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An Analysis of Due Process Hearing Requests within the Ninth Circuit

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ABSTRACT

Under the Individuals with Disabilities Act, parents are entitled to due process procedural safeguards. These safeguards are intended to ensure that parents of children with disabilities are offered the educational rights as those without disabilities. Research in due process hearing requests nationwide is limited, and non-existent in the Ninth Circuit. This study analyzed demographic information for 1,077 due process hearing requests within the Ninth circuit over a span of ten years. Descriptive and frequency analysis were used to determine whether age ranges and eligibility categories are independent of procedural issues in due process hearing requests.

DEDICATION

This is dedicated to the three most important people in my life:

To my mom who has always been my cheerleader and has shown me what a powerful woman can be. I love you Mom.

To Joe, who has supported me in good times and bad… even when you were annoyed with my procrastination, you still encouraged me. I love you always.

To Lindsay, I am honored to be your Mom and hope that this work illustrates that you can do whatever you put your mind to! I love you forever.

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CHAPTER ONE- INTRODUCTION

Since the inception of Public Law 94-142, referred to as the Individuals with Disabilities Education Act (IDEA), in 1975, a range of substantive and procedural safeguards have been established for children with disabilities (Zirkel & Skidmore, 2014). This law profoundly changed the lives of students with disabilities and their families (Itkonen, 2007). Prior to the creation of Public Law 94-142, schools across the country were failing to provide adequate and appropriate education services to students with disabilities (Winzer, 1993). In fact, prior to 1975, lack of regulations left schools with the opportunity to deny students enrollment to the school (Itkonen, 2007). As a result, many children with disabilities remained at home or were placed into institutions (Itkonen, 2007; Osgood, 2008; Winzer, 1993).

One central tenet of Public Law 94-142 is the provision of a Free and Appropriate Public Education, or FAPE (Zirkel & Skidmore, 2014). With the passage of Public Law 94-142, school officials and parents have often debated what a FAPE is and what students with disabilities are entitled to under this provision (Zirkel, 2013). According to Zirkel (2013), a seminal researcher in special education, the FAPE issue accounts for the majority of litigation in special education; as such, it is critical to understand the importance of how it is interpreted by courts. The seminal court case that addressed FAPE was *Board of Education of Hendrick Hudson Central School District* v. *Rowley*, 458 U.S. 176 (1982) (Imber & van Geel, 2010; Zirkel 2013). In this pivotal case, the court determined these requirements to determine whether a FAPE has been provided: (a) the IEP must be reasonably calculated to enable the child to receive educational benefits

and (b) the district complied with procedures (Imber & van Geel, 2010; Zirkel 2013). The decision in *Rowley* made it clear that IDEA does not require that a student must be provided all services that a parent may request (Imber & van Geel, 2010). Often times the disagreement regarding FAPE occurs over what the parent believes to be necessary versus what the school district has proposed (Zirkel, 2013). The corresponding safeguard to FAPE is a specialized dispute remedy system, with one option being the right to a due process hearing (Zirkel, 2013; Zirkel & Skidmore, 2014). As discussed in national studies, the provision of FAPE and the compensatory issues it raises appears to be a major source of due process litigation (Zirkel, 2012, 2013).

According to the Office of Special Education Programs (OSEP), during the 2012-2013 school year, there were roughly 26 due process hearing requests per 10,000 students nationwide (OSEP, 2014). While this number is staggering, the actual number of due process hearing requests has declined (OSEP, 2014). Despite the decline in due process filings, the financial and emotional impact of suits filed are just as great. Thus, understanding the history of special education and reasons why families are filing for due process is critical.

History of Special Education

Special education has a long history influenced by society and beliefs about how all children, including those with disabilities should be educated (Ashbaker, 2011; Salend & Duhaney, 2011; Winzer, 1993). Prior to the 1700s, individuals with disabilities were largely ignored or subjected to inhumane treatment (Duhaney & Salend, 2010; Salend & Duhaney, 2011; Winzer, 1993). By the mid-1800s, institutions and asylums for

individuals with disabilities began to appear (Duhaney & Salend, 2010; Osgood, 2008; Salend & Duhaney, 2011; Winzer, 1993). Despite intentions to provide for individuals with disabilities, many institutions were actually medically based and perpetuated isolation and segregation (Duhaney & Salend, 2010; Salend & Dulhaney, 2011). The practice of institutionalizing individuals with disabilities continued well into the 1970s (Duhaney & Salend, 2010; Salend & Dulhaney, 2011; Winzer, 1993).

Interestingly, it was the rise of the anti-segregation movement from1950 through the 1960s that spurred the disabilities rights movement and legislation (Ashbaker, 2011; Salend & Duhaney, 2011). During this time period, special education underwent significant changes as the nation moved away from segregation. In 1954, a landmark court case paved the way for special education court cases to be heard. In *Brown v. Topeka Board of Education* (1954), the court established that "separate but equal is not equal."

In 1970, there were approximately eight million children with disabilities living in the United States (Imber & van Geel, 2010; Osgood, 2008; Winzer, 1993). Three million of these children were not receiving an appropriate education and another million children were excluded from attending school altogether (Imber & van Geel, 2010; Osgood, 2008; Winzer, 1993). Prior to 1970, this had been acceptable practice because some states had developed exclusions to the state compulsory laws, therefore making the education of all children inconsistent (Osgood, 2008; Imber & van Geel, 2010). Prior to Public Law 94-142 in 1975, most state laws upheld district decisions to exclude students with disabilities, thus, causing irreparable harm to children with disabilities (Imber & van

Geel, 2010).

Procedural Safeguards and Rights

Federal law mandating the provision of education to students with disabilities has been in effect for more than 35 years since the seminal legislation known as the Individuals with Disabilities Education Act (IDEA) (Yell, Katsiyannis & Bradley, 2011). The IDEA has been reauthorized several times since its original passage in 1975 (Yell, Katsiyannis & Bradley, 2011). The resulting reauthorizations have changed the focus from provision of education to all students to one that is focused on results and accountability (Yell, Katsiyannis & Bradley, 2011). Within IDEA, several key tenets provide an explanation of the provisions for students with disabilities (Yell, Katsiyannis & Bradley, 2011). The following are the major tenets of IDEA:

- *Zero reject* – Under this tenet, all students with disabilities are entitled to a Free and Appropriate Public Education (FAPE). This applies regardless of the severity of the disability and must be provided unconditionally and without exception (IDEA Regulations, 34 C.F.R. § 300.220; Yell, Katsiyannis & Bradley, 2011).
- *Child Find Obligation* – States are required to identify, locate, and evaluate any child that is suspected of having a disability (IDEA Regulations, 34 C.F.R. § 300.220; Yell, Katsiyannis & Bradley, 2011).
- *Protection in Evaluation* – Before a student can receive special education and related services, a comprehensive and individualized evaluation must be administered by trained and knowledgeable personnel (IDEA Regulations, 34 C.F.R. § 300.220; Yell, Katsiyannis & Bradley, 2011). Upon completion of the

assessments, a team including the parents must determine eligibility for special education and related services.

- *Free and Appropriate Public Education* – A FAPE consists of special education and related services that (a) are provided at public expense; (b) are under public supervision and direction, without charge; (c) include preschool, elementary, or secondary education in the child's state; (d) meet the standards of the State Education Agency (SEA); and (e) are provided in compliance with an Individualized Education Program (IEP) that meets the requirements of IDEA (IDEA Regulations, 34 C.F.R. § 300.220; Yell, Katsiyannis & Bradley, 2011).
- *Least Restrictive Education (LRE)* – IDEA mandates that students with disabilities are educated with their peers without disabilities to the maximum extent possible (IDEA Regulations, 34 C.F.R. § 300.220; Yell, Katsiyannis & Bradley, 2011). Further, IDEA asserts that a student with a disability cannot be removed from the general education classroom unless education in the general education setting cannot be achieved satisfactorily (IDEA Regulations, 34 C.F.R. § 300.220; Yell, Katsiyannis & Bradley, 2011).
- *Parent Participation* – Parental involvement is critical to success and is a pivotal component of IDEA (Yell, Katsiyannis & Bradley, 2011). A central assumption of IDEA is that parents are partners in the IEP process. Parental involvement is found throughout IDEA, including evaluation, eligibility, and IEP processes (Yell, Katsiyannis & Bradley, 2011).
- *Procedural Safeguards* – To ensure that the rights of students with disabilities are

protected, IDEA allows for several safeguards. These safeguards include (a) the right to a due process hearing; (b) the right to prior written notice; (c) the right to an independent educational evaluation at public expense; and (d) informed parent consent. The major purpose of the safeguards is to ensure that parents have meaningful participation in their children's education (IDEA Regulations, 34 C.F.R. § 300.220; Yell, Katsiyannis & Bradley, 2011).

