examine witnesses (Yell, Ryan, Rozalsk, & Katsiyannis, 2009).
 5. *Education for All Handicapped Children Act (EHA)* - EHA was enacted in 1970, the predecessor and framework to the EAHCA (Weber et al., 2004).
 6. *Education for All Handicapped Children Act of 1975 (EAHCA)* - EAHCA guaranteed access to public education by offering federal funding to states that established policies to assure that all children with disabilities were given access to a free and appropriate public education (FAPE) (McGovern, 2015).
 7. *Elementary school* - An elementary school in Virginia is a school with grades kindergarten through five (Virginia Department of Education [VDOE], 2016a).

8. *Emotional Disturbance* - Emotional disturbance is a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance. This condition may include an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; and a tendency to develop physical symptoms or fears associated with personal or school problems. This term includes schizophrenia. This term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance (Center for Parents Information and Resources, 2012).
9. *Free Appropriate Public Education (FAPE)* - FAPE is special education and related services that have been provided at public expense, under public supervision and direction, and without charge (McGovern, 2015).
10. *Hearing Impairment* - A hearing impairment is an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but is not included under the definition of "deafness." (Center for Parents Information and Resources, 2012).
11. *High school* - A high school in Virginia is a school with grades nine through 12 (VDOE, 2016a).
12. *Individualized Education Program (IEP)* - An IEP is a single written document laying out the plan for special education and related services for a student with disabilities (Weber, Mawdsley, & Redfield, 2004).

13. *Individuals with Disabilities Education Act (IDEA)* – IDEA is a federal funding statute that needs Congressional reauthorization every 10 years or so and that has various “strings” attached, including the school district’s obligation to provide free appropriate public education in the least restrictive environment (Zirkel, 2007).
14. *Intellectual Disability* - An intellectual disability is significantly sub-average general intellectual functioning, existing concurrently [at the same time] with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child’s educational performance (Center for Parents Information and Resources, 2012).
15. *Least Restrictive Environment (LRE)* - LRE is the placement of children with disabilities that allows for their being included in academic and non-academic settings to the maximum extent apt with students who are not disabled (Weber et al., 2004).
16. *Mediation* - Mediation is a form of assisted dispute resolution in which participants come together to resolve their differences with the assistance of a neutral third party (Cortiella, 2008).
17. *Mediator* - A mediator is a trained, impartial facilitator who helps school staff and parents resolve their disagreement in an informal setting (Cortiella, 2008).
18. *Middle school* - A middle school in Virginia is a school with grades six through eight (VDOE, 2016a).
19. *Multiple Disabilities* – Multiple disabilities refers to concomitant [simultaneous] impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), the combination of which causes such severe

- educational needs that students cannot be accommodated in a special education program solely for one of the impairments. The term does not include deaf-blindness (Center for Parents Information and Resources, 2012).
20. *Orthopedic Impairment* - Orthopedic impairment is a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures) (Center for Parents Information and Resources, 2012).
21. *Other Health Impairment* - The term other health impairment refers to having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that (a) is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (b) adversely affects a child's educational performance (Center for Parents Information and Resources, 2012).
22. *Resolution Process* - The resolution process is a time the LEA can try to resolve concerns with the plaintiff with a resolution meeting or mediation (VDOE, 2013).
23. *Section 504 of the Rehabilitation Act of 1973* - Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities in programs or activities that receive federal financial assistance (Katsiyannis et al., 2001).

24. *Specific Learning Disability* - A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disability; of emotional disturbance; or of environmental, cultural, or economic disadvantage (Center for Parents Information and Resources, 2012).
25. *Speech or Language Impairment* - A speech or language impairment is a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance (Center for Parents Information and Resources, 2012).
26. *Traumatic Brain Injury* - Traumatic brain injury is an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma (Center for Parents Information and Resources, 2012).

27. *Visual Impairment, Including Blindness* - A visual impairment is an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness (Center for Parents Information and Resources, 2017).

CHAPTER TWO: LITERATURE REVIEW

Overview

Special education laws have evolved over the past half century from a type of totalitarian society where the government dictated the educational future of a child with a disability to a present day shared authority where control of the educational future of a child with a disability lies among the school system and the parents. With shared control comes much responsibility; whereas, parents used to be passive participants in special education, they are now expected to be active participants. Having that responsibility can be overwhelming to many parents, as special education can be overwhelming, if the process is not understood. Misunderstandings can lead to due process hearings, which are not only time consuming but costly to both the parents and the school system. This literature review explored the history of special education, the evolution of parental rights in special education, and the due process system in Virginia.

Related Literature

History of Special Education Laws

Public school special education in the United States has an origin that dates back to the nineteenth century. At the beginning of the nineteenth century America was primarily agricultural in nature. Most children during this time were expected to work on farms or have a trade: formal schooling was limited to those who were affluent (Fife, 2013; Osgood, 2008). Those who were considered indigent were not offered a formal educational opportunity during this time. As rural living slowly morphed into urban living for many families and children went from an agricultural environment to an industrial environment, the need to expand formal schooling for children of all backgrounds increased. The transformation of America from rural living to urban living caught the attention of people from other countries seeking opportunities in

America. Coupled with the era of industrialization and the influx of immigrants into the United States, the need to provide education to children increased, which necessitated more efficient, government-controlled public school systems (Mattson, 1998; Osgood, 2008). It was during the late nineteenth century that urbanization, industrialization, and immigration (the Progressive Era) influenced the revamping of the current educational system in each state.

As the Progressive Era took shape and urban cities became more crowded, the government became concerned with public welfare, particularly the welfare of children. Many children living in urban areas were from poor, immigrant families who could not afford to send their children to school, thus their children roamed the streets. The government took an active role in addressing how society was caring for its children's education. Leaders in communities became proactive during the Progressive Era; they took an interest in solving the problem of uneducated children deemed as troublemakers and unproductive members of society and implemented laws regarding their education (Johanningmeier, 2006; Osgood, 2008). Legislation at that time was focused mainly on truancy, child labor, and compulsory education (Fife, 2013; Osgood, 2008; Stephens & Yang, 2014; Simpson, 2003). As part of its social reform agenda, Boston enforced the first truancy laws for children younger than fifteen. Shortly after, Massachusetts implemented the first compulsory attendance law in the nation. At this time, children with disabilities were not able to access public education as readily as those without disabilities. Helping children with disabilities became a major focus during the Progressive Era (Fife, 2013; Osgood, 2008; Shuran, 2010; Shuran & Roblyer, 2012). Boston's desire to include all children, including those with disabilities, in public education led to specialized instruction. Public education for all children in America was born as a result of the need for order in communities and in the hope of raising responsible and productive adults, including those

children with disabilities. Children with one of three major disabilities, blindness, deafness, and “feble-mindedness,” made up the majority of the disability groups at that time; however, even with the compulsory education laws in place, students with disabilities were still not educated with their peers in public schools. They were either sent to special schools or institutions, more as a desire to isolate them rather than to educate them (Bursztyn, 2007; Osgood, 2008).

By the late nineteenth century, public school officials began to call for more individualized instruction of children with disabilities. The National Education Association (NEA), which had been in existence since 1857, answered the call to becoming more proactive in educating students with disabilities in urban cities by forming a Department of Special Education. The job of the Department of Special Education was to provide a network of educators and researchers who could exchange ideas and methods in educating students with disabilities. Even with the attempt of the NEA to educate the public regarding the education of children with disabilities, there continued to be public officials who challenged the right to educate children with severe and/or obvious disabilities (Osgood, 2008; Shuran, 2010; Shuran & Roblyer, 2012; Skiba et al., 2008)

Separating children based on their disability was a catalyst for revamping special education (Osgood, 2008; Shuran, 2010; Skiba et al., 2008). Special education has a legislative and national support history that dates back to the 1950s in the Civil Rights movement. Prior to the 1950s, there was limited governmental protection for students with disabilities; school systems had the autonomy and support of the state to determine whether or not they wanted to accept students with disabilities into their school and parents had little to no say in that decision (Bursztyn, 2007; Osgood, 2002, 2008). School systems could refuse to enroll any student who did not present as educable (Cope-Kasten, 2013; Curtis, 2005; Katsiyannis et al., 2001; Martin,

Martin, & Terman, 1996). If students with disabilities were able to attend school, there were little to no accommodations provided for their special needs, and services were at the discretion of the local school districts (Martin et al., 1996; Shuran, 2012). The 1950s was a time that persons of different races and ethnicities became indignant of the discriminatory attitudes and practices of the public when it came to educating all children. Educational equality for children of all races and abilities was sorely lacking prior to the 1950s. The Civil Rights movement prompted the government to review how public schools were integrating students of all ethnicities and races and review the 14th Amendment of the United States Constitution, which prohibits denying any person "life, liberty or property, without due process of law" or to "deny to any person within its jurisdiction the equal protection of the laws." (U.S. Const. amend. XIV, sect. 1).

In 1954, the United States Supreme Court declared that having separate public schools for black persons and white persons was unconstitutional (Foster, Root, & Lee, 2015; Shuran, 2010; Shuran & Robyler, 2012;). Chief Justice Warren of the United States commented on the *Brown v Board of Education* case by stating:

Today, education is perhaps the most important function of state and local government ... Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment (Brown v. Board of Education of Topeka, 1954, Opinion section, para. 10).

Since students with disabilities had limited educational rights prior to the 1950s, the parents of these students had no other recourse but to form advocacy groups in an effort to protest the way their children were being denied access to a public education. Following the

Brown v. Board of Education of Topeka (1954) case, other advocacy groups began to form to challenge students' with disabilities rights to an education (Itkonen, 2007). Parents and advocates of students with disabilities challenged the Courts by using the decision in the *Brown v. Board of Education* to protest the segregation of their child's education, claiming that students with disabilities were being denied a public education based on their disability (Katsiyannis et al., 2001; McGovern, 2015). Their objective was to ensure the rights of children with disabilities to attend public school (Katsiyannis et al., 2001; Osgood, 2008; Shuran, 2010; Shuran & Robyler, 2012; Yell et al., 2009). Their efforts would eventually pay off. While the *Brown v. Board of Education* case may have focused on the rights of African Americans, it ultimately became an instrumental case for promoting public education equality for children with disabilities.

Legislative action. Following *Brown v. Board of Education*, the government began to respond to the pleas of parents of students with disabilities. The earliest efforts to publicly acknowledge persons with disabilities came in the form of governmental support in 1961 when President John F. Kennedy appointed a 26-member panel to search for ways people with mental retardation (aka intellectual disability) were being mistreated and solutions to prevent mistreatment (Osgood, 2008). The panel's recommendations prompted other legislation, which included mandating the federal government to provide aid to the states for persons with disabilities. Following President Kennedy's public support of persons with disabilities came an effort to show continued support towards persons with disabilities through President Lyndon B. Johnson Elementary and Secondary Education Act (ESEA) in 1965. The ESEA provided funding for primary education and has been noted as being the first act to provide public education access to students with disabilities. With the enactment of ESEA, school systems were

expected to make provisions for students with disabilities by providing equal access to the curriculum, otherwise funding to the state would be negatively impacted. ESEA was the first attempt by the federal government to hold school systems accountable for providing accommodations to students with disabilities.

Two landmark cases followed shortly the enactment of ESEA: *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania* (1972) and *Mills v. Board of Education and Mills v. Board of Education* (1972). *PARC v. Pennsylvania* laid the foundation for special education reform. The *PARC v. Pennsylvania* was a class-action lawsuit that challenged the Pennsylvania school system to provide a public education to children with mental retardation, claiming it was unconstitutional to deny these students a public education (Katsiyannis et al., 2001; McGovern, 2015). Out of the PARC case came the term “free appropriate public education” (Itkonen, 2007). In *Mills v. Board of Education* (1972), the parents of children living in the District of Columbia claimed that their children with emotional disabilities, mental retardation, behavioral issues, and hyperactivity were being denied the rights to a public education due to their disability. The federal district court in the District of Columbia contended that these students’ rights were being denied and that every child had a right to a free public education despite their disability. *PARC* and *Mills* were rooted in the equal protection clause of the 14th Amendment of the Constitution and guaranteed that every child with a disability had the right to a public education.

In the 1970s, about 20% of children with disabilities, other than those who were deaf, blind, emotionally disturbed, or mentally handicapped, received public education (McGovern, 2015; U.S. Department of Education, 2010). Parents became more empowered during the 1970s, as law suits demanding equal rights for students with disabilities began to enter the federal court system. In response to parental demands, most states passed legislation designed to promote the

education of children with disabilities (Hardman & Dawson, 2008; Martin et al., 1996). In 1973, Section 504 of the Rehabilitation Act (PL 93-112) was enacted. This national law protected persons with disabilities from being discriminated against based on their disability.

Consequently, there was no funding and no monitoring of the law; therefore, the law did little to protect students with disabilities in the public school setting. School systems rarely acknowledged PL 93-112 due to the fact that there was no incentive to follow it, even though parents had the right to pursue a lawsuit under Section 504 if school systems did not adhere to the law. The game changer came in 1975 when Congress passed PL 94-142, the Education for All Handicapped Children Act. This act required that all students with disabilities receive a free, appropriate public education. Since school funding was directly tied into compliance of federal laws, there was an incentive for school systems to offer special education programs (Martin et al., 1996).

Public Law 94-142. Shortly after the *Brown v. Board of Education* (1954) case, federal legislation mandated that public schools allow students with disabilities to enter the school system and provide accommodations to those said students. Public Law 94-142 (1975), the Education for All Handicapped Children Act, was enacted as a direct result of the *PARC* and *Mills* cases' ruling, which determined that students with disabilities were being denied their rights to access a public education solely based on their disabilities (Itkonen, 2007). PL 94-142 was an amendment to the Education of the Handicapped Act and increased the role that the federal government had when it came to addressing special education (Katsiyannis et al., 2001). The basis of PL 94-142 was a free, appropriate public education that emphasized special education and related services to students with disabilities so that these students could be educated with their non-disabled peers. President Gerald Ford was the President at the time; his

signing of the law was instrumental in ending the segregation that students with disabilities faced when it came to their rights to be educated in a public school despite their disabilities. At the time PL 94-142 was enacted, there were more than one million children with disabilities who were not allowed into their respective school systems due to their disability (U.S. Department of Education, 2016). Further, children with disabilities who were allowed limited public education were often not provided the accommodations necessary to access the curriculum, which further denied their ability of an appropriate education. PL 94-142 was a landmark decision because not only were children with disabilities able to attend public school despite their disability, but those children were also guaranteed specific rights, including FAPE, due process, unbiased assessments, an Individualized Education Plan (IEP), and education in the least restrictive environment (LRE) (Keogh, 2007). PL 94-142 remains the benchmark for school districts to follow when it came to educating students with disabilities. States receiving funding for educating children with disabilities are held to strict standards to comply with all sections of PL 94-142 or face a penalty. Section 616 of PL 94-142 noted that states that do not comply with the procedures under the law shall have their funding withdrawn (Education for All Handicapped Children Act of 1975, 1975).

IDEA (the Individuals with Disabilities Education Act). In 1990, EAHCA was renamed the Individuals with Disabilities Education Act (IDEA). Following EAHCA, the main focus of IDEA remained that students with disabilities continue to have a free appropriate public education (FAPE) in the least restrictive environment (LRE) (Individuals with Disabilities Education Act of 2004, 2004). A child is found eligible for IDEA if the disability that the child exhibits is part of the law and requires special education services. When a child is found eligible for special education services in a public school, the school system must follow certain

guidelines in order to ensure FAPE and LRE. School systems are also responsible for writing an individualized education plan (IEP) for that student that guarantees the basis of IDEA. There are four main parts of IDEA (parts A, B, C, D) which outline the expectations for the school system and the state: part A includes facts about IDEA and definitions of terms used in IDEA, part B concerns funding, part C provides guidelines for services and funding, and part D describes activities that the government should provide to improve the education of children with disabilities. As with the earlier PL 94-142, states must adhere to IDEA's principles or have their funding negatively affected. In order to ensure that states follow the strict guidelines of IDEA, Congress periodically reauthorizes IDEA to amend or add to the existing legislation. States must meet IDEA requirements in order to receive federal funding of special education and related services (Hardman & Dawson, 2008; Itkonen, 2007; Katsiyannis, 2001).

Influential special education laws. Influential court cases involving special education issues date as far back as 1954 and have resulted in Supreme Court decisions that have shaped how public school systems handle children with disabilities. All of the cases violated some area of IDEA and were instrumental in clarifying the components and expectations of IDEA. Some of the most influential special education court cases follow.

Brown v. Board of Education. The case of *Brown v. Board of Education* (1954) involved the segregation of blacks and whites in public schools. The Supreme Court found that separate public schools based on race were unconstitutional and violated equal educational opportunity. The effect of the decision impacted children with disabilities because parents began to sue public schools because of discrimination. This case laid the foundation for the Individuals with Disabilities Education Act (IDEA), as it required all children to be able to access public school (Wright & Wright, 1988; Oyez, 1955).

Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania. The main focus of the *Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania* (1972) included children with mental retardation that were denied the right to a free and appropriate public education based on a Pennsylvania state law that declared children with a mental ability under the age of five years could not enter first grade. Under the Equal Protection law of the Fourteenth Amendment, the Supreme Court ruled that all children with disabilities had a right to an education. After this ruling, public schools had to offer an individualized education plan (IEP) and ensure that students be educated in the least restrictive environment possible (*PARC v. Commonwealth*, 1972; Wright & Wright, 2010; Yell et al., 2009).