Despite the foundations outlined above, parents and school districts may disagree over tenets in IDEA. To resolve disagreements, there are provisions within the law. These judicial remedies are highlighted in the following section.

The Legal System

For a parent of a child with a disability, there are legal authorities that are able to interpret the tenets of IDEA and ensure that parental rights are protected (Huefner, 2007). Figure 1 summarizes the various sources of law (Huefner, 2007).

Branches of Government	**Levels of Government**		
	Federal	**State**	**Local**
Legislative	U.S. Congress (statutes)	State Legislature (statutes)	School Board (quasi-legislative policies)
Executive	Department of Education (regulations)	State Office of Education (rules or regulations)	Superintendent (district rules)
Judicial	Federal Courts (court cases)	State Courts (court cases)	Hearing Officers (quasi-judicial administrative rulings)
*** The U.S. Constitution overrides these sources of law. No level or branch of government may violate the U.S. Constitution**			

Figure 1. Governmental Sources of Special Education Law in the United States. Adapted from Huefner, D. (2007). *Getting comfortable with special education law* (p.8). Massachusetts: Christopher Gordon.

The federal court system has three levels: The United States Supreme Court, the United States Court of Appeals (with 13 districts), and more than 100 federal district courts (Huefner, 2007). A court case starts at the district court level, and with appeals, may reach the Supreme Court (Huefner, 2007). In special education law, a case would move from a state level hearing officer, through the state courts, finally moving to federal courts. At all three levels, decisions rendered are published and used as guidance (Huefner, 2007). However, Huefner (2007) states that state level decisions are limited to the state in which the decision was rendered. Decisions made at the U.S. Court of Appeals level apply to the circuit in which they are decided and may act as guidance for other circuits (Huefner, 2007; Rozalski, Miller & Stewart, 2011). If a case is appealed at the U.S. Court of Appeals, it may be heard at the U.S. Supreme Court and the ruling would apply throughout the United States (Huefner, 2007; Rozalski, Miller & Stewart, 2011).

As stated above, the U.S. Court of Appeals is divided into 13 Federal Judicial Circuits, depending upon geographical location (Huefner, 2007). Figure 2 lists the circuits and the states within each circuit.

Circuit Court	States and Territories Included
1	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island
2	Connecticut, New York, Vermont
3	Delaware, New Jersey, Pennsylvania, U.S. Virgin Islands
4	Maryland, North Carolina, South Carolina, Virginia, West Virginia
5	Louisiana, Mississippi, Texas
6	Kentucky, Michigan, Ohio, Tennessee
7	Illinois, Indiana, Wisconsin
8	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
9	Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Mariana Islands, Guam
10	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming
11	Alabama, Georgia, Florida
12	Washington D.C.
13	Washington Federal

Figure 2 U.S. Circuit Courts and Their Jurisdictions. Adapted from Rozalski, M., Miller, J., & Stewart, A. (2011). Least Restrictive Environment. In Kauffman, J.M. & Hallahan, D.P. (Eds.), *Handbook of Special Education* (p.109). New York: Routledge.

Historically, the Ninth Circuit has a reputation for being liberal and with judicial decisions that conflict with the other circuits in the United States Federal Courts system (Keele & Malmsheimer, 2016; Broscheid, 2011). This could be

attributed to the fact that the Ninth Circuit is the largest circuit, with states and jurisdictions that encompasses vast geographic space (Keele & Malmsheimer, 2016). Further, because the Ninth Circuit is so large, the number of judges in the Ninth Circuit exceeds those in other circuits (Broscheid, 2011). Coupled with the fact that the judges are elected officials, they also represent the political and societal tone for whom they represent (Broscheid, 2011). These factors make the Ninth Circuit an incredibly interesting circuit to study.

Statement of the Problem

Since the inception of Public Law 94-142, the due process hearing has been an integral component of procedural safeguards for parent of children with disabilities (Zirkel & Skidmore, 2014). Often, through the process of creating and implementing a plan for a student with a disability, there may be disagreement or lack of understanding of the legal process of IDEA (Lake & Billingsley, 2000) between families and educators. As a way of working through these disagreements, the dispute resolution system was created. This critical resolution method was initially designed to minimize conflicts between families and school districts; however, despite positive intentions, there have been long-lasting financial and emotional impacts to both families and school systems (Mueller & Carranza, 2011). Detailed analysis of due process hearings can provide school administrators and educators with crucial information regarding the implementation of the law and protections for students with disabilities (Rickey, 2003).

Theoretical Perspective

Organizational theory was chosen as the conceptual framework to guide this study. Like other social organizations, the school system has power, structure, logic, and values all which exercise influence on the ways in which the world is perceived (Owens, 2001). The behavior of people working in an educational organization, both individually and in groups is influenced, if not defined, by the societal norms and expectations of the organization (Owens, 2001; Scott, 2014). Historically, while organizations were present in older civilizations such as the Chinese, Greek, Indian, it was not until the early 20th century that researchers began to explore organizational theory (Owens, 2001; Scott & Davis, 2015). A detailed description of the theoretical perspective is provided in Chapter Two.

Purpose of the Study

The purpose of this study was to examine due process hearing request trends in the Ninth Circuit and student demographic information leading to the request. A second purpose was to determine whether procedural issues identified in due process hearing requests in the Ninth Circuit are independent of specific eligibility categories and age ranges.

Research Questions

This study was guided by the following question: Does an analysis of due process hearings in the Ninth Circuit states during the years 2010-2016 contribute to a comprehensive understanding of student and parent rights balanced with IDEA requirements? In order to answer this, the following questions were addressed:

1. What are the demographics of children for whom a due process hearing request is being filed?
    a. Gender
    b. Age
    c. Disability category
2. What were the categories and procedural issues for the due process hearing requests filed by parents?
3. Are parents of students in a specific disability category more likely to identify procedural issues in due process hearing requests?
    a. Autism and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
    b. Specific Learning Disability and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
    c. Social Emotional Disturbance and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
    d. Intellectual Disability and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?

4. Are parents of students in a specific age range more likely to identify procedural issues in due process hearings?
    a. Students ages 3-5 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
    b. Students ages 6-12 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
    c. Students ages 13-18 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
    d. Students ages 19-22 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?

Study Design

This study employed the use of the quantitative method of research. Muijs (2011) defines quantitative research as an explanation of phenomena by collecting numerical data that are analyzed using mathematically based methods. Hoy and Adams (2016) expand on this definition and assert that quantitative researchers focus on "the development and testing of hypotheses along with the generation of models and theories that explain behavior" (p.1). Additional information regarding the method utilized in this study is discussed in Chapter three.

Significance of the Study

This study was significant given the lack of research regarding due process hearing requests in the Ninth Circuit court system. While there is important research on various components of due process procedures nationwide, no studies have been specific to the Ninth Circuit. It is critical for educators and school administrators to understand special education rights under IDEA and the prevalence of violations to prevent future litigation. Often, school administrators have minimal background in special education, which leaves them at a substantial disadvantage. Further, because of the fiscal impact of a due process hearing request to a school district, approximated to be around $50,000 (Blackwell & Blackwell, 2016), it is imperative that school administrators develop base level competency regarding special education rights and seminal legal cases. Finally, because a due hearing request often has a negative impact on the relationships between families and school personnel, exploration of due process hearing requests may lead to an understanding of how to avoid conflicts between parents and school district personnel.

Key Terms

While the major tenants of IDEA were provided earlier, additional key terms and definitions are designated below:

> *Due Process* – a fundamental principle of fairness in all legal matters, both civil and criminal, especially in the courts. All legal procedures set by statute and court practice, including notice of rights, must be followed for each individual so that no prejudicial or unequal treatment will result. While somewhat indefinite, the term can be gauged by its aim to safeguard both private and public rights against

unfairness. The universal guarantee of due process is in the Fifth Amendment to the U.S. Constitution, which provides "No person shall…be deprived of life, liberty, or property, without due process of law," and is applied to all states by the 14th Amendment. From this basic principle flows many legal decisions determining both procedural and substantive rights (www.dictionary.law.com).

Special Education Eligibility – determination through a comprehensive evaluation whether a student qualifies under the thirteen recognized special education categories.

Individualized Education Plan (IEP) – the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 CFR 300.320 through 300.324 (IDEA, 34 CFR 300.320(a)] [20 U.S.C. 1414(d)(1)(A)(i)]).