Mills v. Board of Education of District of Columbia. The case of *Mills v. Board of Education of District of Columbia* (1972) dealt with the practice of public schools suspending, expelling and excluding children with disabilities from the District of Columbia public schools. Seven families brought a class action lawsuit against the District of Columbia public schools stating they were not allowed to enter the public school due to alleged misconduct, which kept them out of the public schools for extended periods of time. The plaintiffs were seeking compensation based on a violation of the denial of Due Process rights. The Supreme Court determined that children with disabilities could not be suspended, expelled or excluded without due process. The impact for public schools systems was that the federal government codified the rights of children with disabilities to have a free appropriate education and that school systems who provided that service to accept federal funding (Mead et al., 2008; Wright & Wright, 2010).

Board of Education of Hendrick Hudson Central School District v. Rowley. The case of *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982) dealt with the

provision of supplemental services. A deaf student was denied a sign language interpreter based on the fact that the school system provided her with supplementary assistance. The parents argued that without the sign language interpreter, their child was being denied FAPE. The Rowleys lost their case in Supreme Court; however, the implications of the case caused the Supreme Court to redefine the meaning of FAPE. This was the first Supreme Court decision in a special education case and redefined free appropriate public education (FAPE) as defined in the Education for All Handicapped Children Act (Board of Education v. Rowley, 1982; LaNear & Frattura, 2009; Wright & Wright, 2007).

Burlington School Committee v. Massachusetts Board of Education. The case of *Burlington School Committee v. Massachusetts Board of Education* (1985) focused on many issues: procedural safeguards, parental role in decision-making regarding their child's education, tuition replacement for private schooling, and a child's placement according to FAPE. The premise of this case was centered on parental involvement in the IEP, mainly, that parents of a child with a disability had no voice relative to the location of the school in which their child would be educated. The school district in Massachusetts determined that they could not provide for a first grade student, who had a disability, and that he would be better served in another school. The parents disagreed with the decision and enrolled their son into a private, special education school. The parents were seeking reimbursement of tuition. The Supreme Court ruled that public school systems are not responsible to reimburse private school tuition if the IEP provides FAPE to the child with a disability; however, if the setting for the child is deemed inappropriate and the parents are seeking reimbursement for private school tuition, then the school system must reimburse the parents for their expenses. The implication for this case was that school systems could have to pay for private schooling for children with disabilities if the

school system could not meet FAPE as indicated in the IEP (*Burlington v. Massachusetts Board of Education*, 2016; Oyez, 1985, Wright & Wright, 2010).

Honig v. Doe. The issue in the case of *Honig v. Doe* had to do with the exclusion of children who exhibited behavioral issues. The case centered on two students with emotional disabilities who exhibited behaviors that resulted in the expulsion of each of them from their school. The students' rights were violated because the stay-put order in IDEA was not honored. The Supreme Court explicated procedural safeguards that were created to protect children from them being expelled for behaviors related to their disabilities; specifically, children with disabilities who exhibited misbehaviors due to their disability were to stay put and have the parents involved in the next decision. The impact for other students with emotional or behavioral issues that might result in impending expulsion from school is that schools systems need to honor the "stay-put" clause in IDEA while a case for expulsion is being determined. In addition, if school boards fail to provide services to students with disabilities, the states must do so directly (Oyez, 1988; Stekette, 2016).

Florence County School District Four v. Shannon Carter. The case of *Florence County School District Four v. Shannon Carter* related to the responsibility of school systems to provide private placement if FAPE was not or could not be provided. A high school student with dyslexia was found eligible for special education services in reading and in math. The IEP goals were not rigorous enough for the parents, who asked for more intensive goals. The school system refused; therefore, the parents requested due process and enrolled their child in a private school that could meet her needs and provide intense instruction. The school system refused due process. In a unanimous decision (9-0), the Supreme Court determined that parents of students with disabilities had a right to be reimbursed for private school tuition if the public school system

failed to provide FAPE. The Supreme Court decision prompted parents of children with autism to seek out private placements that provided specific therapies that public schools could not provide (Florence v. Carter, 1993; Oyez, 1993; Wright & Wright, 1998).

Cedar Rapids v. Garret F. The case of *Cedar Rapids v. Garret F* (1999) dealt with a student who had a disability that required special services, and the school system did not feel obligated to provide that service. The parents of the student with the disability requested medical services in school for their child after the school provided these services for years. The school system refused, stating that it did not fall under IDEA's medical exclusion clause. The Supreme Court disagreed with the ruling and determined that IDEA regulations state that the school system is responsible for providing school health services by a qualified person. The implication for school systems was that despite the cost of providing medical services to students with disabilities, IDEA guidelines dictate that school systems are responsible for providing an array of medical services necessary for the student with a disability to be able to attend public school in the least restrictive environment (Biskupic, 1999; Osborne, 2014; Oyez, 1999; Wright & Wright, 1998).

Davis v. Monroe Board of Education. The case of *Davis v. Monroe Board of Education* (1999) focused on alleged continual sexual harassment of a student with disabilities at the hands of a classmate and the apparent violation of FAPE due to school officials not taking proper action against the other student to stop the harassment. The Supreme Court ruled the school system was held responsible for the lackadaisical attitude it took when investigating the alleged peer-peer sexual harassment, as the plaintiff was prevented a right to an education under Title IX. The implications for the Davis case not only prompted the courts to review what constitutes peer-peer sexual harassment but also made it more difficult for students to claim student-student

sexual harassment without overcoming hurdles (Davis v. Monroe, 1999; Oyez, 1999; Wright & Wright, 1998).

Schaffer v. Weast. The case of *Schaffer v. Weast* (2005) dealt with the question of which party bears the burden of proof in due process hearings per the guidelines of IDEA. The Schaffers had a son with a learning disability and a hearing impairment. The parents chose to have him educated in a private school through seventh grade; however, the parents wanted their child to attend public school for eighth grade and contacted the school system to set up an IEP. The school system developed an IEP, which the parents rejected due to their claim of inadequacy. The parents wanted the public school system to pay for their child to attend another private institution due to their claim that the public school system could not provide FAPE for their child. The school system refused to pay for the private tuition and made a counter offer, which the parents accepted; however, they continued to seek tuition reimbursement for the previous years their child attended a private school. The Supreme Court determined that the party who seeks relief through a due process hearing bears the burden of proof. The Supreme Court said there was no exception and that the plaintiffs had to bear the burden of proof, even though IDEA did not deal with the matter of the burden of persuasion. The Supreme Court decision in the *Weast* case set a precedent for the plaintiffs to provide the burden of proof (*Schaffer v. Weast*, 2005; Oyez, 2005; Wright & Wright, 1998;).

Arlington Central School District Board of Education v. Pearl and Theodore Murphy. The case of *Arlington Central School District Board of Education v. Pearl and Theodore Murphy* (2006) questioned if parents of a child with a disability could have their child's private school tuition and the educational consultant paid for by the school district. The parents of the child with a disability sought to have their child's school district pay for private tuition under

IDEA. The parents hired an expert to speak on their son's behalf. The parents prevailed; however, they then sought to recover expert fees. The Supreme Court ruled that parents are not entitled to have the private school and educational consultant fees paid for per IDEA's guidelines. This ruling did little to change what the school districts were already responsible for under IDEA, to provide students with disabilities FAPE (Oyez, 2006; Wright & Wright, 2010; Yell et al., 2009).

Winkelman v. Parma City School District. The *Winkelman v. Parma City School District* (2007) case involved parents who worked with the school district to develop an IEP, which placed their son in a private school; however, when the school year began, the school district placed the child in the public schools. The Supreme Court ruled that parents may represent their child and are not required to hire a lawyer because parents have rights under the guidelines of IDEA. The implication for the parents is that their rights were finally recognized and validated through the guidelines of IDEA (Oyez, 2007; Paredes, 2008; Wright & Wright, 2007).

Board of Education of the City School District of the City of New York v. Tom F. The *Board of Education of the City School District of the City of New York v. Tom F* (2007) case dealt with parents requesting that their child's public school system pay for private school tuition when the child with a disability had never entered the public school system prior to the request. The question set forth was to determine if the guidelines under IDEA provided the aforementioned provision. The Supreme Court decision was split 4-4 (one of the Court's Justices refused to consider the case); therefore, the ruling of the Second Circuit remained, which was to provide private school tuition reimbursement to the parents as based on the guidelines of IDEA. The implications for this decision required school districts to be held liable for private school tuition reimbursement if FAPE was not offered at the base school but was offered at a

private school (*Board of Education of City of New York v. Tom F.*, 2007; Oyez, 2007; Paredes, 2008; Wright & Wright, 2007).

Forest Grove School District v. T. A. Like the previous case, the *Forest Grove School District v. T.A.* (2009) case concerned private school tuition reimbursement of a parent with a child with a disability; however, with this case, the parents withdrew their child from the public school system and placed him in a private school. In addition, the child never received special education services while enrolled in the public school system, and the withdrawal from the public school was unrelated to his disability. The guidelines for private education under IDEA were questioned. The Supreme Court ruled that IDEA guidelines do provide for reimbursement for private special education services if the public school cannot provide FAPE and if the private school placement is deemed appropriate for the child regardless of whether or not the child ever received special education services from the public school system (Oyez, 2009; Wright & Wright, 2009). The implications of the decision on school systems were that IDEA (1997) sets forth child find requirements which must be complied, including the need for a comprehensive evaluation to determine if a disability requires special education services. If the school system does not do a thorough evaluation, parents may seek a private evaluation at the expense of the school system even if that child has never attended the school prior to the evaluation (Daly & Ennis, 2009; Dixon et al., 2011)

Virginia Office of Protection and Advocacy v. Stewart. The case of *Virginia Office of Protection and Advocacy v. Stewart* (2011) included a state agency, Virginia Office of Protection and Advocacy (VOPA), which advocated on the behalf of persons with disabilities, allegedly violating federal statutes that allowed the agency to have access to state records. The question of bringing federal action against state officials was examined (*Ex parte Young*). The Supreme

Court ruled that Ex parte Young does allow for a federal court to hear about violations brought against one state agency to another. The implication for states was that they have an obligation to protect and advocate for the rights of students with disabilities and that VOPA can sue the state if that does not occur (Moyer, 2016; Wright & Wright, 2011).

J.D.B. v. North Carolina. The case of *J.D.B. v. North Carolina* (2011) involved a 13-year-old boy whose rights were allegedly violated when he was interrogated at school by police officers, in the presence of school officials, without his Miranda rights being read to him. The violation in question was the student's age and whether he should have been Mirandized in the same manner as individuals of majority. The legal issue framed by the Supreme Court was age under the Fifth Amendment Miranda custody analysis. The Supreme Court reversed the ruling by the North Carolina Supreme Court and remanded the case to the lower courts. The implications from this case changed the way that police officers determine when it is appropriate to read a minor his/her Miranda rights (Allen, 2013; Farber, 2011; Wesley, 2013; Wright & Wright, 1998).

Current United States Supreme Court Cases in Special Education. There are currently two special education cases set to be heard by the United States Supreme Court: *Fry v. Napoleon Community School District* (2017) and *Endrew F. v. Douglas County School District RE-1* (2017). The facts of the case for *Fry v. Napoleon Community School District* (2017) included a child with a severe type of cerebral palsy and the need for support in order to access FAPE and a service dog. At the crux of the case was a young girl, Ehlana Fry, who was born with a severe case of cerebral palsy, requiring her to be dependent on others to provide for her needs. At the suggestion of her pediatrician, Fry's parents acquired a Goldendoodle dog to be trained as her service dog. The Goldendoodle, Wonder, was trained to help Fry balance, retrieve

items, open doors and cabinets, and turn off and on lights (among other tasks). In 2010, Fry's parents requested the Napoleon Community School system and Jackson County Intermediate School District permission to allow Wonder to accompany their daughter to school to provide the services that Wonder had been trained to do for their daughter. The school district denied the Fry's request for Wonder to provide aide to their daughter, stating that Ehlena's IEP had an accommodation that already provided a one-on-one human aide and that Wonder could not provide all of the accommodations that Ehlena needed to access FAPE; however, they did allow the dog to come and sit in the back of the room (Wright & Wright, 2016).

The Frys filed a lawsuit with the Office of Civil Rights (OCR) in 2010 against the Jackson County Intermediate School District under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act, not IDEA, stating that the school system denied their daughter her civil rights by not allowing Wonder, the service dog, to come to school with her. ADA and Section 504 are under the OCR and emphasize equal opportunity. IDEA, on the other hand, is a federal law that does not guarantee equal opportunities in education. In 2012, the OCR agreed that the school district violated Ehlena's right for equal opportunity in education and access to programs that other children had access to by disallowing her service dog to accompany her to school. In 2014, the district court dismissed the case stating that the school had not met the IDEA exhaustion requirements. In 2015, the Frys appealed to the U.S. Supreme Court to review the case. The writ of certiorari was granted.

When service dogs are being considered for students with disabilities to use while in school, ADA, Section 504 of the Rehabilitation Act, and IDEA all apply. Section 504 is a civil rights law that was put into place in 1973 to prevent discrimination against individuals with disabilities. Section 504 provides for FAPE and accommodations considered reasonable.

Section 504 applies to any entity receiving federal funding. Since public education receives federal funding, Section 504 applied to the *Fry v. Napoleon Community School District* (2017) case. ADA works in conjunction with Section 504. Like Section 504, ADA provides for FAPE and accommodations; in addition, ADA extends Section 504 to the private sector and requires schools to make reasonable modifications. ADA also includes the definition of a service animal under the accommodation tool or piece of equipment. ADA further extends the definition of a service animal to include its primary purpose. Under ADA guidelines, if a service animal provides support to a student with a disability in order for that student to receive FAPE, then it is a reasonable accommodation and must be allowed (Berry & Katsiyannis, 2012; Schoenbaechler, 2010). In the case of Ehlena's service dog, Wonder, the dog was trained to assist Ehlena in daily living skills, which is considered a reasonable accommodation under ADA guidelines (Berry & Katsiyannis, 2012; Wright & Wright, 2016). IDEA does not specifically mention service animals in the guidelines; however, like ADA and Section 504, IDEA requires that all students with one of the covered 13 disabilities be provided FAPE in their IEP. Under IDEA, when school systems face making decisions about allowing a student to have a service animal, they must do so on a case-by-case basis and then include the service dog in the IEP under the accommodations section (Berry & Katsiyannis, 2012; Schoenbaechler, 2010). In the case of Ehlena, one-on-one assistance was provided to her and included in the accommodations section of the IEP. When the parents requested that Wonder be allowed to accompany Ehlena, the school system refused for months. Finally, after months of mediation, the school system allowed Wonder to come to school with Ehlena for a period of several months; however, the dog was put in the back of the room and was not allowed to assist Ehlena in the way that he had been trained

(Wright & Wright, 2016). The issue is whether exhaustion in a suit that seeks damages and is brought under ADA is commanded through IDEA.

The case was argued before the U.S. Supreme Court on October 31, 2016. On February 22, 2017, the United States Supreme Court reversed the Court of Appeals decision and ruled in favor of the parents citing the exhaustion doctrine (Wright & Wright, 2017).

The issues in the second case, *Andrew F. v. Douglas County School District RE-1* (2017), included a boy with autism and attention deficit/hyperactivity (ADHD) disorder and IDEA, FAPE, IEP and the level of educational benefit a child with a disability must receive. The facts of the case are that Andrew, a young boy with autism and ADHD, had been provided special education services by his school district under IDEA since he was two. Andrew's parents noted that during the course of his time in special education, he was making limited progress with his communication skills and that his behavior interfered with his educational progress. The parents concluded that their son was not being taught well with the teachers in the current district and therefore, when Andrew was about to enter fifth grade, the parents rejected the IEP that the district proposed and opted to send their son into a private school. The parents claimed that the school district was not providing FAPE for their son and that a private school would be better suited to provide FAPE for their son. The parents requested tuition reimbursement and related expenses for having to enroll their son in an educational placement that provided FAPE. The school district denied the parents' request, which then prompted the parents to exercise their right to a due process hearing. An administrative law judge (ALJ) heard the case and determined that the school district provided Andrew with FAPE, therefore denying the parents tuition reimbursement. The parents brought their case to a federal court who supported the AJL in determining that the school district did provide FAPE to Andrew and noted that he even though

he was not making a lot of educational growth, he was making minimal progress, which was reflected in every IEP. According to the court, Andrew's parents were unable to meet their burden of proof that the school district violated IDEA by not providing FAPE; thus, their request for private school tuition reimbursement was denied for a third time. The case went before the Tenth Circuit Court, which adopted the standard "meaningful educational benefit" citing the "some educational benefit" standard in the *Board of Education v. Rowley* (1982) case. According to the standard, the Tenth Circuit Court agreed with the district court and the AJL that Andrew's IEP provided services that promoted educational benefits and that his behavioral issues were being addressed. The Tenth Circuit Court affirmed the district court's determination that Andrew was denied FAPE. Once again, Andrew's parents did not meet the burden of proof that the school district violated IDEA and therefore were denied their request for private school tuition reimbursement. The parents have now sought the decision of the U. S. Supreme Court in a question that will determine what level of educational benefit a school district must provide a child in the IEP to satisfy the requirements of FAPE guaranteed by the Individuals with Disabilities Education Act.

One of the biggest issues in the *Andrew F. v. Douglas County School District RE-1* (2017) court case is the issue of educational benefit: whether or not FAPE requires schools to maximize the learning potential of students with disabilities. The *Board of Education v. Rowley* (1982) case provided some explanation as to what constitutes some educational benefit under IDEA, but not meaningful. However, the courts of appeals are not in a position to interpret the level of meaning educational benefits that school districts must provide to determine FAPE in the Andrew case since there is no set standard to compare. Educational benefit is determined

separately, by which state the child with a disability resides, and is guided by IDEA regulations, which compares the benefit of regular education to the benefits of special education.

Another issue in the *Andrew F. v. Douglas County School District RE-1* (2017) case was the interpretation of IDEA for reimbursement of private school tuition. Despite tuition reimbursement cases that have gone before the Supreme Court in the past several years, IDEA continues to be challenged by parents seeking private school tuition reimbursement under the standard of FAPE. The language in IDEA that is being challenged is the following:

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment. (20 U.S.C. § 1412[a] [10][C][ii])

The case was argued before the U.S. Supreme Court on January 11, 2017. On March 22, 2017, the United States Supreme Court overturned the lower court's ruling, that was in favor of the school district, in favor of the parents. The Supreme Court emphasized full inclusion in regular education classrooms as a primary standard for students with disabilities.

The most recent case that went before the Supreme Court involving private school tuition reimbursement, *Forest Grove School District v. T.A.* (2009), as discussed earlier, addressed whether or not parents who had not ever enrolled their child in public school before they enrolled their child in private school should receive reimbursement for the private school tuition. The Court determined that a child did not have to attend public school prior to private school in order

to receive private school tuition reimbursement. This was significant for the *Andrew F. v. Douglas County School District RE-1* (2017) case because the *Forest Grove School District v. T.A.* (2008) case set a precedent for how the Supreme Court interprets IDEA when it comes to tuition reimbursement (Osborne & Rehberg, 2009; Wright & Wright, 2009). As noted previously, the Supreme Court ruled that IDEA guidelines do provide for reimbursement for private special education services if the public school cannot provide FAPE and if the private school placement is deemed appropriate for the child regardless of whether or not the child ever received special education services from the public school system or not (Wright & Wright, 2009; Oyez, 2009).

NCLB and IDEA. In 1982, the U.S. Supreme Court made its first interpretation of the Education for All Handicapped Children, known now as IDEA, in the *Rowley v. Hendrick Hudson School District* (1982) case. The case set the standard for all special education cases to use when determining if the rights of students with disabilities have been violated. However, it was the case of *The Board of Education v. Rowley* (1982) that clarified IDEA's definition of educational benefit. At that hearing, the U. S. Supreme Court determined that a child with a disability needed only to be provided educational benefit in the classroom in the least restrictive environment in order to be provided a FAPE (Board of Education v. Rowley, 1982). Every state in the United States has a unique due process hearing system; however, most states use the minimal standards set in IDEA to make decisions of whether a child with a disability has been denied FAPE. The decision in *Board of Education v. Rowley* (1982) determined that states do not have to maximize the potential of students with disabilities (Pudelski, 2016). Even though the government requires minimal standards to show educational progress in children with disabilities, each state may require higher standards (Crabtree, 2016). IDEA standards are to

ensure that students with disabilities receive educational benefits rather than a specified level of education (Pudelski, 2016).

In 2001, President Bush signed into law the No Child Left Behind Act (NCLB). NCLB reauthorized the Elementary and Secondary Education Act of 1965 and attempted to close the achievement gap for disadvantaged students, including those with disabilities, by setting standards for accountability, assessments, and parental involvement (No Child Left Behind Act of 2001, 2002). Under NCLB, school districts were also required to provide accommodations and adaptations to students with disabilities. Parental involvement in their child's education was noted as being a key component in student achievement, particularly for students with disabilities (Cortiella, 2006). NCLB was designed to hold school systems and the states accountable for student achievement. Prior to NCLB, there was the Education for All Handicapped Children Act, later changed to the Individual with Disabilities Education Act (IDEA). These acts served to prevent educational discrimination to students with disabilities by providing educational access and opportunities in the least restrictive environment (LRE).

IDEA first came into existence in 1975 when the federal government demanded that school systems provide educational benefits to students with disabilities. IDEA has endured many updates and changes in the past thirty years, but one standard that has not changed is that all children with disabilities be provided educational opportunities in the least restrictive environment and with non-disabled students as much as possible. A key component in IDEA is for states to identify and evaluate all children with disabilities to determine if they are in need of special education services and then to provide an Individual Education Plan (IEP) for those students. Parental involvement is mandatory in IDEA. Under IDEA, parents must be part of their child's IEP and be given procedural safeguards in order to ensure that their rights as parents

and the rights of their child with a disability are not violated. Like NCLB, all students under IDEA must be provided district-wide and state assessments, accommodations, and alternate methods of assessment as indicated in each student's IEP. IDEA, unlike NCLB, does not hold school systems accountable for progress and performance of students with disabilities; parents are not allowed to challenge measures of school performance as there is no measure of that under IDEA. However, parents are allowed to challenge special education services.

Ever since the reauthorization of IDEA (2004) and the No Child Left Behind Act (No Child Left Behind Act of 2001, 2002), each state department of education has monitored school districts more closely on their provision of FAPE, especially since parents of students with disabilities often challenge the minimal standard of the "educational benefit" guideline as a way for school systems to get out of providing FAPE. State departments also monitor school systems for indicators of measurable progress for each student with a disability. Each state has academic content standards for students with disabilities that are now referred to as standards-based IEPs. This type of IEP is expected to parallel non-disabled students' state grade-level content and skills areas but be tailored to each student with a disability. IDEA also provides guidelines for where students with disabilities are educated. As much as possible, students with disabilities are not only to have access to the general education curriculum but are also to be actively engaged in the learning of content area, skills, and assessments (Cortiella, 2006).

How IDEA fails. According to Hyman, Rivkin, & Rosenbaum (2011),

The primary purpose of IDEA is to ensure that every child with a disability, who is therefore eligible for special education services under the statute, receives a FAPE (free appropriate public education), regardless of whether the student is in a public or private

school, out of school, homeless, or in a hospital, jail, prison, or foster care placement. (p. 116)

However, IDEA may not work for all parents and children. Some believe that IDEA may fail when parents are not completely involved in the decision-making process nor understand the decision-making process of their child's specialized educational plan due to factors such as limited English proficiency, parental educational background, and a lack of knowledge about the IEP process, to name a few (Jung, 2011). Parents who are embarrassed to admit a lack of understanding of the IEP process to the IEP team usually do not ask for clarification and end up going along with whatever the rest of the IEP team deems necessary for the student. IDEA may fail passively in this situation because parental needs are not being met, yet the team has no knowledge of this chasm and thus continues with the IEP process. Often, parents leave an IEP meeting more confused than when they came into the meeting. The trust for the IEP team outweighs any concerns that they parent(s) may have about the IEP. Jung (2011) stated that "parents may not be a culturally deprived group but tend to be an emotionally and psychologically deprived group in dealing with the school system or mainstream society" (p. 24). Knowing the background of the parents would greatly benefit the IEP team, empower the parent during the IEP process, and prevent IDEA from being violated.

IDEA may also fail when FAPE "does not exceed the level of rights guaranteed by the IDEA if the state mandates" (McCarthy, 2008, p. 1714). IDEA can trump state statutes; however, statutes give much more protection than IDEA (McCarthy, 2008). One of the rights of FAPE is "appropriate education." Since the meaning of "appropriate education" can be viewed in many ways, sometimes it is necessary for a school system to look into case laws to determine if a violation of "appropriate education" occurred (McCarthy, 2008, p. 1714). Looking into case laws

take time, which sometimes the student and parents do not have. IDEA may fail parents and the student when procedural safeguards are not understood, explained, or followed.

Steps in Resolving Disputes in Special Education

Parents of students with disabilities and the students with disabilities themselves are mandated by IDEA 1997 and 2004 to have certain guaranteed legal rights and protections under a law called procedural safeguards. The guaranteed rights in IDEA requires that families not only be informed about their rights, but that they have knowledge and understanding of how they can resolve conflicts with their child's school system (Fitzgerald & Watkins, 2006; VDOE, 2016b). Procedural safeguards in IDEA are guidelines set forth by the United States Congress that clarify the responsibilities of school systems in evaluating for and providing special education and related services to children with disabilities. Procedural safeguard notices provide parents of school-aged children an explanation of their legal rights. The procedural safeguards offer the following parental rights: (a) access to educational records, (b) independent educational evaluations for their child, (c) parent participation in all meetings involving their child, (d) prior written notice on any changes to the Individualized Education Program, (e) procedural safeguard notice in writing, (f) parental consent before an evaluation or provision of special education rights, (g) stay put rights for a student with a disability to be allowed to stay in the current placement while going through a dispute resolution, (h) a formal process of resolving issues called due process, (i) ability to bring a civil action against the school system if a violation of IDEA occurs, (j) mediation with a third party to resolve issues between the parents and the school system, (k) reimbursement of attorney's fees if parents win a due process or civil action, and (l) state level appeal to the state department to name a few. The guaranteed rights in IDEA require that families not only be informed about their rights, but that they have knowledge and

understanding of how they can resolve conflicts with their child's school system (Fitzgerald & Watkins, 2006; Lee, 2016; VDOE, 2016b).

The school district has an obligation to students with disabilities and their parents. Their first obligation is to identify a child with a disability; they do this by obtaining permission from the parent to assess their child and assessing the child suspected of a disability. However, a parent has a right to request testing of their child prior to or in lieu of the school system making that request. The parent also has a right to obtain an independent, educational evaluation at the expense of the school district. Once a child is diagnosed with a disability, it is the responsibility of the school district to hold an Individual Education Program (IEP) meeting to develop a specific plan for addressing the educational needs of the child with a disability as it pertains to accessing the general education curriculum. The school district has an obligation to make sure that the IEP is appropriate – tailored to the needs of the child with a disability and his/her educational needs. The school district is responsible for including the parents of the student with a disability in the planning of the IEP. The parents have a right to disagree with the placement and services proposed by the IEP team. If that occurs, the parents may opt to take the school district through mediation or due process. It is then the responsibility of the school district to prove that a FAPE was afforded to the student with a disability. Once an IEP is put into place, the school district must ensure that the accommodations, services, and goals provided in the IEP are being provided by the school system and accessed by the student. Part of the IEP may include related services, such as transportation, speech services, counseling, and occupational services, to name a few. Related services may be requested by the parent and disputed by the school system, which may go to mediation and/or due process as well. The parents have the burden of proving why their child requires a related service to access the general education

curriculum. IDEA dictates that school systems must place students with disabilities in the least restrictive environment (LRE). School districts are required by law to ensure that students with disabilities receive a free and appropriate public education (FAPE). Parents have a right to challenge the placement of their child through mediation and/or due process. The school district has the responsibility to prove that the placement for the child with a disability is appropriate (Gee, 1996). Prior to involving other entities in dispute resolution, it is mandated that parents of students with disabilities seek mediation as part of their due process rights.

Even though school systems are legally required to provide parents with a document containing procedural safeguards, the system is not legally responsible for reading the document to the parents (Mandic, Rudd, Hehir, & Acevedo-Garcia, 2012, p. 196). The law, regarding procedural safeguards, dictates that the language must be readable to the audience it is intended, must be translated verbally upon request to interpret it, and parents must sign that they have received a copy of the procedural safeguards and that they understand their rights. The issue stems from the fact that the parental rights document is often given to the parents during the last few minutes of a meeting. Explanations of the document are briefly given, and it is seldom requested that they be read aloud or that the document is reviewed line by line. The parents who receive their rights are expected to be able to read and interpret the information on their own without explanation regarding the terminology embedded in the document. Therefore, it is no wonder that the readability of the procedural safeguards has often come under question. Studies have shown that the readability of the procedural safeguards is often too demanding on parents who have limited education or have disabilities themselves (Burke, 2013; Fitzgerald & Watkins, 2006; Mandic et al., 2012; Mueller, 2014; Nagro & Stein, 2015). In reality, “research has shown that parents often do not understand documents provided to them by the school” (Fitzgerald &

Watkins, 2006, p. 498). Fitzgerald and Watkins (2006) conducted a study to determine the readability of the procedural safeguards of all states. According to Fitzgerald and Watkins (2006), “between four to eight percent of the procedural safeguard document is written between a 7th to 8th grade reading level while the rest of the document is written between a 9th to 10th grade reading level” (p. 506). The findings of the Fitzgerald and Watkins’ study (2006) suggested that “parents of students with disabilities are likely to find parental rights documents very difficult to read and to understand” (Fitzgerald & Watkins, 2006, p. 497). Due process procedures are a key component in special education procedural safeguards.

Steps involved in and prior to due process hearings. Due process hearings are a right that is guaranteed by the state and federal government through IDEA. Due process hearings are impartial procedures that focus on resolving disputes between parents of students with disabilities and the school system (VDOE, 2016b). Either the parents of a student with a disability or the school system can file due process hearings. A due process hearing usually involves a complaint about a violation of IDEA in the form of FAPE, evaluation, identification, or education of a child, but it can also take the form of appropriateness of a child’s service or placement (VDOE, 2016b). When parents of a student with a disability disagree with school personnel, they have three different options: mediation, due process hearing, or a complaint.

Special education mediation is a voluntary process which involves an impartial mediator hired by the state, the parents of a child with a disability, and the school system which the child attends. Mediation is required by IDEA to be offered to parents of a child with a disability and the local education agency (LEA) so that disputes may be resolved without going through a more formal process. Mediation must be accepted by both parties in order for the process to proceed. Parents may request mediation when they disagree with any component of the IEP. Mediation

attempts to resolve issues between parents and the school system in an effort to avoid a more formal hearing called a due process hearing. Mediators have the job of assisting the parents and the school system in coming up with a resolution of the dispute through a mutually agreed upon decision (Cortiella & Wettach, 2009). Mediators must be qualified in effective mediation techniques. They also must understand special education law. Mediators are selected from a list that is kept at the Virginia Department of Education and are assigned on a rotating basis (VDOE, 2016b).

Complaints can be filed with the VDOE and may be made by any person or any entity. The job of the VDOE is to investigate the complaints and determine if any violation of special education law has occurred. If a parent files a complaint against their child's LEA and VDOE determines that the LEA violated a special education law or IDEA, the LEA will be required to make amends for their action. Amends could be in the form of compensatory services, monetary awards, or actions, which directly benefit the student with a disability (VDOE, 2016b). VDOE has sixty calendar days from receipt of the complaint to resolve the issue (VDOE, 2016b).

Due process hearings are formal hearings conducted by a hearing officer who decides the outcome. Due process hearings begin when either a parent of a child with a disability or the child's LEA files a written complaint. The written complaint is submitted to the VDOE signifying a violation that is related to one of the following or a combination: the identification, evaluation, or educational placement of a child with a disability, or the provision of a free, appropriate public education (FAPE) to the child (VDOE, 2016b). Hearing officers are attorneys who are knowledgeable in special education law. They are appointed through the Virginia Supreme Court. VDOE is responsible for training hearing officers on special education law. They also review the hearing officers' decisions (VDOE, 2016b).

Implications of due process hearings. Mediation resolution is an ideal solution between school systems and parents of students with disabilities; however, if school systems and parents are unable to come to an agreement, the next step is to take the issue to a more formal due process hearing. According to Getty and Summy (2004), most due process cases are the result of three major violations which parents perceive to have taken place: denial of FAPE, reimbursement of private school tuition, and the payment of attorney fees. Yell and Drasgow (2000) noted that school districts were usually at fault in one of the following areas: parental participation, evaluation procedures, personnel qualifications, a child's individualized education plan, or placement of a child with a disability. The implications of going through a due process hearing for parents and school personnel can cause both emotional distress and devastating cost factors, financially and in time. There are also ethical considerations prior to and following due process hearings.

Trussel et al. (2007) noted that

Legal precedents and professional organizations have aided in the guidance and direction of ethical standards in regards to special education and working with parents since special education professionals are mandated by law to ensure partnership between the parents and the school. (p. 20)

However, research dictates differently. Parents are not always active participants in the IEP process and, at times, there can be hostility between the other IEP participants and the parents, or parent withdrawal from the whole IEP process, which ultimately will affect trust in the relationship (Trussel et al., 2007). Distrust between parents and other members of the IEP team may be due to miscommunication, failure of the parent for not fully understanding his/her

rights under the law, the terminology of special education, and the special education procedures on the part of the IEP team participants for not understanding the parents' needs.

Research has also shown that parents have reported not feeling like active participants in the IEP process due to the other IEP team participants dominating the meeting (Trussel et al., 2007, p. 20). Parents who do not have access to a support system have also indicated that they feel like an insignificant part of the IEP team. Parents who do not feel empowered by the IEP team often passively give up their partnership in the IEP process and do not embrace the decision-making capabilities that they have acquired.