Local Education Agency (LEA) – Local Education Agency, typically a local school district (Title 1. D. 661).

State Education Agency (SEA) – the state agency representative, typically the Department of Education within individual states (Title 1.D.661).

Summary

This chapter provided an introduction to the history of special education and description of key tenets identified in the IDEA. The study purpose and research questions were established. The study design was introduced and will be expanded upon in the chapters to follow. This chapter also included a brief synopsis of the conceptual framework as well as key definitions needed for understanding. In the chapter to follow, a

comprehensive literature review includes of a history of special education and laws that have provided guidance for educators and parents.

CHAPTER TWO-REVIEW OF THE LITERATURE

This chapter contains a review of literature related to this study. As stated in chapter one, the purpose of this study was to examine due process hearing request trends during the years 2010-2016 in the Federal Ninth Circuit and student demographic information leading to the request. A second purpose was to determine whether procedural issues identified in due process hearing requests in the Ninth Circuit are independent of specific eligibility categories and age ranges. This chapter consists of a discussion of the conceptual framework as well as a comprehensive literature review including a brief history of exceptionality, brief history of special education, federal laws that initiated inclusion of students with disabilities, procedural safeguards for students with disabilities, a brief overview of the dispute resolution system, and seminal special education case law.

Theoretical Perspective

The theoretical perspective supporting this study is organizational behavior theory. Organizational behavior theory is defined as "a field of social-scientific study and application to administrative practice that seeks to understand and use knowledge of human behavior in social and cultural settings for the improvement of organizational performance" (Owens, 2001, p.30). This theory is critical to the understanding of how to improve performance of schools and improve school leadership (Owens, 2001). Organizations are a prevailing characteristic of modern societies and provide the foundation for a variety of social processes: (a) socialization, (b) communication, (c) ranking, (d) the formation of norms, (e) the exercise of power, and goal setting and

attainment (Scott & Davis, 2016). While the history of modern organizational thought was not documented prior to the late 1800's, its roots can be traced to Egyptians (Owens, 2001; Scott & Davis, 2016). This is evident in the organization, planning, and administrative leadership that enabled the great pyramids to be built (Owens, 2001; Scott & Davis, 2016). By the same token, during the same time, the Chinese had developed a large, systematic administrative system that is still in use today (Owens, 2001; Scott & Davis, 2016).

Classical Organizational Theory

Classical organizational theorists have attempted to identify and describe the rules that would establish the basis for management (Owens, 2001). Most classical theorists deal with organizational structure (Owens, 2001). One tenet of classical organizational theory is the concept of hierarchy (Owens, 2001). This principle alleges that authority and responsibility must flow in directly from the top policy level down through the organization to the lowest level (Owens, 2001). This is evident in many school districts today in which an organizational chart will feature vertical lines of authority (Owens, 2001).

Early classical organizational theory was dominated by the work of Frederick Taylor, Henry Fayol, and Max Weber (Owens, 2001; Scott, 2014; Scott & Davis, 2016). In the early 1900s, Frederick Taylor, an engineer, was a major contributor to the school of scientific thought and felt that the United States was run inefficiently and needed to have systematic management (Owens, 2001; Scott & Davis, 2016). Taylor believed strongly in motivation as being a factor for an efficient organization (Owens, 2001; Scott

& Davis, 2016). Further, pay should be closely aligned with the difficulty of expected work and productivity (Owens, 2001). Taylor's views are considered somewhat antiquated in modern organizational theory, however, prior to Taylor, no one had considered motivation in organizations (Owens, 2001).

Henry Fayol, around 1949, considered management functions and attempted to generate broad administrative principles that would serve as guidelines for the rationalization of organizational activities (Scott & Davis, 2016). According to Scott and Davis (2016), Fayol was of the theory that rationalized the organization from the "top down." (p.44). In the early 19th century, Max Weber focused attention on formal structures of organizations (Scott & Davis, 2016). Weber surmised that organizations functioned from a top-down approach; however, he was distinct in that he focused on the way in which power, authority, and decisions flowed down through the hierarchy (Owens, 2001; Scott & Davis, 2016). The first to develop the term "bureaucracy," Weber defined it as "a particular type of administrative structure, developed in association with the rational-legal mode of authority" (Scott & Davis, 2016, p 48). One central idea of Weber's bureaucracy is that there are rules governing behavior and a distinct hierarchical structure (Owen, 2001; Scott, 2014; Scott & Davis, 2016). To expand, the level of position in the hierarchy dictated the level of power and decision making in the individual (Scott & Davis, 2016).

In the nineteenth century, while states had developed a rudimentary framework for education including compulsory education laws and teacher certification, there lacked a true organizational structure (Owens, 2001; Scott, 2014). From 1950 through 1970,

there was an extraordinary amount of research on function and effectiveness of organizations, including how to ensure personnel comply with rules and policies (Owens, 2001; Scott, 2014). As indicated in Figure 3 below, federal laws dictate the laws governing special education. To receive funding and comply with federal laws, states must develop regulations and laws for school districts to follow. These laws and regulations trickle down to school administrators and teachers, which in turn affects how they serve families and children with disabilities. Without rules and regulations, there would be no guarantee of conformity to provide services to children with disabilities.

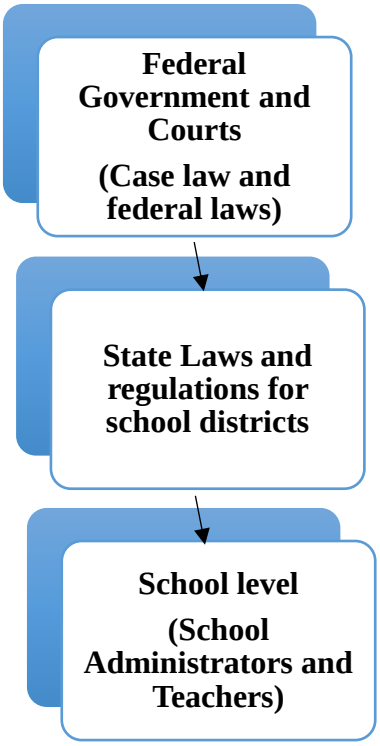

Figure 3 Hierarchal Approach to governance of special education law. Adapted from Scott, W. (2014). *Institutions and organizations: Ideas, interests, and identities.* (p.237). Los Angeles: Sage.

In summary, the theoretical perspective discussed in the section above helps to

illustrate the importance of organizations and the impact of regulatory laws on personnel. As will be discussed in the sections to follow, education, in particular special education, has a deep history rooted in societal norms and understandings as well as regulatory laws. Understanding how governmental organizations work and theoretical perspectives influencing them elicits a deeper understanding of the connective relationship between governmental organization and day to day workings in a school.

Early History of Exceptionality

Prior to 1800.

According to Winzer (1993) exceptionality can be defined as something that differs from the norm and has existed since the beginning of documented history. Prior to around 1700, anyone who was considered different was rarely tolerated (Winzer, 1993). People were considered "different" for social, political, religious, intellectual, and physical reasons (Osgood, 2008; Winzer, 1993). It is challenging to determine when people with disabilities emerged; however, early writings from Homer and others of his era indicate that people with disabilities have been present from the earliest times (Osgood, 2008; Winzer, 1993). According to Winzer (1993), while there is no evidence of legal mandate from this earlier time, it is evident from the writings that exist that careful consideration towards people with disabilities was given. Based on writings dating back to ancient Egypt, it appeared that with increased agriculture and urbanization, the opportunities for people with disabilities grew, if only for their survival (Winzer, 1993). According to Winzer (1993), the ancient Egyptians were the first to document an interest in disabilities. This interest can be traced back to the writings of physicians who

wrote about recipes that could be used to treat various conditions such as deafness and blindness (Winzer, 1993). Interestingly, the ancient Egyptians were also interested in the social well-being of people with disabilities (Winzer, 1993).

Unfortunately, as demonstrated by early writings, treatment and tolerance for people with disabilities has varied between cultures, location, and passage of time (Osgood, 2008; Winzer, 1993). In fact, no two societal cultures have viewed exceptionality the same way (Osgood, 2008; Winzer, 1993). This is evident in the early Greek and Roman writings in which they indicated that when an infant demonstrated blindness, deafness, or other disabilities, they were thrown in the river or left exposed to the elements (Winzer, 1993). By the fourth century, social awareness had changed slightly so that parents of children with disabilities were offered financial assistance to help in their care. However, survival in this age depended largely on their ability to provide economic or social value (Winzer, 1993). During this time, people with disabilities were largely used for amusements or diversions such as prostitution (Winzer, 1993).