Even though research thus far has indicated that parents are not actively involved in the IEP process nor considered equal partners in the IEP process due to many factors, there still is an ethical obligation – as well as a legal obligation - on the part of the school system to ensure that parents have a part in the decision-making process. Parents who do not understand the IEP process are not equipped well enough to advocate for their child with a disability. Students with disabilities who do not have the support of their parents often “struggle academically and behaviorally despite having a specially designed educational plan” (Fiedler & Haren, 2009, p. 172). Parents who know their rights can be advocates for their children with disabilities.

Special education laws and regulations specific to Virginia. The preamble to the Virginia Constitution states the following in regards to the General Assembly's responsibility for education: “The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth” (Article VIII, section 1). The code of Virginia delineates the commonwealth's responsibility for education of children with disabilities: “The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate

and train children with disabilities...” (§ 22.1-214); “ ‘Children with disabilities’ means those persons who are aged two to twenty-one, inclusive ... are disabled as defined by the Board of Education, and...need special education” (§ 22.1-213);

Each state board, state agency and state institution having children in residence or in custody shall have responsibility for providing for the education and training to such children which is at least comparable to that which would be provided to such children in the public school system; (§ 22.1-7)

and “Each school division shall provide free and appropriate education, including special education, for the children with disabilities residing within its jurisdiction in accordance with the regulations of the Board of Education” (§ 22.1-215).

These regulations set forth the requirements of the Board of Education regarding the provision of special education and related services to children with disabilities in the Commonwealth, reflecting both state and federal requirements. The regulations are applicable to all local school divisions, state-operated programs, the Virginia School for the Deaf and the Blind at Staunton, and private schools in the Commonwealth that provide special education and related services to children with disabilities. In addition to these requirements, the following statutes and regulations are applicable to children with disabilities: all regulations promulgated by the Board of Education, provisions of the Code of Virginia (COV), the requirements of section 504 of the Rehabilitation Act of 1973 (as amended), the Americans with Disabilities Act, the Education Department General Administrative Rules (for federal grant requirements), the Virginians with Disabilities Act, and the No Child Left Behind Act of 2001. These requirements are based on the fundamental notion that special education and related services are to be designed to meet the unique educational needs of children with disabilities, provide educational

opportunity in the general curriculum to the extent possible in accordance with each child's individualized education program, and prepare children with disabilities for opportunities in postsecondary education, employment, and independent living (Virginia Department of Education [VDOE], 2010).

The Virginia Department of Education provides for an impartial special education due process hearing system to resolve disputes between parents and local educational agencies with respect to any matter relating to section 22.1-214 of the Code of Virginia, 34 CFR 300.121, and 34 CFR 300.507 through 34 CFR 300.518). The Virginia Department of Education uses the impartial hearing officer system that is administered by the Supreme Court of Virginia.

Training parents about the Individuals with Disabilities Education Act. IDEA 2004 “legally mandates opportunities for parental involvement in the procedural safeguards” (Mandic, et al., 2012, p. 195). The rights afforded to the parents include the following: “sharing in the decision-making in regards to school identification and diagnosis, evaluation, placement, services, IEP planning, and transition to adulthood” (Mandic et al., 2012, p. 196). Parental rights outlined in IDEA include the following:

- Prior written notice - (in the parents' native language) must be provided at a reasonable time before the school district proposes, refuses to initiate, or changes the identification, evaluation, educational placement or provision of a free appropriate education to the child with special needs,
- Informed parental consent - parents must be fully informed of all information relevant to the activity for which consent is sought, understand and agree to the carrying out of the activity, and understand that written consent is voluntary and may be revoked at any time,

- Access to all educational records - the right to inspect, review, and receive copies of all education records with respect to the identification, evaluation, and education placement of the child with a disability, and to review records without any unnecessary delay and prior to any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of that child. This must happen no later than 45 days after there has been a request to see the records,
- Evaluation procedures - the right to a full and individual evaluation of the child's educational needs prior to initial placement in special education. The child should be assessed in all areas of suspected disability, and the evaluation must be based on a variety of assessment tools, including information provided by parents. A multidisciplinary group, including at least one person who is knowledgeable in the area of the suspected disability, must make the assessment. The child must be reevaluated at least every three years or more frequently if conditions warrant, or if requested earlier by the parent or child's teachers,
- Independent educational evaluation (IEE) - the right to request an independent educational evaluation at public expense if there is a disagreement with the educational evaluation provided by the school district. The school district must provide information upon request as to how and where to obtain an independent educational evaluation and ensure that the criteria, under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, are the same as the criteria that the school district uses when it initiates an evaluation. Before paying for such evaluation, the school district may initiate a due process hearing to show that its evaluation is appropriate. If an independent

educational evaluation is done by the parents at their own expense, the school district must consider the results of the independent educational evaluation in any decision it makes about that child's educational program,

- Private school placement by parents - the school district is not required to pay for the cost of education, including special education and related services, for a child at a private school or facility if the school district has made a free appropriate public education available to the child and the parent chose to place their child in the private school. However, children voluntarily enrolled in private schools for purposes other than FAPE may continue to receive special education and related services subject to financial limits and location options prescribed in the IDEA,
- Dispute resolution - every attempt should be made to resolve differences with the local school district as soon as they arise. If they cannot be resolved, mediation or a due process hearing may be requested, and
- Mediation - a process to assist the parents and the school in resolving disagreements regarding a student's special education program. A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the student, at no cost to parents (Center for Parent Information and Resources, 2014).

As noted above, parents have many rights under IDEA when it comes to educating their child with a disability; however, IDEA regulations are not always understood by the parents or explained to the parents in the procedural safeguards. Many misunderstandings by parents regarding expectations of IDEA often lead to due process hearings. It is critical that school

systems train parents on the regulations of IDEA and procedural safeguards so that the number of cases that go to due process may be reduced.

Issues in special education. In a study done by Cheatham, Hart, Malian, & McDonald (2012), it was noted that parents reported their special education experiences were often more negative than positive. Several reasons for the negative experiences were mentioned, including: “difficulty processing the information, intimidation of the professionals, lack of decision-making opportunities, and blame for their child’s lack of success” (p. 50). Cheatham et al. (2012) noted that special education professionals needed to advocate for the parents of students with disabilities when they knew that IDEA was not being followed. The study also included six of the most prevalent violations of IDEA. These violations included the following:

1. The school did not individualize educational goals but rather picked a few IEP goals from a bank to add to the IEP. IDEA states that all students with disabilities must have individualized appropriate education. Individualized appropriate education means that goals and objectives need to be developed as a team and should be based on assessment (both formal and informal) data.

2. The school did not provide the least restrictive environment (LRE). In IDEA, the LRE “guarantees a student’s right to be educated in the setting most like that for peers without disabilities” (Cheatham et al., 2012, p. 52). The parents of a student with a disability must be informed as to the options the student has in regards to being educated with his peers. Parents need to be active decision-makers in this process.

3. The school missed key IEP members from the IEP meeting. IDEA assures procedural safeguards. IDEA is violated when a representative of the school system, who is knowledgeable in special education procedures, is missing. Parents may not even realize that a key member of

the IEP team is missing and may agree to something that is not needed for their child or may miss the opportunity to receive something for their child if a representative knowledgeable about special education is not present at the meeting.

4. The school developed IEP goals that are the same year after year. IDEA principles mandate an individualized appropriate education, which means that the special educator must systematically monitor the educational progress of the students with disabilities in order to amend the IEP goals with the IEP team if the goals no longer apply to the student. Parents of students with disabilities who are not making progress in specific areas need to be updated with regularity so that the IEP team can make informative decisions.

5. The school did not invite parents to review the IEP goals periodically through progress notes. IDEA principles state that parent participation is mandatory in the whole IEP process. When parents are not informed that their child is not doing well in an area until the next IEP meeting, the parents' role as decision-makers has been violated. Parent participation is outlined in IDEA and needs to be embraced in order for the parents to be empowered.

6. The school violated the IDEA principle of zero-reject. School systems must provide the special education services for students who qualify for a particular service. Parents should never be told that the school does not offer a particular service because that is a direct violation of free and appropriate education (FAPE). If a particular service is unavailable for a student with a specific disability, the school system needs to document its efforts before trying an alternate placement.

Summary

In reviewing the literature, it was noted that influential court cases involving special education issues date as far back as 1954 and have resulted in Supreme Court decisions that have

shaped how public school systems handle children with disabilities. All of the cases reviewed violated some area of IDEA and were instrumental in clarifying the components and expectations of IDEA. IDEA has forced parents to become advocates for their child with a disability at the expense of sacrificing a relationship with the child's school system. While recent additions to the dispute system, such as mediation and conflict resolution sessions, have reduced some action towards due process, there are still some parents who refuse to mediate and thus rely on litigation to solve their issues. The intent of this study was to review due process hearing cases in Virginia from 2004-2016 to identify patterns in relation to the nature of the hearings in order to determine the total frequency regarding types of disability due process cases, most frequently violated FAPE rights, and the outcomes of the due process cases over the last 12 years.

CHAPTER THREE: METHODS

Overview

This study examined the types of disability and outcomes of due process hearings from 2004-2016 in the state of Virginia among K-12 public school students. Archival data from the Virginia Department of Education due process website was used. In order to examine the data, a descriptive content analysis was deemed most appropriate. Chapter Three includes information about the design of the study, instrumentation, participants, the setting of this study, procedures used to collect the data, and the research questions. The analysis and data collection procedures are also addressed.

Design

The research design used in this study was a descriptive content analysis based on archival data from the state of Virginia. In this study, the researcher examined the total frequency regarding the types of disability due process cases among various disabilities and their outcome over the last 12 years in the state of Virginia among K-12 public school students. This descriptive content analysis described the percentage of several variables: types of disabilities, sex, age, and outcome of due process hearing cases, in regards to local education agency (LEA) win versus parent win. The types of disabilities examined served as the independent variable in this study and included the categories of autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment, including blindness. The researcher collected data, put it in the form of frequency counts, and analyzed it using frequency tables and trend charts.

Research Questions

The following research questions were used for this study:

RQ1: What are the frequencies of due process wins and losses for the local education agency (LEA) and the parents of the student with a disability from 2004-2016 in the state of Virginia among K-12 public school students?

RQ2: What are the frequencies of types of special education disabilities brought to due process from 2004-2016 in the state of Virginia among K-12 public school students?

RQ3: What trends emerge among the types of special education disabilities brought to due process from 2004 to 2016 in the state of Virginia among K-12 public school students?

Participants and Setting

The information for this descriptive content analysis was drawn from the Virginia Department of Education's (VDOE) website under Special Education Due Process Hearings/Hearing Officer Decisions (by fiscal year). Virginia is a Commonwealth divided into 95 counties and 38 independent cities (VDOE, 2016a). The Virginia Department of Education is located in Richmond, Virginia and is a governing and policy-making body, which serves to interpret and facilitate educational legislation for public schools from elementary through secondary education. The Virginia Department of Education's special education sector is an entity which serves to interpret and facilitate special education legislation that relates to education (Wright & Wright, 2015). A 2010 child count data from VDOE noted that there were over 163,000 students with disabilities in Virginia at that time (VDOE, 2010).

One hundred and thirty one children with disabilities and their parents, along with their respective local school divisions (LEA), were participants in the due process hearing cases studied. The sample consisted of students with disabilities' age, sex, disability, and outcome. Out

of the 131 cases, only 106 had all of the information necessary to collect all the required data proposed for the study. The special education disabilities included in the 106 cases were taken from the 13 federally recognized disabilities of IDEA. However, only seven of the 13 special education disabilities were included in the data because they were the primary disabilities in the cases which contained all of the required data for the study. The seven disabilities were as follows: autism, emotional disturbance, intellectual disability, multiple disabilities, other health impairment, specific learning disability, and speech or language impairment. The number of males in the data set was 79. The number of females in the data set was 26. The average age of the students was 13 years old. The aggregate amount of the special education disability due process hearing cases included: 25 autism cases, 12 emotional disturbance cases, nine intellectual disability cases, seven multiple disabilities cases, seven other health impairment cases, 18 specific learning disability cases, and four speech or language impairment cases. As this study used archival data, all of the due process hearing cases studied were already brought before a hearing officer within the Office of Dispute Resolution and Administrative Services. The hearing officer's job was to listen to each party's evidence as an impartial mediator and to render a decision as it related to the requirements of IDEA and state law. The cases studied spanned over a 12-year period of time (from 2004-2016) and were listed chronologically according to date they were received by the Office of Dispute Resolution and Administrative Services. The topics of the due process cases can be found in Appendix J.

Instrumentation

Data used in this study came from the Virginia Special Education Due Process Hearing procedure that was extracted from the Virginia Department of Education Division of Special Education and Student Services' Virginia Procedural Safeguards Notice: Special Education

Procedural Safeguards Requirements. The Procedural Safeguards Notice was found on the Virginia Department of Education website (VDOE, 2016b). All of the special education due process hearing cases in Virginia between the years 2004-2016 went through a system of procedures in order for the outcome to be included in the database on the VDOE website (Virginia Department of Education [VDOE], 2008). The procedures that were implemented during each hearing were in accordance with the due process requirements set forth in the reauthorized IDEA (2004). There is a specific protocol in Virginia for filing a due process hearing in accordance with the IDEA reauthorization starting with the VDOE and the impartial hearing officer hearing system set forth by the Supreme Court of Virginia.

In 2006, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education published a document which addressed regulatory requirements necessary to file due process hearings in compliance with IDEA. According to the OSERS, in reference to IDEA regulations, there is a specific timeline for filing a due process complaint (U.S. Department of Education, 2013) (see Appendix B). When parents of a student with a disability in Virginia have a complaint that alleges an IDEA violation, the complaint cannot be more than two years before the date the violation allegedly occurred (U.S. Department of Education, 2013). In order for parties in Virginia to request a due process hearing, they must first request a due process proceeding from VDOE and send a copy of the request to the other parties involved. A hearing officer is then assigned the case within 15 calendar days of receiving the request. If the case is considered sufficient, a hearing officer is assigned the case within five days of the receipt of notification. Within five business days of agreeing to serve as the hearing officer, a date, time, and location for a prehearing meeting is set-up. The prehearing meeting is necessary to possibly avoid litigation and to determine if mediation is possible between the

parties (U.S. Department of Education, 2013). If the request for due process is not resolved within 30 calendar days, the next step is for both parties to go through a due process hearing. During the due process hearing, the hearing officer is responsible for listening to evidence presented by both parties and making his or her decision based solely on the preponderance of evidence in accordance with state and federal law and regulations. The findings of facts and decisions are then sent to each party and their attorneys and to the VDOE within 10 school days of when the hearing was held. In Virginia, the hearing officer's decision is final and binding unless it is appealed. After the decision is rendered, VDOE is responsible for redacting the documents to protect personally identifiable information. VDOE is also responsible for providing findings and decisions to the State Special Education Advisory Committee and making the findings available to the public by posting each due process hearing decisions quarterly on the VDOE website. The data for this study was retrieved from the VDOE's (2016b) website.

The researcher collected data from the VDOE website and placed the data into frequency charts. The first chart (Disability Due Process Cases) consisted of nine columns containing seven of the 13 federally-recognized special education disabilities, the year of the case, and the total number of cases heard per year. The seven disabilities in the chart were labeled as follows: autism, ED = emotional disturbance, ID = intellectual disability, MD = multiple disabilities, OHI = other health impairment, SLD = specific learning disabilities, and SLI = speech or language impairment. The rows were designated as the year the court cases were decided and the total number of cases heard between 2004-2012 (see Appendix A).

Data from the VDOE website was also placed into a second chart (parent win, lea win, split decisions, dismiss, split, and neither outcomes of due process cases) and consisted of 13 columns for the 13 federally-recognized disabilities. They were abbreviated as follows: DB =

deaf-blindness, deaf = deafness, ED = emotional disturbance, HI = hearing impairment, ID = intellectual disability, MD = multiple disabilities, OI = orthopedic impairment, OHI = other health impairment, SLD = specific learning disabilities, SLI = speech or language impairments, TBI = traumatic brain injury, and VI = visual impairments. Each chart was organized by the outcome for each case (see Appendix H).

Procedures

In order to conduct this study, the researcher first obtained permission from the Institutional Review Board (IRB) at Liberty University to ensure that all rights of the participants were protected. Then the researcher began the descriptive content analysis by visiting the Virginia Department of Education (2017) website. On the VDOE home page, the researcher went to the left side of the page, under VDOE home, and scrolled down nine places until the “Special Education” tab was found. The researcher selected the Special Education tab and was brought to the Special Education home page. The researcher went to the right side of the Special Education home page, under the Special Education Main Menu, and selected the “Resolving Disputes” tab. The researcher selected the Resolving Disputes tab and was brought to the Special Education Resolving Disputes page. The researcher went to the right side of the page, under Resolving Disputes main menu, and selected the “Due Process Hearings” tab. The researcher selected the Due Process Hearing tab and was brought to the Resolving Disputes Special Education Due Process Hearings page. On that page, the researcher scrolled down to the middle and found the title Hearing Officer Decisions (by fiscal year). Below that title, there were blue subcategories that start with “Issue Index” at the top and end with the year range 2001-2002. In order to research due process hearings from 2004-2016, the researcher selected each year range to review, starting with the range 2005-2006 (one 2004 case was in that range). Once

the researcher selected the year range 2005-2006, the screen “Due Process Hearings Hearing Officer Decisions 2005-2006” appeared. Under that title, blue sub case numbers came into view. The researcher selected “Case #1 – Reference # 04-111.” After selecting Case #1 – Reference # 04-111, a document with redacted information was created (see Appendix G for example). The researcher perused all of Case #1 – Reference # 04-111, to locate the following information: the date the case was received, the case number, the sex of the student involved in the case, the age/grade level of the student involved in the case, and the student’s disability. When the aforementioned information was found, the researcher recorded the information in a chart (see Appendix G). Upon completion of Case #1 – Reference # 04-111, the researcher used the back arrow key and continued the procedure in a subsequent manner for each year.