According to Winzer (1993), the Hebraic law contains some of the first known provisions for people with disabilities. Under the scriptures, blindness, deafness, widows, orphans, and the needy were all treated with special consideration (Winzer, 1993). This protection was emulated in the later twelfth and sixteenth centuries (Winzer, 1993).

This was not the case in Europe during the medieval times. In fact, people with disabilities living in Europe often led a dangerous and uncertain existence (Winzer, 1993). Throughout the medieval times in Europe, people with disabilities were subject to

a cruel fate. Often times, they were ignored, laughed at, denied basic civil liberties, and subject to death (Winzer, 1993). This was only perpetuated during the witchcraft hysteria during which it was commonplace for people with disabilities to be killed because they were thought to have been possessed (Winzer, 1993). Winzer (1993) indicates that it was not until the late seventeenth century when people began to think differently.

In Europe, the twelfth century saw the development and spread of lunatic hospitals, these later became known as "asylums" (Winzer, 1993). These hospitals contained anyone who did not fit the norm of society (Winzer, 1993). The hospitals contained people who were mentally ill, disabled, people who were homeless and jobless, alcoholics, and prostitutes (Winzer, 1993). Unlike churches, these institutions did not seek to care for people who had disabilities, rather, they were used solely because of the need for society to be protected from people perceived to be dangerous (Winzer, 1993). The use of institutions continued through the nineteenth century in Europe (Winzer, 1993).

Across the sea in America, prior to the nineteenth century, people with disabilities were treated similarly to those in Europe: they were condemned, laughed at, or expelled from their community (Osgood, 2008). These practices made living with a disability a lonely fate.

Post 1800 America.

In the mid-1800's, institutions such as The Asylum for the Deaf in Hartford, Connecticut began to emerge (Giordano, 2007; Osgood, 2008; Winzer, 1993). As more and more institutions opened, the interest in institutionalizing, educating, treating, and

even curing individuals with disabilities grew (Osgood, 2008; Winzer, 1993). The sudden awareness of disabilities grew out of the increased population and development of North American cities (Osgood, 2008). However, despite this growing national awareness of people with disabilities, there was also an expansion of institutions through the mid to late 1800's (Osgood, 2008; Winzer, 1993). These institutions did not focus on education, training, or care; rather, they were intended to isolate or remove existence of disabilities (Osgood, 2008). This change was a direct shift from the earlier philosophy of trying to determine the best ways in which to educate or even cure a disability (Osgood, 2008; Winzer, 1993). Despite this trend of increased institutions, a shift occurred in the way the public perceived people with disabilities (Giordano, 2007). Prior to this time, there had been a perceived threat of danger or of loose morality regarding people with disabilities (Giordano, 2007). Although these perceived notions never disappeared fully, they diminished (Giordano, 2007).

Despite increased awareness and understanding regarding people with disabilities, establishing education practices was still an uphill battle. The nineteenth century became one of legislative education reform for all children (Osgood, 2008). This education reform revolutionized the way children with disabilities are educated in the United States. A brief history of the special education system in the United States is reviewed in the section to follow.

History of Special Education

Contrary to what some believe, special education reform did not start in the 1970's (Dorn, Fuchs, & Fuchs, 1996; Gerber, 2011; Spaulding & Pratt, 2015). As stated

by Winzer (1993), “The care and treatment of disabled individuals has followed historical trends, not created them” (p. 383). Special education has had a long history shaped by social, political, and philosophical trends (Duhaney & Spalding, 2010; Giordano, 2007; Smith, 1998). Building on this idea, Spaulding and Pratt (2015) categorized special education reform into three eras: Early Reform (1800-1860), Stagnation and Regression (1860-1950), and Contemporary Reform (1950- present). These three periods of time are discussed further in the sections to follow.

Early reform (1800-1860).

As highlighted in the previous section, people with disabilities have historically been treated with disdain, fear, hatred, and disgust (Osgood, 2008; Spaulding & Pratt, 2015; Winzer,1993). In the era of Early Reform, society was beginning to show interest in educating people with disabilities (Giordano, 2007; Spaulding & Pratt, 2015; Winzer, 1993). This is in contrast to the social stigma that had been evident for thousands of years. During the early 1800s, the newly formed United States experienced an incredible amount of growth (Orenstein & Levine, 1993; Winzer, 1993). This time period reflected industrialization which resulted in many children joining the workforce at age six (Orenstein & Levine, 1993; Winzer, 1993). It was not until later in the century that compulsory education laws went into effect (Orenstein & Levine, 1993). For children with disabilities, the larger development was the need from society to become more organized in the care for people with disabilities, albeit segregated (Dorn, Fuchs, & Fuchs, 1996; Osgood, 2008; Winzer, 1993).

During this timeframe, development of the special education system in the United

States relied heavily on the philosophical groundwork of European theorists (Duhaney & Salend, 2010; Giordano, 2007). One such European pioneer was Jean Marc Itard (Duhaney & Salend, 2010; Giordano, 2007; Winzer 1993). Itard, like other French physicians became fascinated by a wild boy that had been seen running through the French wilderness (Winzer, 1993). Reports indicated that this boy could not stand on two legs, fought with teeth, could not speak or understand language (Duhaney & Salend, 2010; Winzer, 1993). Itard was eager to try to educate this young boy (Giordano, 2007). Itard, against the current philosophies of the time, felt that with environmental changes and the teaching of practical skills, the boy could be restored to society and that he would recover (Giordano, 2007; Winzer, 1993). Despite over four years of intense instruction from Itard, the boy, "Victor" made minimal progress (Giordano, 2007; Winzer, 1993). Despite the lack of success with Victor, Itard's work was a pivotal turning point for individuals with disabilities (Duhaney & Salend, 2010; Spaulding & Pratt, 2015; Winzer, 1993). Through his work with Victor, Itard instituted a specialized curriculum that was tailored to meet Victor's needs, thus, proving that individuals previously considered to be uneducable were able to learn (Duhaney & Salend, 2010; Giordano, 2007; Spaulding & Pratt, 2015). The work of Itard paved the way for later education pioneers in the United States.

In the United States, the first efforts to educate children with disabilities came to those who were blind and deaf (Duhaney & Salend, 2010; Osgood, 2008; Spaulding & Pratt, 2015; Winzer, 1993). The reason for this was because sensory disabilities is more detectable than an intellectual disability (Spaulding & Pratt, 2015). Prior to 1817 and the

efforts of Thomas Gallaudet and Laurent Clerc, no specialized public institutions existed in the United States, save asylums for the insane (Winzer, 1993). In 1817, Thomas Galluadet and Laurent Clerc established the Connecticut Asylum for Education and Instruction of Deaf and Dumb Persons (Duhaney & Salend, 2010; Spaulding & Pratt, 2015; Winzer, 1993). The creation of this specialized institution was widely received, and resulted in an additional 55 institutions for the deaf or hard of hearing by 1880 (Winzer, 1993).

The motivation for a revolution in the way in which people with disabilities are perceived can be attributed to the work of Dorothea Dix (Spaulding & Pratt, 2015; Winzer, 1993). This retired teacher visited jails, hospitals, and almshouses (charitable organizations) across the country (Spaulding & Pratt, 2015; Winzer, 1993). Dix was appalled at the shocking conditions faced by people with mental illness or disabilities (Spaulding & Pratt, 2015; Winzer, 1993). Dix fought for the humane treatment of people with disabilities and mental illness (Spaulding & Pratt, 2015). Further, she instituted the notion that although a person may have an intellectual disability, they still deserved to be treated with same rights as others (Spaulding & Pratt, 2015).

Stagnation and regression (1860-1950).

This time period was marked with the rise of institutions and education for children with disabilities fell flat (Dorn, Fuchs, & Fuchs, 1996; Gerber, 2011; Spaulding & Pratt, 2015). Although by 1918, all states had enacted mandatory attendance laws for students, children with disabilities were often excluded (Gerber, 2011; Giordano, 2007; Spaulding & Pratt, 2015; Yell, Rogers, & Rogers, 1998). Schools were often seen as a

place where only “normal” children could learn (Spaulding & Pratt, 2015). The public, including teachers believed that students with disabilities would be best served in a segregated school or institution (Giordano, 2007; Spaulding & Pratt, 2015).