One hundred and thirty one cases were reviewed and documented between the years 2004-2016; however, many of the cases contained redacted information. Out of the 131 cases examined, only 106 cases contained all of the information the researcher required. The researcher did a frequency count, by counting how many cases from 2004-2016 contained the following information: the gender of the students, the age of the student, the grade level of the student, the student’s disability, and the outcome of each case. The researcher then recorded that information onto individual charts per year of due process hearing (see Appendix H).

Data Analysis

The data was analyzed using descriptive content analysis. The researcher collected frequency counts for each category. Frequency and percentages were reported as well as trend charts.

CHAPTER FOUR: FINDINGS

Overview

This study examined the frequency of due process hearings associated with special education disabilities from 2004 to 2016 in the state of Virginia among K-12 public school students. Archival data from the Virginia Department of Education due process website was collected and examined. Descriptive content analysis was used to analyze the data. Chapter Four presents the findings and an analysis of the data collected.

Research Questions

The following research questions were used to guide this descriptive content analysis:

RQ1: What are the frequencies of due process wins and losses for the local education agency (LEA) and the parents of the student with a disability from 2004-2016 in the state of Virginia among K-12 public school students?

RQ2: What are the frequencies of types of special education disabilities brought to due process from 2004-2016 in the state of Virginia among K-12 public school students?

RQ3: What trends emerge among the types of special education disabilities brought to due process from 2004 to 2016 in the state of Virginia among K-12 public school students?

Descriptive Statistics

One hundred and six cases were examined for this study. Twenty-five of the cases were not considered for the disability frequency count because the information was redacted on the website (see Appedices D and E). For this study, 13 categories covered under The Individuals with Disabilities Education Act (IDEA) were examined. The categories were autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech

or language impairment, traumatic brain injury, and visual impairment, including blindness. However, six categories of disabilities were not used in this study because they were not the primary disability listed on the case or no due process hearing cases associated with that particular disability during the years studied were found. The six categories not used in this study were deaf-blindness, deafness, hearing impairments, orthopedic impairment, traumatic brain injury, and visual impairment, including blindness

The following dummy codes were given to each of the variables analyzed using SPSS: The gender column was coded as: 0 = male, 1 = female, and 3 = undetermined. The grade column was coded as: 0 = elementary school (kindergarten - fifth grade); 1 = middle school (sixth - eighth grades), 2 = high school (ninth - 12th) grade, and, 3 = college (13th grade and above). The disabilities column (primary disability only considered as well as only disabilities with a set of at least five students) was coded as: 1 = autism, 4 = emotional disturbance, 6 = intellectual disability, 7 = multiple disabilities, 9 = other health impairment (with the majority of students being labeled as having attention deficit/hyperactivity disorder or ADHD), 10 = specific learning disability, and 11 = speech or language impairment. The outcomes column was coded as: 0 = case dismissed, 1 = parent win, 2 = local education agency (LEA) win, 3 = split decision, and 4 = neither.

Due Process Cases by Disability

The numbers of due process cases by disability were examined. The highest percentage was other health impairment at 29%, the next highest percentage was autism at 24%, specific learning disability was third at 17%, emotional disturbance was fourth at 11%, intellectual disability was next at 8%, multiple disabilities was sixth at 7%, and speech or language Impairment was seventh at 4% (see Table 1).

Table 1

Number of Due Process Disabilities Cases (2004-2016)

| Disability | Total | |
|-------------------------|--------|------------|
| | number | Percentage |
| Autism | 25 | 24% |
| Emotional Disturbance | 12 | 11% |
| Intellectual Disability | 9 | 8% |
| Multiple Disabilities | 7 | 7% |
| Other Health Impaired | 31 | 29% |
| Specific LD | 18 | 17% |
| Speech or LI | 4 | 4% |
| Total | 106 | 100% |

Note. LD = learning disability, LI = language impaired

Age. The age of each student with disabilities brought to due process between 2004-2016 was analyzed and placed into a table (see Table 2). The average age of a student with a disability, who went to due process was 13 years old. According to the data, there was an increase in the number of cases between the ages of 13 and 14 years old; this tends to be the middle school years.

Table 2

Ages of Students with Disabilities Cases Brought to Due Process (2004-2016)

| Age | Number | Percentage |
|---------|--------|------------|
| Unknown | 46 | .434 |
| 5 | 2 | .019 |
| 6 | 2 | .019 |
| 7 | 3 | .028 |
| 8 | 3 | .028 |
| 9 | 3 | .028 |
| 10 | 5 | .047 |
| 11 | 3 | .028 |
| 12 | 3 | .028 |
| 13 | 7 | .066 |
| 14 | 8 | .075 |
| 15 | 1 | .001 |
| 16 | 6 | .056 |
| 17 | 4 | .038 |
| 18 | 6 | .056 |
| 19 | 2 | .019 |
| 20 | 0 | 0 |
| 21 | 1 | .001 |
| 22 | 1 | .001 |

Sex. The sex of the students with disabilities brought to due process between 2004-2016 were analyzed and placed into a table (see Table 3). The majority of students with a disability who went to due process were male (74.5%) as compared to female (25.5%). Thus, males ($n=79$) were approximately 2.9 times more likely than females ($n=27$) to be brought to due process.

Table 3

Sex of Students with Disabilities Cases Brought to Due Process (2004-2016)

| Sex | Frequency | Percent |
|---------|-----------|---------|
| Males | 79 | 74.5 |
| Females | 27 | 25.5 |
| Total | 106 | 100.0 |

Results

Research Question One

Research question one examined percentages of due process wins and losses for the local education agency (LEA) and the parents of the student with a disability. There was 106 special education due process hearing cases analyzed between the years 2004-2016 which were listed on the Virginia Department of Education website under special education due process hearings. The data gathered was analyzed using content analysis to identify the frequencies of wins and losses. Out of the 106 cases analyzed, the following information was gathered: seven due process cases were dismissed, 11 due process cases the parent prevailed, 79 due process cases the local education agency (LEA) prevailed, eight due process cases had split outcome decisions, and one due process case neither party prevailed. When looking at the odds ratio of LEA winnings ($n = 79$) to parent winnings ($n = 11$), the LEA was 7.2 times more likely to have a favorable outcome, or in other words, the LEA won 87% of the cases (see Table 4).

Table 4

Outcome of Due Process Cases by Disability (2004-2016)

| Disability | Case Dismissed | Parent Prevailed | LEA Prevailed | Split Decision | Neither Prevailed | Total |
|------------|----------------|------------------|---------------|----------------|-------------------|-------|
| Autism | 0 | 3 | 21 | 1 | 0 | 25 |
| ED | 1 | 1 | 10 | 0 | 0 | 12 |
| ID | 0 | 2 | 6 | 1 | 0 | 9 |
| MD | 0 | 2 | 5 | 0 | 0 | 7 |
| OHI | 5 | 1 | 22 | 3 | 0 | 31 |
| SLD | 1 | 1 | 13 | 3 | 0 | 18 |
| SLI | 0 | 1 | 2 | 0 | 1 | 4 |
| Total | 7 | 11 | 79 | 8 | 1 | 106 |

Note. ED = emotional disturbance, ID = intellectual disability, MD = multiple disabilities, Other = other health impaired, SLD = specific learning disability, SLI = speech language impaired.

Research Question Two

Research question two examined the primary disability of each of the 106 special education due process hearing cases which were listed in each due process case document on the Virginia Department of Education website under special education due process hearings between 2004-2016. Based on the analysis, students with the disability category of other health impairment (OHI) ($n = 31$) were brought to due process more than any other disability category, accounting for 29% of the total cases. Autism ($n = 25$) followed closely behind, accounting for 24% of the total cases. Third was specific learning disability ($n = 18$), accounting for 17% of the total cases. According to the findings, OHI and autism combined accounted for over half of the cases that went to due process (see Table 5).

Table 5

Total Number of Disability Cases Brought to Due Process (2004-2016)

| Year | Disability | | | | | | | Total |
|-------|------------|-----------------------|-------------------------|-----------------------|-------------------------|------------------------------|-------------------------------|-------|
| | Autism | Emotional Disturbance | Intellectual Disability | Multiple Disabilities | Other Health Impairment | Specific Learning Disability | Speech or Language Impairment | |
| 2004 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| 2005 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2006 | 3 | 1 | 2 | 1 | 4 | 5 | 2 | 18 |
| 2007 | 4 | 1 | 0 | 0 | 1 | 2 | 2 | 10 |
| 2008 | 4 | 3 | 3 | 3 | 5 | 1 | 0 | 19 |
| 2009 | 3 | 0 | 1 | 0 | 6 | 2 | 0 | 12 |
| 2010 | 4 | 2 | 2 | 0 | 4 | 1 | 0 | 13 |
| 2011 | 2 | 1 | 0 | 1 | 3 | 2 | 0 | 9 |
| 2012 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 2 |
| 2013 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 3 |
| 2014 | 1 | 1 | 1 | 0 | 5 | 1 | 0 | 9 |
| 2015 | 0 | 1 | 0 | 0 | 1 | 2 | 0 | 4 |
| 2016 | 3 | 1 | 0 | 1 | 1 | 0 | 0 | 6 |
| Total | 25 | 12 | 9 | 7 | 31 | 18 | 4 | 106 |

Research Question Three

Research question three examined the trends that emerged among the 106 special education disability cases that were brought to due process between 2004-2016. The information for the trend chart came from a content analysis consisting of each due process hearing case obtained through the documentation on the Virginia Department of Education website under special education due process hearings. Based on the trend analysis, four (MD, ID, ED, SLD) out of the seven special education disability categories examined in the study did not experience increases in the number of cases during the years 2004-2016. Three of the disability categories

(SLD, OHI, and Autism); however, experienced notable increases in the number of cases between the years 2005-2010 (see Figure 1).

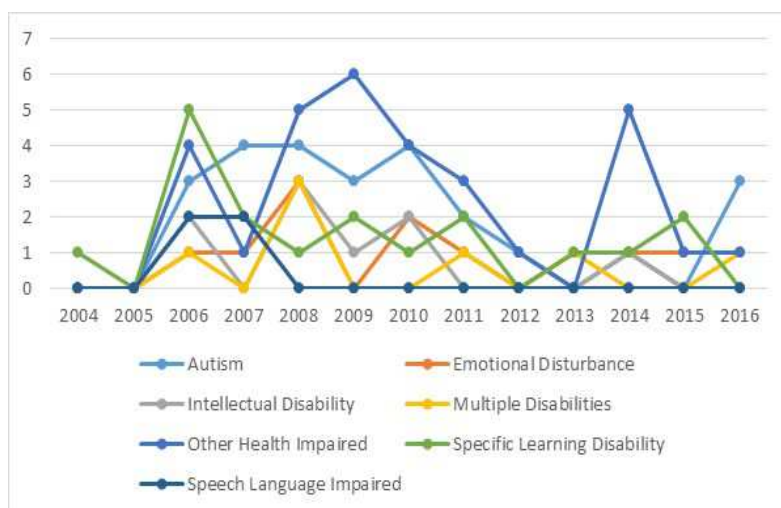


Figure 1. Special education disability due process trends line graph (2004-2016). This figure illustrates emerging trends in the following special education categories between the years 2004-2016: Autism, Emotional Disturbance, Intellectual Disability, Multiple Disabilities, Other Health Impairment, Specific Learning Disability, Speech or Language Impairment.

Autism. After examining individual special education disability categories, it was noted that trends emerged in due process hearing cases for each category between the years 2004-2016. In cases involving students with autism, there was a steady rise in cases brought to due process between the years 2005-2007 then a steady decline between the years 2010-2013 with a slight increase between 2015-2016 (see Figure 2).

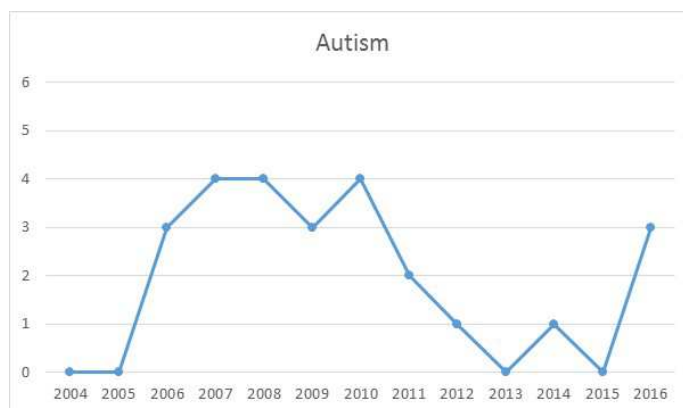


Figure 2. Trend analysis graph for autism. This figure illustrates emerging trends in autism due process hearing cases between the years 2004-2016.

Emotional disturbance. After examining individual special education disability categories, it was noted that trends emerged in due process hearing cases for each category between the years 2004-2016. In cases involving students with emotional disturbance (ED), there was no spike in cases brought to due process between the years 2004-2016; however, there was a slight peak between the years 2007-2008 and a slight decline between the years 2008-2009 and again between the years 2010-2012 before it leveled off between the years 2013-2016 (see Figure 3).

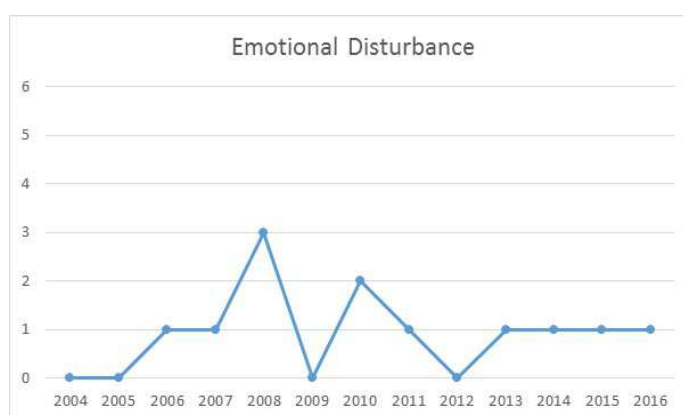


Figure 3. Trend analysis graph for emotional disturbance. This figure illustrates emerging trends in emotional disturbance due process hearing cases between the years 2004-2016.

Intellectual disability. After examining individual special education disability categories, it was noted that trends emerged in due process hearing cases for each category between the years 2004-2016. In cases involving students with an intellectual disability (ID), there was a small increase in cases brought to due process between the years 2007-2008 and a small decrease in cases brought to due process between the years 2010-2011. With the exception of one case that was brought to due process in 2014, there have been no other reported cases of students with ID brought to due process between the years 2011-2016 (see Figure 4).

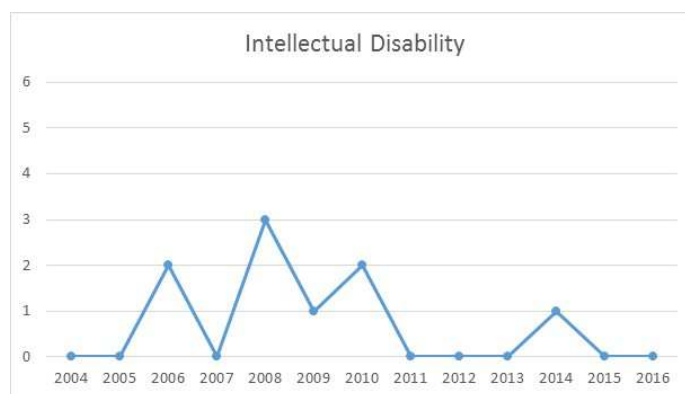


Figure 4. Trend analysis graph for intellectual disability. This figure illustrates emerging trends in intellectual disability due process hearing cases between the years 2004-2016.

Other health impairment. After examining individual special education disability categories, it was noted that trends emerged in due process hearing cases for each category between the years 2004-2016. In cases involving students with an other health impairment (OHI), there was an increase in cases brought to due process between the years 2007-2009 and a steady decrease between the years 2009-2013 with another increase between the years 2013-2014 and a sharp decline between the years 2014-2015 (see Figure 5).

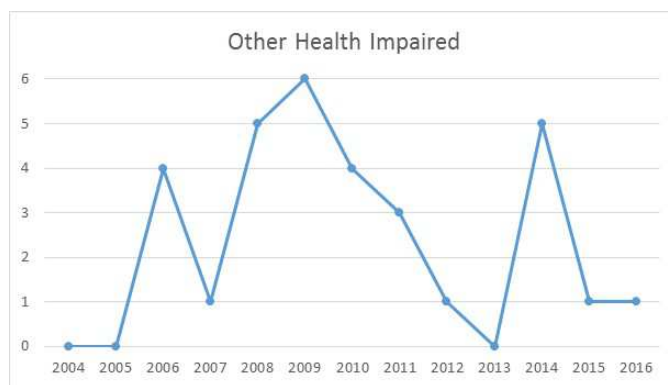


Figure 5. Trend analysis graph for other health impairment. This figure illustrates emerging trends in other health impairment due process hearing cases between the years 2004-2016.