While doctors and philosophers have had an impact on the field of special education, the structure was built and expanded upon by teachers in the field (Gerber, 2011). Elizabeth Farrell was an experienced teacher who, in 1899, transferred to The Henry Street Settlement house in New York City (Gerber, 2011; Giordano, 2007). The Henry Street School was located in one of the poorest neighborhoods in New York City and was a mecca for diverse students. The school had classrooms that housed students of varying languages, cultures, socioeconomic levels, ages, and ability levels (Gerber, 2011). In order to meet the various needs of her students, Farrell developed and instituted the concept of special classes for children with mild to moderate disabilities (Gerber, 2011; Giordano, 2007; Winzer, 1993). Once she developed the concept of special classes, Farrell realized that there needed to be a basis for admittance or eligibility process (Gerber, 2011).

Farrell, along with other special education pioneers of her time advocated away from the use of institutions, moving towards provision of special classes in public schools (Gerber, 2011). Interestingly, as the ungraded special classes grew nationwide, Farrell established the need for specific and tailored “plans” for students with disabilities (Gerber, 2011). These tailored plans gave the teacher insight into how to work with the child based on his individual needs (Gerber, 2011). During her tenure as director of ungraded classrooms, Farrell was a champion of strong professional development for

teachers (Gerber, 2011). This eventually led to the creation of the longest running special education teachers' association, *Council for Exceptional Children* in 1922 (Gerber, 2011).

Despite the progress in advocacy for people with disabilities and the advancements made in education, there was still a lack of equal provision of services for children with disabilities (Gerber, 2011; Giordano, 2007; Osgood, 2008). Regardless of the compulsory attendance laws, states were still excluding children with disabilities from attending (Yell, Rogers, & Rogers, 1998). In fact, exclusion was made possible because many states' law allowed for excused compliance with compulsory laws (Imber & Van Geel, 2010).

A seminal state Supreme Court case in Wisconsin regarding exclusion of a child with a disability, *Beattie v. Board. of Antigo* (1919), determined that despite a child's ability to understand the curriculum, the right to participate in public school cannot be insisted upon if it is against the good of the school. In this instance, the case centered on a 13 year- old boy who was paralyzed and had difficulty speaking, often making high pitched raspy sounds. He also tended to drool, giving an impression of being unkempt. Despite these outwardly appearances, he was able to comprehend what other classmates were doing and saying. Although he was able to participate, the school board removed him from the school citing his health conditions were too distracting and commanded too much of the teacher's time and attention. The initial verdict found in favor of the parent and student, but upon review by the state Supreme Court, the verdict was reversed to be in favor of the school district. This verdict set the stage for others states to avoid

providing education to students with disabilities, despite the institution of compulsory laws. This was corroborated by the 1940 census that showed that over five million children with disabilities were not enrolled in school (Winzer, 1993).

Contemporary reform (1950-present).

Curiously, it was the civil rights movement during the 1950s and 1960s that spurred legislation that changed the way in which children with disabilities were educated (Yell, Rogers, & Rogers, 1998). As discussed in previous sections, children with disabilities were often excluded despite the institution of compulsory attendance laws. However, children with disabilities were not the only group excluded from attending school, minorities were as well. The civil rights movement is marked with societal change in how minorities, specifically African Americans, were treated and educated (Blanchett, Brantlinger, & Williams Shealey, 2005; Duhaney & Salend, 2010; Imber & Van Geel, 2010; Yell, Rogers, & Rogers, 1998). The landmark case *Brown v. Board of Education* (1954) that triggered equal rights for all will be discussed in the section to follow.

Brown v. Board of Education (1954).

The Equal Protection Clause of the Fourteenth Amendment, states that it is unlawful to deny any person the equal protection of the laws (Imber & Van Geel, 2010). In other words, to deny a person equal protection of the laws means to treat a person or group differently without reason (Imber & Van Geel, 2010). While this may seem simple, it has been debated for years in front of the Supreme Court. Prior to and during the 1950s, African Americans were forced to attend segregated schools, away from their Caucasian

peers. The only reason for segregation was due to race and appeared to be a violation of the Fourteenth Amendment (Imber & Van Geel, 2010). Further, often the schools in which they attended were rundown and in poor physical condition (Blanchett, Mumford, & Beachum, 2005). Frustrated by the condition of their child's school and the distance from home, the Brown family went to the National Association for the Advancement of Colored People (NAACP) to challenge segregation in public schools (Blanchett, Mumford, & Beachum, 2005; Smith & Kozleski, 2005). Motivated by earlier successful equal protection supreme court decisions, the Browns, along with other families of color and with assistance from the NAACP, brought forth the claim that segregated schools for African Americans were a violation of the Fourteenth Amendment, thus, illegal (Blanchett, Mumford, & Beachum, 2005; Imber & Van Geel, 2010; Salend & Duhaney, 2011; Smith & Kozleski, 2005). This landmark case established "separate but equal is not equal" (*Brown v. Board. of Education*, 1954). With this seminal case, the Supreme Court set a precedence that twofold education systems were not appropriate or legal (Blanchett, Mumford, & Beachum, 2005; Salend & Duhaney, 2011; Smith & Kozleski, 2005; Spaulding & Pratt, 2015).

Spurred by the success of *Brown v. Board. of Education* (1954), parents and advocates of people with disabilities pursued litigation and state legislation that would promote equal education for all children, including those with disabilities (Duhaney & Salend, 2010; Imber & Van Geel, 2010; Salend & Duhaney, 2011; Spaulding & Pratt, 2015; Winzer, 1993). The following section will highlight seminal court cases that impacted special education prior to the passage of Education for All Handicapped

Children Act in 1975.

Legislation Leading to the Education of All Handicapped Children Act of 1975

Following the Supreme Court decision that segregation of students was unconstitutional, parents of children with disabilities were eager to ensure that all children had equal access to education (Blanchett, Mumford, & Beachum; Imber & Van Geel, 2010; Salend & Duhaney, 2011; Huefner, 2006). Prior to the 1970s, children with disabilities were often excluded or segregated (Itkonen, 2007). However, children with learning disabilities or other "invisible disabilities" were left to fend for themselves in a sink or swim general education classroom (Itkonen, 2007). This disparate education system triggered a grassroots effort to make systemic changes (Itkonen, 2007). This advocacy was warranted given the staggering numbers of students with disabilities without services. In 1970, there were eight million children with disabilities (Imber & Van Geel, 2010). Of those eight million children, three million were not receiving appropriate education and another three million were excluded altogether (Imber & Van Geel, 2010). The following are brief summaries of three pivotal cases that helped shape how children with disabilities are educated.

Hobson v. Hansen (1967).

Following the seminal *Brown v. Board. of Education* (1954) case, it was apparent that school districts were still slow to ensure equal protections for minorities (Blanchett, Mumford, & Beachum, 2005; Smith & Kozleski, 2005). This is evident in *Hobson v. Hansen* (1967). In this case, Washington, DC public schools attempted to move from outright segregation of African American students, instead, purposefully instituting

practices that encouraged segregation of students. The Washington, DC school board instituted new neighborhood school zones. The intent of this was to ensure that students would have schools within walking distance. However, given the racially and economically divided neighborhoods already in existence, it just solidified the divide. Additionally, the school board made conscious racial hiring decisions for the neighborhood schools. This resulted in primarily African American teachers at the primarily African American schools. To avoid parental outcry, the school board instituted an option for parents to choose an alternate school for their child to attend. This action resulted in many parents of white children moving students to schools outside their neighborhood and further segregating the school system. In order to provide ability grouping for students, the school district developed a track system. The "track system" divided students into separate groups ranging from "basic" for the slow student to "honors" for gifted student. This system brought about segregation of students because more students in one ethnic group were likely to fall in the basic group despite actual ability. Upon review, the court ruled that the Washington, DC school system was unconstitutional as it deprived African America children and poor children equal access to education with white or more affluent children. (Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967))

Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania (1971).

Motivated by earlier civil rights cases and dissatisfied with the way in which their children were treated in the school system, thirteen parents approached the advocacy

group, Pennsylvania Association for Retarded Children for assistance in challenging exclusion from public school. Many of the children had either been excluded from participation in public school, or had been denied re-admittance after attendance. In fact, this appears to have been commonplace during this time period as there were approximately 46,000 students with intellectual disabilities receiving services. However, there were another 70,000 to 80,000 who were excluded. The group successfully argued the provisions in Pennsylvania law that allowed districts to exclude students with mental retardation denied them guaranteed access to public education. The court ruled that such exclusion was unconstitutional. The court determined that the school district must provide a free public education for all students with mental retardation in a program most like the programs that are provided for their non-disabled peers (*Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania,* 334 F. Supp. 1257(E.D. Pa. 1971 and 343 F. Supp. 279 (E.D. Pa. 1972); Yell, Rogers, & Rogers, 1998).

Mills v. District of Columbia Board of Education (1972).

In 1972, the parents of seven children with varying disabilities, mostly behavior disorders, challenged the District of Colombia School District over the exclusion from public school. The way in which these students were excluded included expulsion, suspension, and reassignment. In 1972, there were approximately 13,000 out of 18,000 students with disabilities who were excluded in the District of Columbia School District. One of the plaintiffs in the case, Peter Mills, was a 12- year- old African American who had been expelled from school because he had been deemed a behavior problem. The

school district contended that they did not have to provide services to students with disabilities because they did not have the funds (Ashbaker, 2011). The court determined that it was unconstitutional to exclude students of any disability because of lack of funds, thus requiring the school district to provide a free public education for all children with disabilities. Further, the court required the school district to provide basic procedure rights of notice and hearing prior to placement into a special education program. These due process hearing rights included the following: right to a hearing with a representative, a record, and an impartial hearing officer; the right to appeal; the right to have access to all records; and the right to have notice for all of these processes (*Mills v. District Columbia Board of Education*, 348 F. Supp. 866 (D.D.C. 1972); Yell, Rogers, & Rogers, 1998).

The effect of Hobson, PARC, and Mills.

Despite the Hobson, PARC, and Mills successful litigations, there did not seem to be much change as far as services for students with disabilities nationwide (Yell, Katsiyannis, & Bradley, 2011). Immediately following the rulings in these cases, similar lawsuits were filed in 28 other states (Yell, Katsiyannis, & Bradley, 2011). Despite successful litigation and changes in some states, there were still many students with disabilities who were not receiving any services (Yell, Katsiyannis, & Bradley, 2011). By the early 1970s, most states had established laws requiring that free public education be provided to students with disabilities, however, there was disparity in services between the states (Itkonen, 2007; Yell, Rogers, & Rogers, 1998). The growing frustration from parents and advocates reached law makers. Before long, two major federal statutes

designed to ensure equitable treatment and a free and appropriate education would emerge (Imber & van Geel, 2010).

The Rehabilitation Act of 1973.

At the core of The Rehabilitation Act is Section 504 (Imber & Van Geel, 2010). Under this federal statute:

> No otherwise qualified individual with handicaps…shall solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance… (29 U.S.C. §701-796, Volume 34 C.F.R)

This Act applies to all public and private institutions that accept federal financial assistance and protects anyone with a disability, not only students (Imber & Van Geel, 2010). Section 504 requires federal agencies who receive federal funds to provide assurances of compliance, make corrections when violations are found, and make individualized accommodations and modifications for people with disabilities (Yell, Rogers, & Rogers, 1998). This statute was the first enacted to protect the rights of people with disabilities.

P.L. 93-380, Education Amendments of 1974.

The Education Amendments of 1974 was an improvement to the Elementary and Secondary Education Act of 1965 (ESEA) in that it afforded funding for programs for students who had disabilities or who were disadvantaged (Huefner, 2006; Yell, Rogers, & Rogers, 1998). The ESEA also created organizations such as The Bureau of Education for the Handicapped and created the National Advisory Council on Handicapped

Children (Huefner, 2006; Yell, Rogers, & Rogers, 1998). The intent of the revisions to ESEA was to ensure that states who received federal funding for special education establish a goal of providing full opportunities for all children (Yell, Katsiyannis, & Bradley, 2011; Yell, Rogers, & Rogers, 1998).

Individuals with Disabilities Education Act

In 1975, spurred by recent litigation, statutes, and public outcry over unequal access to free public education for children with disabilities, Congress drafted and enacted Public Law 94-142, or the Education for All Handicapped Children Act (EAHCA) (Ashbaker, 2011; Mueller, 2015; Huefner, 2006; Yell, Rogers, & Rogers, 1998). In 1990 the name of the law was retroactively changed to the Individuals with Disabilities Education Act (IDEA) To date, this law represents the greatest increase in the government's role in special education (Yell, Katsiyannis, & Bradley, 2011). The IDEA was drafted to guarantee that children with disabilities received a free appropriate public education, protect of rights for children and families, and assist states and local education agencies in implementing programs for children with disabilities (Ashbaker, 2011; Yell, Katsiyannis, & Bradley, 2011; Yell, Rogers, & Rogers, 1988).

The IDEA, through formula grants, offered federal funding to those states that provided services to children with disabilities (Huefner, 2006). It was expected that to receive the funds, states had to develop plans demonstrating that they were serving students with disabilities (Yell, Katsiyannis, & Bradley, 2011). The expectation was that IDEA would be fully implemented and state plans for implementation would be in place by August 23, 1977 (Yell, Rogers, & Rogers, 1998). All states with the exception of New

Mexico submitted plans and accepted federal funding for the new statute (Yell, Rogers, & Rogers 1998). Later, after lawsuits were filed over discrimination and exclusion of students with disabilities, New Mexico submitted a state plan and accepted federal funding to serve students with disabilities (Yell, Rogers, & Rogers, 1998).

The initial version of IDEA mandated services for children with disabilities ages 6-21 found eligible under one or more of eight eligibility categories (Imber & Van Geel, 2010). Categories of eligibility include: deafness, visual impairment, mental retardation, orthopedic impairments, other health impairments, serious emotional disturbance, specific learning disabilities, and speech impairment (Griffith-Sheriff & Walter, 1981). In order to be eligible for services, a child must be eligible under one of the categories and require special education services (Imber & Van Geel, 2010).

The IDEA afforded several protections and held strong procedures for provision of services to children with disabilities. Schools no longer had the ability to reject or exclude children with disabilities as they were now held to a "zero-reject" clause. School districts had a child find obligation to identify, locate, and evaluate any child in need of special education or suspected of having a disability. Prior to placement into special education, the child must have a full evaluation administered by trained personnel. Every child is entitled to a free and appropriate public education (FAPE). A FAPE consists of special education and related services and is provided free of charge and specially designed for that child. The IDEA mandates that students with disabilities are educated with their peers without disabilities to the maximum extent possible. From its inception, the Individuals with Disabilities Education Act contained an extensive system of

procedural safeguards to ensure that all students with disabilities receive a FAPE. The procedural safeguards ensure that parents are meaningfully involved. The safeguards include: prior written notice, informed parental consent, an opportunity to examine records, the right to an independent educational evaluation at no cost, and the right to an impartial due process hearing. Finally, the law includes a requirement for the development of an Individualized Education Plan (IEP) that is reviewed annually (IDEA, 20 U.S.C. §1432; Huefner, 2006; Yell, Katsiyannis, & Bradley, 2011).

In 1986, the IDEA was amended (Huefner, 2006). The 1986 Amendments accomplished three tasks: services and protections were extended to preschoolers ages 3-5; an incentive state grant program for early intervention services for infants and toddlers with disabilities who had a disability or were "at-risk" for a disability was created; and attorney's fees for parents who prevailed in due process litigation were awarded (Huefner, 2007).

1990 legislation amended and renamed the law the Individuals with Disabilities Act, or IDEA (Huefner, 2006). This amendment eliminated all usage of the term "handicap" as it was determined to be derogatory (Huefner, 2006). Additional to terminology changes, IDEA added new eligibility categories: autism, and traumatic brain injury (Huefner, 2006). The amendment separated the category of hearing impairment from that of deafness, bringing the total of eligibility categories to 13 (Huefner, 2006). The 1990 amendments also added detailed transition planning by the age 16 for students with disabilities (Yell, Katsiyannis, & Bradley, 2011).

While IDEA and the subsequent reauthorizations had greatly expanded services

and protections for children with disabilities, it was not entirely successful as there had been too much focus on compliance and paperwork and not enough on student skill attainment (Huefner, 2006; Yell, Katsiyannis, & Bradley, 2011). Thus, IDEA was amended in 1997 with changes that were intended to ensure that students with disabilities received a quality education that focused on student performance (Huefner, 2006; Yell, Katsiyannis, & Bradley, 2011). The 1997 amendments contained quite a number of additions and clarifications. These additions encompassed: including measurable annual goals and how progress towards goals would be measured; informing parents regarding progress; reconvening of the IEP if a child failed to make adequate progress; and designing IEPs to improve and increase the benefits given to children with disabilities to the extent that they are able to achieve measurable progress (Huefner, 2006; Yell, Katsiyannis, & Bradley, 2011).