Multiple disabilities. After examining individual special education disability categories, it was noted that trends emerged in due process hearing cases for each category between the years 2004-2016. In cases involving students with multiple disabilities (MD), there was a small increase in cases brought to due process between the years 2007-2008, but for the most part, there were zero to one MD cases brought to due process between 2004-2016 (see Figure 6).

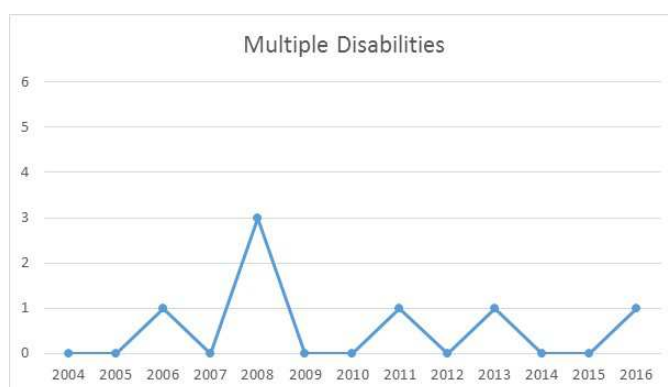


Figure 6. Trend analysis graph for multiple disabilities. This figure illustrates emerging trends in multiple disabilities due process hearing cases between the years 2004-2016.

Specific learning disability. After examining individual special education disability categories, it was noted that trends emerged in due process hearing cases for each category between the years 2004-2016. In cases involving students with a specific learning disability

(SLD), there was an increase in cases brought to due process between the years 2005-2006 with a steady decrease in cases brought to due process since 2006. There were no reported cases of students with SLD brought to due process in the years 2012 and 2016 (see Figure 7).

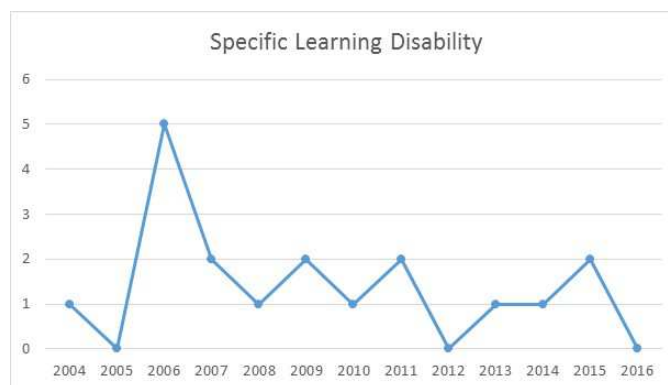


Figure 7. Trend analysis graph for specific learning disability. This figure illustrates emerging trends in specific learning disability due process hearing cases between the years 2004-2016.

Speech language impairment. After examining individual special education disability categories, it was noted that trends emerged in due process hearing cases for each category between the years 2004-2016. In cases involving students with a speech or language impairment (SLI), there were only four reported due process hearing cases between the years 2006-2007, with the other years reporting no due process hearing cases (see Figure 8).

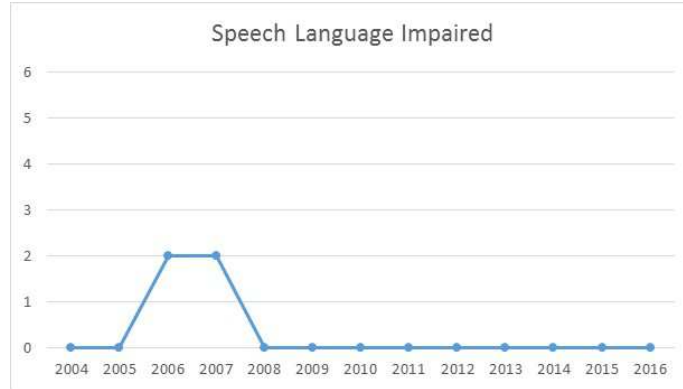


Figure 8. Trend analysis graph for speech or language impairment. This figure illustrates emerging trends in speech or language impairment due process hearing cases between the years 2004-2016.

CHAPTER FIVE: CONCLUSIONS

Overview

This study examined the frequency of due process hearings associated with the 13 identified special education disabilities recognized by IDEA in the state of Virginia among K-12 public school students. Archival data from 2004-2016, taken from the Virginia Department of Education due process website, was collected and examined using a descriptive content analysis approach that focused on identifying frequencies of due process hearing cases over a 12-year span. Chapter Five concludes this study by discussing the results, the implications, the limitations, and the recommendations for future references.

Discussion

The purpose of this descriptive content analysis study was to see if the total frequency of types of disability due process cases and outcomes were the same over the last 12 years in the state of Virginia among K-12 public school students. One hundred and thirty one cases were examined; however, due to redacted information in several of the cases, only 106 cases were utilized for this study. The due process cases contained the 13 federally-recognized special education disability categories: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment, including blindness, as defined by IDEA (2015). Only seven of the 13 special education disabilities were included in the data because they were the primary disabilities in the cases: autism, emotional disturbance, intellectual disability, multiple disabilities, other health impairment, specific learning disability, and speech or language impairment. Information collected and examined in this study contained the following: case number of the due process

hearing, sex of the student, age of the student, grade of the student, primary disability category of the student, and the outcome of the case.

Research Question One

Research question one involved the frequencies of due process wins and losses for the local education agency (LEA) and the parents of the student with a disability from 2004-2016 in the state of Virginia among K-12 public school students. Out of the 106 cases analyzed, the following information was gathered: seven due process cases were dismissed, 11 due process cases the parent prevailed, 79 due process cases the local education agency (LEA) prevailed, eight due process cases had split outcome decisions, and one due process case neither party prevailed. When looking at the odds ratio of LEA winnings ($n = 79$) to parent winnings ($n = 11$), the LEA was 7.2 times more likely to have a favorable outcome, or in other words, the LEA won 87% of the cases. Part of the reason why the LEA won more due process cases than the parents could be due to the strict federal guidelines that each state must adhere to in order to receive federal funding. States receiving funding for educating children with disabilities are held to strict standards to comply with all sections of PL 94-142 or face a penalty. Thus, school systems are more careful to ensure IEP compliance. Section 616 of PL 94-142 noted that states that do not comply with the procedures under the law shall have their funding withdrawn (20 USC 1418, sec. 616). Parents, on the other hand, may not be aware of these strict guidelines and may be submitting their cases with an erroneous understanding of the law.

Another reason why the LEA may prevail more in due process hearing cases than parents is that under the No Child Left Behind Act (NCLB) of 2001, school systems and the states are not only held accountable for student achievement but are also commanded to prevent educational discrimination to students with disabilities by providing educational access and

opportunities in the least restrictive environment (Cortiella, 2006). Each state department of education monitors school districts closely on their provision of a free and appropriate public education (FAPE), especially since parents of students with disabilities often challenge the minimal standard of the educational benefit guideline as a way for school systems to get out of providing FAPE. State departments also monitor school systems for indicators of measurable progress for each student with a disability. Each state has academic content standards for students with disabilities that are now referred to as standards-based IEPs. As much as possible, students with disabilities are not only to have access to the general education curriculum but are also to be actively engaged in the learning of content area, skills, and assessments (Cortiella, 2006).

Parents who bring the LEA to due process may not understand the primary purpose of IDEA or FAPE. According to Hyman et al. (2011), the primary purpose of IDEA is to ensure that every child with a disability receives a FAPE. According to Wrightslaw (2008), the purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living..." (IDEA, 2004, 20 U.S.C. 1400(d)). When parents do not understand FAPE or the premise behind it and mediation does not resolve the issue, the parents bring the LEA to court. However, because the LEA understands FAPE, they are better prepared to adhere to its strict guidelines.

Finally, one more reason why the LEA may prevail in a due process hearing case may be representation by an attorney. School districts have representation in due process hearing cases approximately twice as frequently as parents, since many parents cannot afford representation

(Pudelski, 2016). School systems hire representatives (attorneys) who are versed in special education law and understand the law when it comes to a FAPE for a student with a disability.

Research Question Two

Research question involved at the frequencies of the types of special education disabilities brought to due process from 2004-2016 in the state of Virginia among K-12 public school students. Based on the collected and examined data, it was concluded that, between the years 2004-2016, the highest percentage of due process cases came from the disability category of other health impairment at 29%. The next highest percentage was autism at 24%, specific learning disability was third at 17%, emotional disturbance was fourth at 11%, intellectual disability was fifth at 8%, multiple disabilities was sixth at 7%, and speech or language impairment was seventh at 4%. ADHD jumped 15% in the last several years, possibly due to over diagnoses, less exposure to outdoor play, delay in sleep onset due to use of modern technology, lack of structure in children's lives, video games addiction, genetics, and educators pushing parents to medicate their child for better academic success (Hicks, 2013). In a national survey sent by the Center for Disease Control (CDC) between 2009-2010 to parents of children with ADHD, parent reports from Virginia noted that 81% of children with ADHD took medication for ADHD during the past week. Among all states and D.C., the national average was 74%. Virginia ranked 11th out of 51 (Center for Disease Control [CDC], 2010). The same parent report noted that 39% of children with ADHD in Virginia received behavioral treatment for ADHD during the past 12 months. Among all states and Washington, D.C., the national average was 44%. Virginia ranked 39th out of 51 (CDC, 2010). Another ADHD survey by CDC took place between the years 2003-2011 to note trends. At that time, parents surveyed reported a 2.5% increase in ADHD diagnoses in youths between the ages of 4-17 years old in the years

2003-2011. The increase went from a 9.3% report rate to an 11.8% report rate (CDC, 2017). Children with ADHD tend to be a challenge for teachers, who are not prepared to handle the activity level of the child with ADHD. Students with ADHD have a tendency to disrupt classroom instruction if not properly managed. Teachers who are not trained in how to deal with a child with ADHD may have difficulty with behavior management and thus contact the parents more often with negative feedback. Parents of children with ADHD who are consistently contacted about their child's behavior may determine that a FAPE is not being provided for their child.

Autism is another category that had a high percentage of due process cases in Virginia. Autism is a condition which has a spectrum range. Children with autism spectrum disorder (ASD) all have difficulty with social interaction, empathy, communication, and flexible behavior but to different degrees. Autism has been classified as a special education disability since 1992. A report from the Centers for Disease Control and Prevention and National Center for Health Statistics showed that reported autism in children, ages three to 17, went up about 80% from 2011-2013 and 2014. Data released by the CDC in 2012 estimated that the prevalence of autism in children, between the ages of 3 through 17, is 1 in 68 in the United States (CDC, 2016). A government survey, taken from parent surveys in 2014, suggested that one in 45 children between the ages of three through 17 have autism (U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2015). The number of students served under the category of autism in Virginia public schools has increased as well, from approximately 1,500 students in 1998 to approximately 18,000 students in 2015 (CDC, 2016). At this time, autism is the fastest growing developmental disability in the United States (TACA, 2017). Part of the reason autism is on the rise could be due to children being reclassified from a

former disability to autism. Another reason why ASD cases have been on the rise could be due to genetics or environment. Some studies show that babies born to older women could have chromosomal abnormalities linked to ASD (CDC, 2016). Environmental factors may be a marker in the rising number of ASD cases in the United States; a pregnant woman's exposure to pesticides could be one factor and mercury exposure through vaccines may be another factor (CDC, 2016). Finally, pregnant women whose immune systems contain specific antibodies may increase the risk of their baby having ASD (CDC, 2016). The speculations and controversies explaining the increase in ASD cases continue.

Parents who have children with ASD have access to a wealth of information on the Internet, as well as access to other parents of children with ASD in the form of a group. Over the last several years, parents of children with ASD have formed an autism community, where they ban together to advocate for their children. The ASD community work together to trade information on new research, find the "best" education for their child, advocate for their child, and understand the latest legal decisions regarding ASD and school districts. School districts face many challenges with the growing number of children with ASD, partly due to parent advocates and partly due to effectively trying to teach a child with ASD using evidence-based educational strategies. According to research literature on ASD, applied behavioral analysis (ABA) appears to be the best-known evidence-based educational strategy to use with children with ASD. Public school systems may not always properly train teachers on the most effective way to use ABA strategies and thus risk parents challenging them on FAPE and suing the school system.

Specific learning disability (SLD) had the third highest percentage of due process cases in Virginia during 2004-2016. The Regulations Governing Special Education Programs for Children with Disabilities in Virginia (2010) defined a SLD as a

Disorder in one or more basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, dyslexia, or developmental aphasia and can include such disorders as dyslexia, dysgraphia/agraphia, dyscalculia, or developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disabilities; of environmental, cultural, or economic disadvantage. (COV § 22.1-213; 34 CFR 300.8 (c) (10))

Other disorders could accompany SLD as a secondary or tertiary disorder. Teachers who work with students that exhibit SLD need to be versed in effective, evidence-based instructional practices in order to promote educational benefit and growth, otherwise, they risk being challenged on a FAPE.

Research Question Three

Research question three involved trends that emerged among the types of special education disabilities brought to due process form 2004-2016 in the state of Virginia among K-12 public school students. When examining trends it was noted that, overall, there were only slight increases in the number of special education due process cases in Virginia in the categories of autism, other health impairment, and specific learning disability.

One explanation for the possible increases in the number of due process cases in the categories of autism, other health impairment, and specific learning disability could be due to the reauthorization of the Individuals with Disabilities Education Act (IDEA) in 2004 that continued with parents advocating for their children and the 2005-2006 Supreme Court decisions regarding parental rights. Under IDEA 2004, parents' rights became a bit more restricted. For example, the presumption that favors a child with a disability when an offense has occurred was absent. School districts can now remove a child from school when an offense has occurred and take that offense to the IEP team for a manifestation of determination review to determine if the offense was caused by the student's disability. This means that a child with a disability can be suspended from school for a period of time. School systems may now remove a child for inflicting bodily injury, carrying drugs, or carrying weapons to school without parental input. Finally, students who are removed from school may be sent to alternative placements for 45 days without parental input. Under these changes, parents may claim a lack of FAPE and go to due process.

Another explanation for the increases in due process cases over the past 12 years could be due to a provision that allows parents to place their child in a private school at the school districts' expense if they feel that their child with a disability is not being provided a FAPE. Parents who place their children in private education challenge their school districts on the delivery of special education services. IDEA 2004 focused on changing low expectations for students with disabilities and educational practices that were not research-based, to high expectations for students with disabilities while having those students access the general education curriculum to the maximum extent possible. According to IDEA (2004), parents who

feel that their child's school does not provide a quality education that meets the special needs of their child have a right to send their child to a private school at the schools district's expense.

Researchers have mentioned a third possible explanation for the increase in special education due process hearings in autism and other health impairments. Autism diagnoses have been on the rise in the last two decades, while ADHD diagnoses have increased in the last decade. As noted in the study, the due process system has been in existence for parents since the early 1980s. Due process hearings peaked during those years and were focused mainly on the desires of the parties as opposed to the educational needs of the child (Pudelski, 2016).

Three major court cases between 2005-2007 added to the explanation of special education due process trends. In 2005, *Schaffer v. Weast* was heard in the Supreme Court. This case challenged the appropriateness of an IEP, while *Arlington Central School District Board of Education v. Pearl and Theodore Murphy* (2006) questioned if parents of a child with a disability could have their child's private school tuition and the educational consultant paid for by the school district. Finally, *Winkelman v. Parma City School District* (2007) challenged the courts on whether or not parents could represent themselves in a court of law. All of these cases demonstrated how parental rights have changed over the years, giving parents more rights in where and how their child with a disability is educated.

Implications

Based on the research findings in the study, it is presumed that more information is needed in order to make any broad conclusions about the trend on due process hearings in Virginia. While the information gathered from the VDOE due process hearing website noted some potential valuable information for school systems, there is not enough solid information regarding the reasons why the parents brought the LEA to due process. For instance, the study

revealed that the outcome of each due process case was not equitable between parent wins and LEA wins, nor was it predictive of the type of disability the student exhibited or the age and gender of the student. The grade level of the student did not appear to be a factor in the type of disability brought most frequently to due process or the outcome of the due process hearings. Interestingly, the disability category brought to due process the most frequently during 2004-2016 was the category of OHI, with attention deficit/hyperactivity disorder (ADHD) the most prevalent condition under that category.

This researcher believes that many of the problems that lead up to due process come from administrators' roles in special education, teachers' roles in special education, and parental expectations. One implication found in this study was that administrators' roles in special education may have a direct impact on parent-school relationships. Research indicates that many administrators may not have the special education background to support their special education teachers, nor do they take an interest in special education (DiPaola & Walther-Thomas, 2003). Administrators who are in charge of special education at their school and have never been in special education may not understand the components of an IEP or the premise behind IDEA and the No Child Left Behind Act (NCLB). They may not also know what providing FAPE means and are thus unable to support their special education teachers during an IEP meeting or when a parent has a complaint about accommodations and services. In order for administrators to be able to support their special education teachers, they need to understand their students' IEPs, keep up with evidence-based research practices in special education, have knowledge of past and recent legislative actions, and engage in special education professional development a few times per year.

Another implication found in this study was that administrators may not always ensure legal compliance in IEPs if they do not understand policies and procedures and procedural safeguards or review draft IEPs prior to an IEP meeting to ensure compliance. Administrators who know the components of an IEP are able to effectively read over a draft IEP prior to an IEP meeting and give informed feedback to their special education teachers so that both the administrator and the special education teacher are in accordance with one another and IDEA.

A third implication found in this study was that administrators must keep up with the legal aspects of IEPs and changes that affect the students with disabilities and provide their teachers professional development opportunities regarding the same information to ensure that IEP compliance is obtained.

A fourth implication found in this study, concerning administrators, was that administrators must have knowledge of the special education population at their school, the disabilities, and the challenges the disabilities present both educationally and behaviorally, so they are better prepared to assist teachers in IEP implementation, academic progress, and behavior management.

A fifth implication found in this study for administrators was that they need to keep the lines of communication open with parents of students with a disabilities in order to prevent miscommunication set-backs. Administrators who keep an open line of communication with parents may possibly prevent going to court by educating parents on what a FAPE means for their child and how the school system will provide FAPE for their child. It is the belief of this researcher that school systems that take the time to inform the parents of their child's educational plan and the meaning of a FAPE while also keeping the lines of communication open find an ally in the parents. Successful relationships between special educators and the parents also occur

when parents have access to special educators, feel their support, and are offered networking with the school system. If parents feel empowered by the school system and become more active participants in the education of their child, they may be less likely to bring the school system to due process. A final implication for administrators found in this study was that administrators need to train all their teachers and staff on how to implement special education accommodations so there is a clear understanding throughout the school that IEP compliance is mandatory. This not only may prevent parents from bringing the school to due process, but may also unite the school as a whole so that parents may note student progress both academically and behaviorally.

An implication for parents found in this study was that parents who bring the LEA to due process may not understand the primary purpose of IDEA or understand how their child's disability impacts educational access and expect the school system to "fix" their child. A second implication was that these parents may also not understand the premise behind a FAPE. Parents who lack understanding of IDEA may be the parents who bring the LEA to court for expectations that school systems cannot provide or are not in line with a FAPE. A third implication concerning parents was that the parents may not have a clear understanding of the IEP process or the procedural safeguards given to them at the IEP meeting. It is the belief of this researcher that parents need to take some time during the IEP meeting to ask lots of questions to ensure they have an understanding of their child's disability and how it affects academic and behavioral progression, the services and accommodations suggested to them by the LEA, and their rights and the rights of their child. Moody (2010) noted that parents who are active members of the IEP team are more satisfied in the special education process than parents who are not active participants and that school systems that engage families throughout the IEP process find an ally in the parents (Fiedler & Haren, 2008). Also, family access to special educators,

open communication, support, and networking, was found to be a key component in successful relationships between school systems and the parents (Fiedler & Haren, 2008).

One implication found in this study for special educators and general education teachers was that they may be not adequately trained in how to work with students with specific disabilities. They also may not have a complete understanding of FAPE. Special educators and general education teachers must be trained on how a student's disability affects educational and social progression so they know how to properly implement students' accommodations. Knowing the meaning of FAPE and the obligation to provide FAPE to students' with disabilities is key to successful understanding of IEP implementation. A second implication found in this study for special education teachers was a possible lack of communication with parents, which may affect relationships. Special education teachers must foster a relationship with the parents of students with disabilities by keeping the lines of communication open. Applequist (2009) noted that parents were most frustrated with the lack of information they received from the school system in regards to services and accommodations provided to their children with disabilities. The lack of communication expressed by these parents often turned into distrust with the school system. The parents in the study found that their experience with the special education process was negative in specific areas; however, their experience with caring special education professionals made a difference in their view of the special education process (Applequist, 2009).

Limitations

This was an archival case study based on information from the state of Virginia's Department of Education (VDOE). Virginia's special education due process cases were chosen for this study due to the availability of the data. It was assumed that all the data collected on the

VDOE's due process hearing website was available, accurate, and updated. The findings of this study were limited to Virginia and cannot be generalized as valid for other states. Although federal law requires each state to follow specific guidelines when it comes to IDEA, certain due process procedures may be state-specific. Some of the information on the special education due process hearing cases from 2004-2016 was redacted and therefore could not be included in the study. One major limitation of this study was the relatively small sample size. Out of the 131 cases examined, only 106 had all of the information necessary to make a valid conclusion. Another limitation of this study was that the information in the documents on the VDOE website have redacted sections to protect the student. The researcher was left to decipher some of the information and could have inadvertently made an assumption that was not correct. Another limitation of this study was that only seven out of the 13 federally recognized disabilities were represented in the study, either due to the sample size, redacted information, or it was listed as a secondary or tertiary disability in the documentation. One final limitation of this study was that the VDOE constantly updates the due process cases and therefore, not all of the cases in 2016 were included, as they were just added in the system.

Recommendations for Future Research

It seems evident by the results of this study that specific disability due process cases may be on the rise. It is still unclear the reasons why autism and other health impairment due process cases have increased over the past several years while other disability categories, such as speech or language impairment, due process cases have flat lined. A more extensive study that examines why autism and other health impairment due process cases have increased over the years should be conducted. It is also evident by this study that knowing the most contested violations of IDEA would be beneficial for school systems so that action can be taken to possibly

prevent a particular IDEA category from going to due process. Future researchers should consider requests to view complete due process hearing documents that abide by confidentiality laws but that are less redacted. Reading complete due process cases without any redacted information but the child's name and school system would give a broader area to study and thus possible explanations to unanswered questions. This study was limited to 106 due process cases between the years 2004-2016 because the researcher encountered many documents that had key information redacted. Having information about the sex, age, grade level, and disability of the child in all the due process documents might shed some light on trends. Future research might consider a more in-depth study of how the hearing officers choose which cases go to due process and which cases are dismissed from going to due process. Knowing that information could lead to more cases of mediation taking place so that school systems are not being brought to court unnecessarily. Not considered in this study were ethnicity, demographics, completed grade level of parents, and economic status of the parents. Future research studies in these areas, in conjunction with knowing the sex, age, grade level, and disabling condition of the student, could prove useful in confirming or refuting the findings of this study.

It also seems evident from this study that parents do not have a firm grasp on IDEA or FAPE and need to be educated more on what school systems can and cannot do for children with disabilities. Possible suggestions to aid in parental understanding of IDEA or FAPE could be providing some type of visual for the parents to review and to ask questions. Parental involvement in the IEP process might also be examined in future research studies. Based on the findings of this research, this researcher believes that school systems need to do a better job of involving their parents in the IEP process. Suggested future research could include a study of if

successful collaboration with parents and the school system throughout the IEP process and during the implementation of the IEP during the school year produces satisfied parents.

Additionally, interviewing parents, teachers, and administrators on their understanding of policy and procedures could prove beneficial to future researchers.

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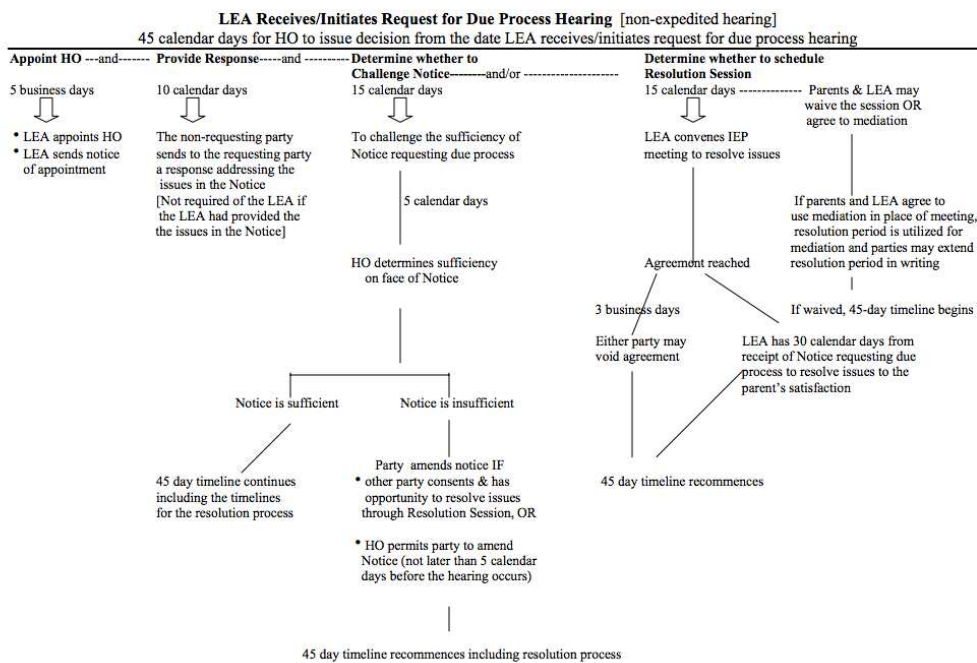
APPENDIX A: DISABILITY DUE PROCESS CASES CHARTS

Table A1

Disability Due Process Cases

| | Disability | | | | | | | Total |
|-----------|------------|-----------------------|-------------------------|-----------------------|-----------------------|------------------------------|--------------------------|-------|
| | Autism | Emotional Disturbance | Intellectual Disability | Multiple Disabilities | Other Health Impaired | Specific Learning Disability | Speech Language Impaired | |
| 2004 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| 2005 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2006 | 3 | 1 | 2 | 1 | 4 | 5 | 2 | 18 |
| 2007 | 4 | 1 | 0 | 0 | 1 | 2 | 2 | 10 |
| 2008 | 4 | 3 | 3 | 3 | 5 | 1 | 0 | 19 |
| 2009 | 3 | 0 | 1 | 0 | 6 | 2 | 0 | 12 |
| Year 2010 | 4 | 2 | 2 | 0 | 4 | 1 | 0 | 13 |
| 2011 | 2 | 1 | 0 | 1 | 3 | 2 | 0 | 9 |
| 2012 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 2 |
| 2013 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 3 |
| 2014 | 1 | 1 | 1 | 0 | 5 | 1 | 0 | 9 |
| 2015 | 0 | 1 | 0 | 0 | 1 | 2 | 0 | 4 |
| 2016 | 3 | 1 | 0 | 1 | 1 | 0 | 0 | 6 |
| Total | 25 | 12 | 9 | 7 | 31 | 18 | 4 | 106 |

APPENDIX B: DUE PROCESS HEARING TIMELINE



APPENDIX C: WIN, LOSE, AND DISMISS OUTCOMES OF DUE PROCESS CASES

Table C1

Win, Lose, and Dismiss Outcomes of Due Process Cases

| | Case Dismissed | Parent Prevailed | LEA Prevailed | Split Decision | Neither Prevailed | Total |
|---------------------------------|-------------------|---------------------|------------------|-------------------|----------------------|------------|
| Autism | 0 | 3 | 21 | 1 | 0 | 25 |
| Emotional Disturbance | 1 | 1 | 10 | 0 | 0 | 12 |
| Intellectual Disability | 0 | 2 | 6 | 1 | 0 | 9 |
| Multiple Disabilities | 0 | 2 | 5 | 0 | 0 | 7 |
| Other Health Impaired | 5 | 1 | 22 | 3 | 0 | 31 |
| Specific Learning Disability | 1 | 1 | 13 | 3 | 0 | 18 |
| Speech Language Impaired | 0 | 1 | 2 | 0 | 1 | 4 |
| Total | 7 | 11 | 79 | 8 | 1 | 106 |

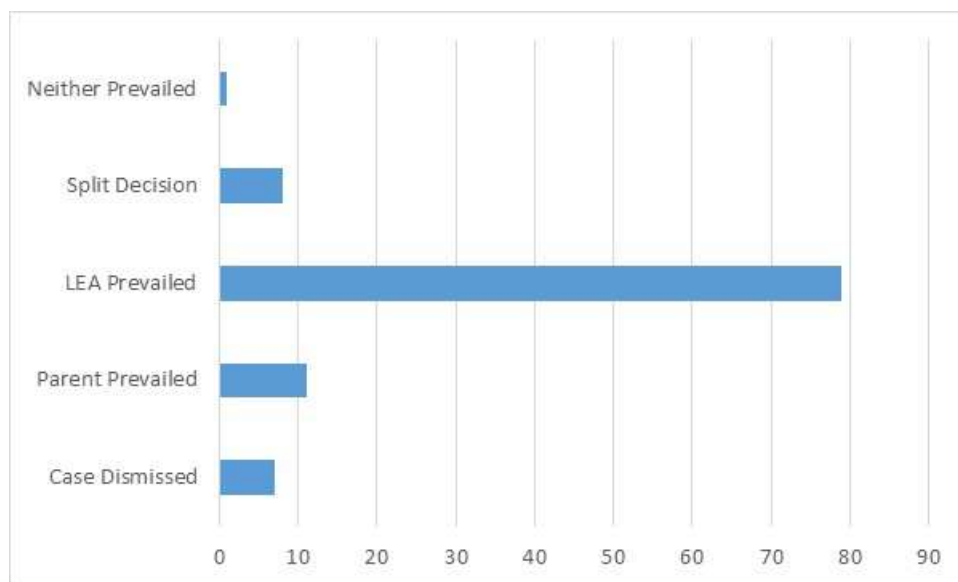


Figure A1. Win, lose, and dismiss outcomes of due process cases.

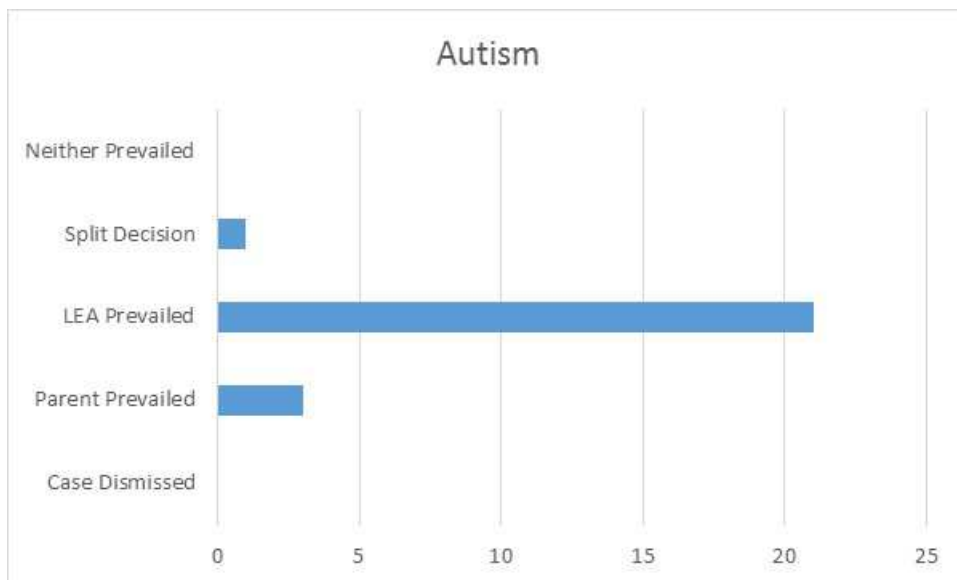


Figure A2. Win, lose, and dismiss outcomes of autism due process cases.

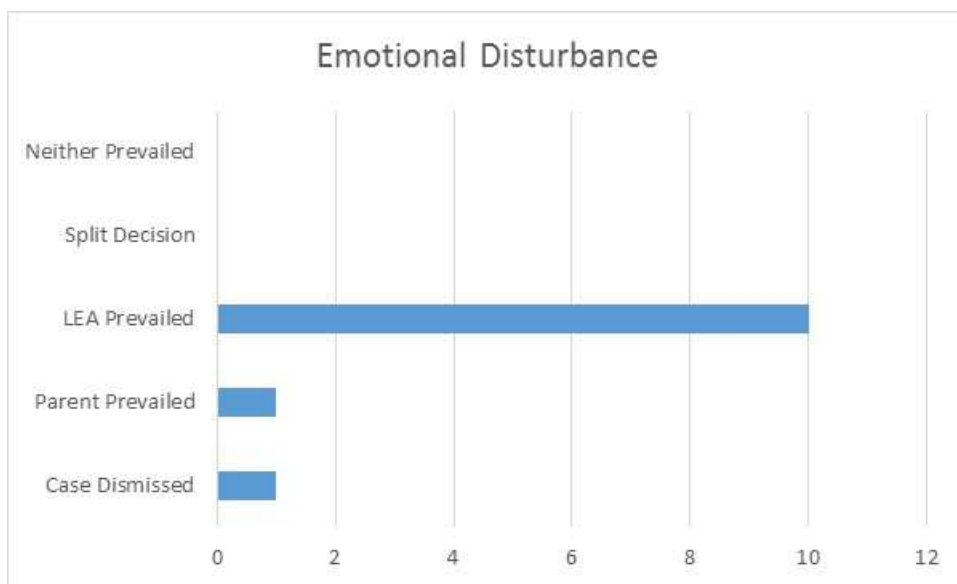


Figure A3. Win, lose, and dismiss outcomes of emotional disturbance due process cases.