Congress recognized that children with behavior challenges were not fully supported under IDEA (Yell, Rogers, & Rogers, 1998). To rectify this, the 1997 amendment required that if a student with disabilities has behavior difficulties, the school must consider strategies and supports to address the problems. If there are concerns, a behavior plan based on a functional behavior assessment should be included in the IEP. School districts may discipline a child with a disability in the same manner as they do students without disabilities with a few exceptions. For extreme disciplinary issues such as weapons or drugs, a unilateral interim placement may be considered. Additionally, a student with a disability may be suspended for no more than 10 days per school year. (Individuals with Disabilities Act Amendments of 1997, 105th Congress, 1st session; Yell,

Katsiyannis, & Bradley, 2011; Yell, Rogers, & Rogers, 1998).

Despite the success in ensuring provisions of services to children with disabilities, Congress felt that IDEA had come up short in as far as the provision of scientifically research based methods (Ashbaker, 2011; Huefner, 2006; Yell, Katsiyannis, & Bradley, 2011). The primary goal of IDEA 2004 amendments was to improve outcomes for students with disabilities. There were several substantive changes to IDEA with this reauthorization. The changes included an alignment with another federal statute, the Elementary and Secondary Education Act, commonly known as No Child Left Behind and revising eligibility criteria. The law now included three new components to the eligibility process: parents or school officials could request an initial evaluation; a student could not be found eligible for special education if there was another fundamental problem that resulted in deficit areas; and states could no longer require that a discrepancy model be used to determine whether a student has a learning disability. Instead, states must allow for school districts to use a process that determines whether a child can respond to scientific based instruction. This is often referred to as the Response to Intervention (RTI). Finally, school districts were now allowed to use up to 15% of their special education funding for early intervening services, or services for children who have not yet been identified as having a disability. The primary goal of this was to provide research based interventions, along with progress monitoring, in a systematic manner to children who are at risk (Ashbaker, 2011; Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.; Yell, Katsiyannis, & Bradley, 2011).

Despite the accomplishments of the last 40 years, IDEA has not been without its

share of debate (Yell, Katsiyannis, & Bradley, 2011). These disagreements have resulted in copious court decisions, including some heard by the U. S. Supreme Court (Yell, Katsiyannis, & Bradley, 2011). Selected case decisions and the IDEA tenet associated are highlighted in the sections that follow.

Free and appropriate public education (FAPE).

At the heart of the IDEA, free and appropriate public education (FAPE) has been much debated (Romberg, 2011; Yell & Crockett, 2011; Zirkel, 2015; Zirkel, 2013). The IDEA defined FAPE as a program of special education and related services that (a) are provided at public expense under public supervision and direction, and free of charge; (b) meet the standards and requirements of the state agency; (c) include an appropriate preschool, elementary, or secondary school education in the agency involved; and (d) are provided in the conformity of the IEP (IDEA, § 1401[8]) (Drasgow, Yell, & Robinson, 2001). Congress purposely did not elaborate on the definition for FAPE (Drasgow, Yell, & Robinson, 2001). Instead, the intention was that states would adopt procedures that allowed for individualized education plans (IEPs) to be developed that captured all the needs of the student (Drasgow, Yell, & Robinson, 2001). Further, states were mandated to adhere to the procedures designed to ensure a FAPE for each child with a disability (Drasgow, Yell, & Robinson, 2001). Nevertheless, despite the procedures set in place by Congress, FAPE has been heavily debated (Drasgow, Yell, & Robinson, 2001; Huefner 2006; Imber & Van Geel, 2010). Soon after the IDEA was enacted, a seminal case made its way to the Supreme Court to help determine a framework for FAPE (Drasgow, Yell, & Robinson, 2001; Imber & Van Geel, 2010).

Board of Education of Hendrick Hudson Central School District v. Rowley (1982).

This case centered on Amy, a first grader who was deaf and whose parents wanted services above what was offered through her IEP. The proposed IEP included placement in a general education class, the use of an FM hearing aid, one hour per day instruction from a tutor for the deaf, and speech therapy for three hours per week. Amy was doing well with these services, but her parents noted the disparity between her demonstrated skills and potential. In order to give her the same opportunities as her peers, her parents requested an interpreter for all of her classes. The school district disagreed, having consulted with experts in the area of hard of hearing, who asserted that Amy did not require that service. The court found that given the fact that the district had complied with the IDEA and the notable progress Amy made in school, the school had provided a FAPE to Amy.

The court determined that the intent of Congress was to give access, or "basic floor of opportunity" (*Board. of Educ. of Hendrick Hudson Central SD. v. Rowley*, 458 U.S. 176 (1982) to students with disabilities. The court determined that the FAPE mandate held dual meaning, which was primarily procedural and second substantive (Yell & Crockett, 2011; Zirkel, 2005). Therefore, a two-part test was established to be used by other courts to determine whether a school has met the FAPE requirements (Drasgow, Yell, & Robinson, 2001; Yell & Crockett, 2011). The question established by the court are (a) has the school complied with procedures of the Act and (b) is the individualized program developed through the Act reasonably calculated to enable the

child to receive benefit? According to the court, if these two prongs were met, then the school would be in compliance with the FAPE requirement (Drasgow, Yell, & Robinson, 2001). Therefore, the Supreme Court developed a meaningful FAPE standard: Eligible students with disabilities are entitled to services that are individualized and sufficient for them to benefit from their educational program (Drasgow, Yell, & Robinson, 2001; Yell & Crockett, 2011; Zirkel, 2013; Zirkel, 2005).

Despite the framework for the two-prong test highlighted in *Rowley,* courts continued to struggle with determining whether FAPE had been provided to children with disabilities (Yell & Crockett, 2011; Zirkel, 2013; Romberg, 2011) as evidenced in more recent court decisions. In *W.G. v. Board of Trustees* (1992), the U.S. Court of Appeals for the Ninth Circuit ruled that a school failed to include the classroom teacher or representative of a private school when developing the IEP, thus denying the student a FAPE (*W.G. v. Board of Trustees, 960 F.2d 1479* (9th Circuit, 1992)).

A FAPE sometimes requires that a child with a disability be provided with a related service in addition to their special education services (Yell & Crockett, 2011). Related services are defined in IDEA as:

> General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services,

> including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training (IDEA 20 U.S.C. § 1402(26)(A).

This list is not exhaustive, but all related services must be determined by the IEP team on an individual basis (Yell & Crockett, 2011). Two seminal cases involving related services and FAPE speak to how controversial issues can become.

Cedar Rapids v. Garrett F. (1999).

This case involves a boy who had been paralyzed in a motorcycle accident and was only able to breathe with use of an electric ventilator or with someone manually pumping an air bag attached to his tracheotomy tube. For years, Garrett's parents paid for his medical care, a licensed nurse, during school hours. Once he started middle school, Garrett's parents requested that he school district fund the cost of his medical care during the school day. The school district refused on the basis that it was not the responsibility of the district to provide for continuous medical care. Ultimately, the case went to the Supreme Court for a decision. The court ruled that the school district was responsible for the medical services since it did not require the services of a physician and Garrett was unable to attend school without these services. Therefore, even complex medical services cannot be excluded from IDEA and must be provided by the school district (*Cedar Rapids Community School District v. Garrett F.* (526 U.S. 1999); Yell & Crockett, 2011).

Burlington School Committee v. Massachusetts Department of Education (1985).

In this case, the father of a child with a disability rejected the school district's proposed IEP for the 1979–1980 school year and sought review by respondent Massachusetts Department of Education's Bureau of Special Education Appeals (BSEA). Meanwhile, the father, at his own expense, enrolled the child in a state-approved private school for special education. The child remained at the private school for a second year as well. The BSEA determined that the school district's proposed IEP was inappropriate and that the private school was better suited for the child's educational needs, and ordered the district to pay the child's expenses at the private school for the 1979–1980 school year. While the district agreed to pay for one year of tuition for the private school, they refused to pay for the second year. Instead, they appealed the decision and the case ultimately went to the Supreme Court for a decision. The court ultimately held that the father was entitled to reimbursement given the denial of FAPE (*Burlington School Committee v. Massachusetts Department of Education*, 471 U.S. 883 (1984); Zirkel, 2005).

As evident from the cases presented, FAPE is a hotly contested issue and one that is often confused by the courts. Determining FAPE is a decision reached between schools and families specific to an individual child's needs. FAPE is not the only issue brought before the courts. Procedural violations of the law can also lead to court cases.

There are other issues that frequently appear in the court system. The procedures within IDEA are vast and can be confusing to school districts. Three of these procedures include child find obligations, evaluation and eligibility, and written notice. Case

highlights and descriptions of these specific procedures are discussed in the section to follow.

Child find obligation.