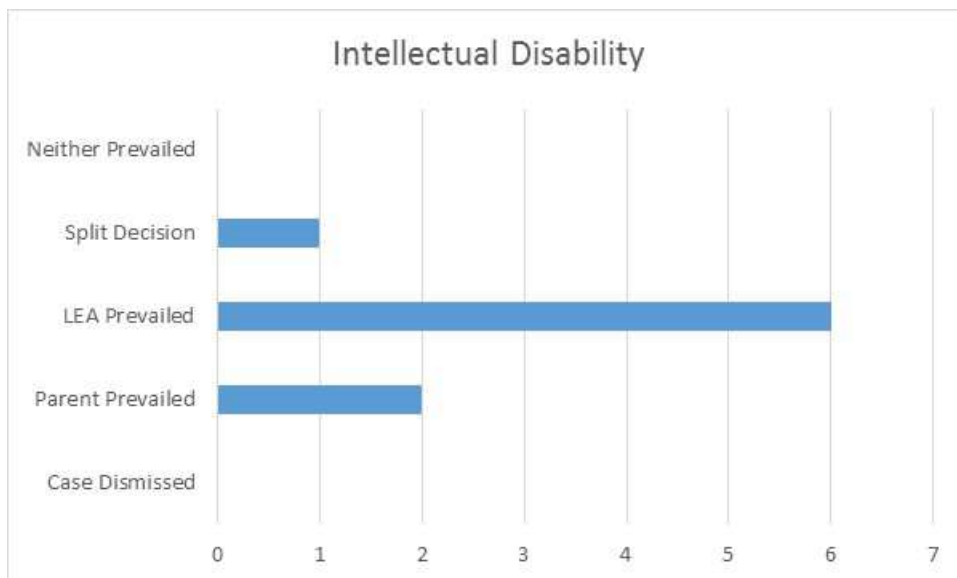


Figure A4. Win, lose, and dismiss outcomes of intellectual disability due process cases.

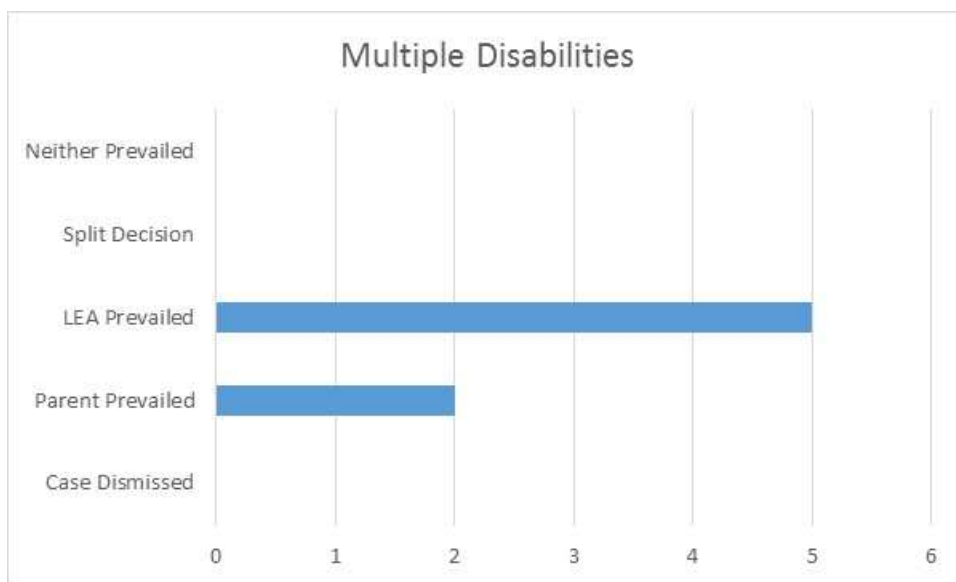


Figure A5. Win, lose, and dismiss outcomes of multiple disabilities due process cases.

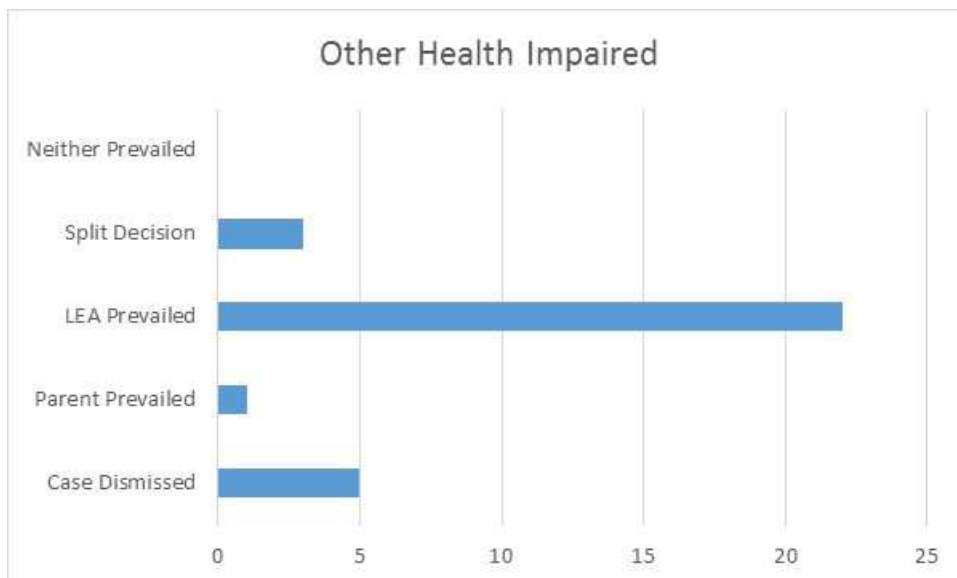


Figure A6. Win, lose, and dismiss outcomes of other health impaired due process cases.

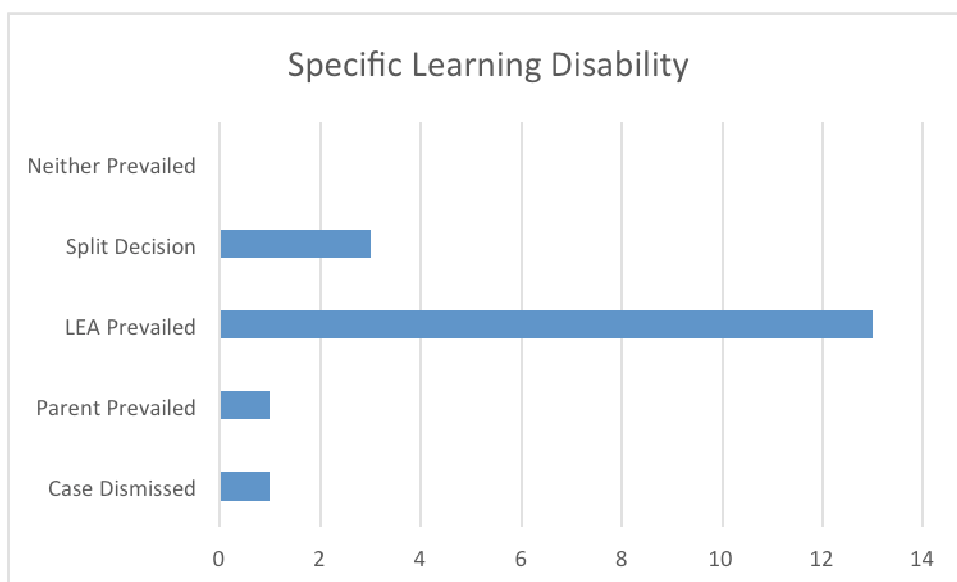


Figure A7. Win, lose, and dismiss outcomes of specific learning disability due process cases.

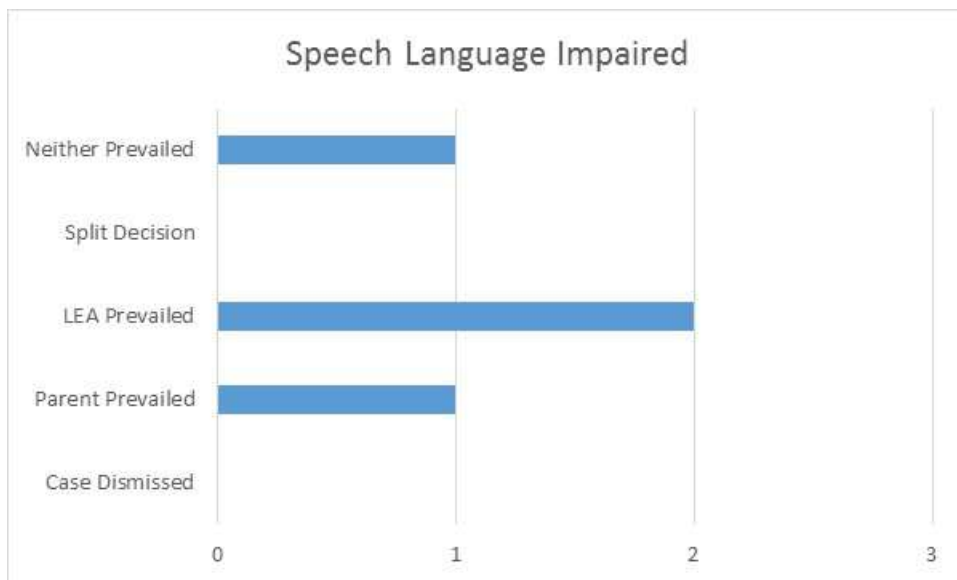


Figure A8. Win, lose, and dismiss outcomes of speech language impaired due process cases.

APPENDIX D: CASE NUMBERS OF UNIDENTIFIED DISABILITIES

06-064
16-016
15-010
14-009
13-008
12-032
12-009
09-062
09-061
16-024
11-042
12-022
14-052
06-071
09-063
07-038
07-037
05-085
09-076
09-073
07-057
05-103
13-001
10-034
06-085

APPENDIX E: CASES DELETED FROM STUDY**No Date on Outcome (blank)**

15-003
13-007
06-093

Split Outcome Decisions

10-037
11-042
16-008
10-045
10-009
08-072
14-045A
06-042
04-111
08-032

Cases Dismissed

12-009
09-062
06-064
16-016
14-009
16-023
16-002
07-026

Small group size Assumption violation (SLI)

06-092
07-017
07-031

APPENDIX F: SPSS DATA BASED ON GENDER, GRADE, DISABILITY, OUTCOME**Gender**

| Sex | Frequency | Percent | Valid Percent | Cumulative Percent |
|-------|-----------|---------|---------------|--------------------|
| 1 | 79 | 74.5 | 74.5 | 74.5 |
| 2 | 27 | 25.5 | 25.5 | 100.0 |
| Total | 106 | 100.0 | 100.0 | |

Grade

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-------|-----------|---------|---------------|--------------------|
| | 31 | 29.2 | 29.2 | 29.2 |
| 0 | 26 | 24.5 | 24.5 | 53.8 |
| 1 | 25 | 23.6 | 23.6 | 77.4 |
| 2 | 23 | 21.7 | 21.7 | 99.1 |
| 3 | 1 | .9 | .9 | 100.0 |
| Total | 106 | 100.0 | 100.0 | |

Disability

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-------|-----------|---------|---------------|--------------------|
| 1 | 25 | 23.6 | 23.6 | 23.6 |
| 4 | 12 | 11.3 | 11.3 | 34.9 |
| 6 | 9 | 8.5 | 8.5 | 43.4 |
| 7 | 7 | 6.6 | 6.6 | 50.0 |
| 9 | 31 | 29.2 | 29.2 | 79.2 |
| 10 | 18 | 17.0 | 17.0 | 96.2 |
| 11 | 4 | 3.8 | 3.8 | 100.0 |
| Total | 106 | 100.0 | 100.0 | |

Outcome

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|--|-----------|---------|---------------|--------------------|
|--|-----------|---------|---------------|--------------------|

| | | | | |
|------------|-----|-------|-------|-------|
| Dismissed | 7 | 6.6 | 6.6 | 6.6 |
| Parent Win | 11 | 10.4 | 10.4 | 17.0 |
| LEA Win | 79 | 74.5 | 74.5 | 91.5 |
| Split | 8 | 7.5 | 7.5 | 99.1 |
| Neither | 1 | .9 | .9 | 100.0 |
| Total | 106 | 100.0 | 100.0 | |

APPENDIX G: DUE PROCESS CASES IN VIRGINIA COPY OF WORKING CHART

Running Head: DUE PROCESS CASES IN VIRGINIA

Due Process Cases in Virginia's Office of Dispute Resolution and Administrative Services

| Decision Date | Case number | Gender | Age | Grade level | Autism | DB | Deaf | ED | HH | ID | MD | OI | OHI | SLD | SLJ | TBI | VI | Parent WIN | Case Dismiss | LEA WIN | Comments |
|---------------|-------------|--------|-----|-------------|--------|----|------|-------|----|----|----|----|----------|-----|-----|-----|----|------------|--------------|---------|---|
| 9.10.15 | 16-001 | M | 12 | ? | X (P) | | | | | X | | | | | | | | | | X | Parent failed burden of proof |
| 9.9.15 | 16-002 | M | 16 | ? | | | | | | | | | X ADHD | | | | | | X | | Case dismissed |
| 10.25.15 | 16-008 | M | 18 | ? | X | | | | | | | | | | | | | X | | X | Split decision – reflective Interim Order |
| 12.19.15 | 16-015 | F | ? | ? | X | | | | | | | | | | | | | | | X | Parent failed to provide burden of proof |
| 11.4.15 | 16-016 | ? | ? | ? | | | | | | | | | | | | | | | X | | Dismissed without prejudice - no IEP |
| 2.9.16 | 16-023 | F | ? | ? | | | | X (P) | | | | | X ADHD | | | | | | X | | Order of dismissal due to lack of standing by father |
| 3.1.16 | 16-024 | M | 7 | ? | | | | | | | | | | | | | | | X | | Case dismissed with prejudice |
| 4.4.16 | 16-029 | M | 18 | ? | | | | | | X | | | | | | | | | | X | Reference <i>Board of Education v. Rowley</i> |
| 7.31.14 | 14-042 | M | ? | 1 | | | | X (P) | | | | | X ADHD | X | | | | | | X | Parents did not provide written consent for initial provision of SPED or related services |
| 10.14.14 | 14-052 | F | ? | K | | | | | | | | | | | | | | | X | | Dismissed without prejudice |
| 9.18.14 | 15-003 | M | ? | 6 | | | | | | | | | X (ADHD) | | | | | | | | Determined that child's conduct was not a manifestation of his disability |
| 10.22.14 | 15-006 | M | 14 | ? | | | | X (P) | | | | | X ADHD | X | | | | X | | | LEA admits could not provide the child a FAPE because ED label was incorrect |

APPENDIX I: DUE PROCESS HEARING CASE EXAMPLE

04-111

CASE CLOSURE SUMMARY REPORT

(This summary sheet must be used as a cover sheet for the hearing officer's decision at the end of the special education hearing and submitted to the Department of Education before billing.)

| | |
|--------------------------|-----------------------------------|
| PUBLIC SCHOOLS | Mrs. |
| School Division | Name of Parents |
| Name of Child | February 25, 2005 |
| John F. Cafferky, Esq. | Lynn C. Brownley, Advocate |
| Counsel Representing LEA | Counsel Representing Parent/Child |
| Parent, | Public Schools (in Part) |
| Party Initiating Hearing | (In part) |
| | Prevailing Party |

Hearing Officer's Determination of Issue(s): _____ has Dyslexia. Dyslexia is a learning disability under IDEA. _____ the parent, has failed to meet the burden of proof for reimbursement for _____'s placement at _____ and _____ School. _____ has provided _____ FAPE under IDEA. Petitioner's appeal of placement at _____ H.S., pursuant to the August, 2004 IEP is DENIED, as well as her claim for compensatory education. _____ would benefit from the _____ intensive reading program, part-time, pursuant to my Final Order.

Hearing Officer's Orders and Outcome of Hearing:
 Petitioner's appeal of the August 2004 IEP placement of _____ at _____ High School is denied. The claims for reimbursement and compensatory education are denied, except for _____
 It is ordered that _____ will complete her high school education at _____ High School, and that an IEP be arranged to work out a schedule for part-time attendance at _____, pursuant to my Final Order attached hereto.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which I have also advised the LEA of its responsibilities to submit an implementation plan to the parties. The

APPENDIX J: TOPICS OF THE DUE PROCESS CASES

Access to Facility or Services, Accommodations, Age of Majority, Assistive Technology Device, Behavioral Intervention Plan, Burden of Proof, Child Find, Compensatory Services, Comprehensive Services Act, Damages, Disability Classification, Discrimination, Due Process Procedures/Requirements, Eligibility, Evaluation, Expert Statements, Extended School Year (ESY), Extended School Day (ESD), Finality of Due Process Proceedings, Free Appropriate Public Education (FAPE), Functional Behavioral Assessment (FBA), Homebound, Identification of Disability, Individualized Education Program (IEP) Appropriateness, Individualized Education Program (IEP) Implementation, Individualized Education Program (IEP) Procedures, Individualized Education Program (IEP) team, Independent Educational Evaluation (IEE), Interim Alternative Educational Setting (IAES), Least Restrictive Environment (LRE), Lost Wages, Manifestation Determination Review (MDR), Mental Anguish, Notice, Parental Consent/Participation, Placement, Prior Written Notice, Qualifications of School Staff, Reevaluation, Rehabilitation Act of 1973 (504), Reimbursement, Related Services, Safety Services, Settlement Agreement, State Complaint System, “Stay-put” Provision, Student Records, Subject Matter Jurisdiction, Transition Services, Transfer of Rights, and Transportation.