States have the obligation to locate, find, and evaluate children with disabilities, even those never enrolled in public school (Imber & Van Geel, 2010). A school district who fails to adhere to the child find requirement may be overlooking potential children with disabilities, therefore, could face providing compensatory education services to that child (Imber & Van Geel, 2010; Yell, Katsiyannis & Bradley, 2011).

Board of Education of Fayette County, Kentucky. v. L.M. (2007).

In *Board of Education of Fayette County, Kentucky. v. L.M.* (2007), the school district failed to identify a second-grade boy for two years. The hearing officer awarded the student 125 hours of compensatory services. While the school district appealed this decision, it was maintained and compensatory services were still offered as part of the settlement. (*Board of Education. of Fayette County, Kentucky v. L.M.*, 478 F.3d 307 (6th Cir.) 2007).

Eligibility and evaluation.

IDEA mandates that school districts complete evaluations in a timely manner; most states specify less than 60 days (Huefner, 2006). IDEA also specifies that in order to be placed into special education, students must be found eligible through a comprehensive evaluation by trained personnel (Yell, Katsiyannis, & Bradley, 2011). Further, the assessments utilized must not be discriminatory on a racial or cultural bias (Yell, Katsiyannis, & Bradley, 2011). As highlighted in the cases below, some school

districts have struggled with these mandates.

Holland v. District of Columbia (1994).

In *Holland v. District of Columbia* (1994), during the 1991-1992 school year, Siobhan Holland attended Holy Trinity School, a private school in the District of Columbia. In October of 1991, the Psychiatric Institute of Washington conducted a psychiatric evaluation of Siobhan. On February 24, 1992, the Hollands referred Siobhan to the District of Columbia Public Schools (DCPS) in order to determine her eligibility for special education services. Fifty days passed without DCPS issuing either a Notice of Ineligibility or a Notice of Proposed Change in Educational Placement. The family filed a due process hearing and presented the school district with an independent evaluation. The hearing officer determined that the school district had not fulfilled the IDEA requirement in adhering to timelines for evaluation and required the school district to evaluate Siobhan. The Holland family appealed this decision and requested additional independent evaluations. The court of appeals denied this request, citing the central tenet in IDEA requires that schools have the opportunity to evaluate prior to spending public funds for independent evaluations (*Holland v. District of Columbia*, WL 901045, 14 A.D.D. 379 (1994)).

Larry P. v. Riles (1984).

Although this case was originally brought forth prior to the enactment of P.L. 94-142, *Larry P. v. Riles* (1984) was seminal in that it brought forth the issue of school districts' over reliance on standardized IQ measures to place African American students in self-contained programs. The initial complaint for declaratory and injunctive relief was

filed in 1971, with six African American elementary school children in the San Francisco Unified School District. The guardians of the children challenged the unconstitutional use of standardized intelligence tests for placement of black children in self-contained special education classes for students who have mental retardation in San Francisco.

Historically, during the mid-60's California created programs for several categories of students with educational problems. The “educable mentally retarded” (E.M.R.) program was for school children who had intellectual disabilities and were considered incapable of being educated through the regular educational program, but who could benefit from special educational facilities to make them economically useful and socially adjusted. The “trainable mentally retarded” (T.M.R.) category was for children with more severe intellectual disabilities. In addition, there were two categories for students who, with help, could be returned to a regular school program. These were the programs for “culturally disadvantaged children” with cultural or economic disadvantages, but with potential for successfully completing a regular educational program, and for “educationally handicapped minors” (E.H.), students with marked learning or behavioral disorders, capable of returning to a regular school program but who could not presently benefit from the regular program. According to court documents, the E.M.R. classes were for children who were considered “*incapable* of learning in the regular classes,” and the E.M.R. curriculum was “not designed to help students learn the skills necessary to return to the regular instructional program.” The E.M.R. classes were designed only to teach social adjustment and economic usefulness. According to court documents, “The [E.M.R.] classes are conceived of as ‘dead-end classes’” and

misplacement in E.M.R. causes a stigma and irreparable injury to the student.

As discovered during the case, from 1968 until trial in 1977, African American children were significantly overrepresented in E.M.R. classes. For example, in 1968–69, black children were about 9% of the state school population, yet accounted for 27% of the E.M.R. population. When the Court of Appeals heard the case, they determined that the district was in violation of IDEA because of the requirement that tests and evaluation procedures are free of racial and cultural bias. It was clear in this case that the standardized assessments were not free of racial bias. Further, school officials had not established validity of IQ test used to place children in classes for the educable intellectually delayed in view of evidence of the higher percentage of African American students who were placed in those classes on the basis of the tests. Finally, the court found that school district officials had violated Title VI by utilizing certain IQ tests for placement of children into classes for the educable mentally retarded, with result that a higher percentage of African American children than of white children were placed in those classes (*Larry P. v. Riles*, 793 F. 2d 969 (9th Circuit)(1984)).

Written notice.

One of the pivotal tenets of IDEA procedural safeguards is the written notice requirement. The intention was to ensure parental involvement (Ashbaker, 2011; Huefner, 2006;). Written notice must be provided to a parent anytime a school district is (a) proposing or refusing to evaluate, (b) changing a student's placement, and (c) conduct an eligibility or IEP. A seminal case regarding unilateral removal without parental involvement is highlighted below.

Honig v. Doe (1988).

In *Honig v. Doe* (1988), two adolescent boys with serious emotional disturbance were suspended indefinitely, pending their expulsion from two California public schools. The two boys had a long history of challenging behaviors. One of the boys had been suspended when he choked another student and then kicked out a window. The other boy had stolen, extorted other students, and made suggestive comments to female students. When the school informed the grandparent and parent, it was after the suspension and pending expulsion had taken place, therefore, they were unaware of procedural safeguards. The court determined that school districts could not unilaterally change a student's placement by expulsion or permanent suspension for dangerous behaviors that were a result of the child's disability. Instead, the court reasoned, the school district should reconvene the IEP to determine the needs of the child and consider the supports in place.

In IDEA, one of the procedural safeguards was the "stay-put" protection. This safeguard was put into place to "maintain the status-quo" (Zirkel, 2013, paragraph 1). When there is a dispute or conflict regarding a child with a disability, IDEA allows the stay-put protection to come into effect which means that the current placement of the child will remain until the dispute is resolved (Zirkel, 2013b).

In *Honig*, the court determined that the school district could have utilized a variety of methods to discipline the boys, none of which included expulsion or permanent suspension (Huefner, 2006). The court also established a threshold for bypassing the protections in IDEA. The court concluded that in order to circumvent the hearing process

and expedite removal for behaviors, the school district must prove that the current placement would in all likelihood result in injuries to the student or others (*Honig v. Doe*, 108 S. Ct. 592 (1988); Huefner, 2006;).

Least restrictive environment (LRE).

The IDEA requires school districts to provide students with disabilities an education in the least restrictive environment (LRE) (Rozalski, Miller, & Stewart, 2011). As defined in IDEA, LRE is:

> In general.--To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (IDEA, 20 U.S.C. § 1412 (612)(a)(5)(A)).

Least restrictive environment is not a specific placement but varies according to a student's academic and behavioral needs (Rozalski, Miller, & Stewart, 2011; Yell, 1995). In fact, some students demonstrate needs beyond what can be provided in the general education classroom; thus, require a more restrictive placement (Rozalski, Miller, & Stewart, 2011; Yell, 1995). The LRE is a tenet in IDEA that has been heavily debated since its inception, as evident in many court cases. Seminal LRE court cases are highlighted below.

Daniel R.R. v. State Board of Education (1989).

In *Daniel R.R v. Board of Education* (1989), the parents of a six year-old with Down syndrome challenged a school district decision that their child could no longer be served in the general education classroom. The boy had originally been placed in a combination general and special education program. It became apparent to the school that he could not master any of the skills taught by the general education teacher, despite the use of supplemental aids and modifications. The parents disagreed with the school district recommendation that Daniel be placed in a self-contained special education program. The court determined that the school had proven that the general education teacher had tried a continuum of services prior to recommending him to move to a more restrictive environment.

The court developed a two prong test for determining if inclusion in general education classroom is appropriate. First, with the use of supplements and aids could the student achieve satisfactorily in the general education environment. Second, if the student is in a self-contained setting, is the student included with students without disabilities to the maximum extent possible (*Daniel R.R. v. Board of Education*, 874 F2d 1036 (Fifth Cir.1989); Rozalski, Miller, & Stewart, 2011).

Clyde K. v. Puyallup (1994).

In *Clyde K. v. Puyallup* (1994), a 15-year-old boy with Tourette's syndrome was receiving special education services in general education classes. Because of his increasingly disruptive behavior, the parents and school district decided to remove him from general education classes and place him in an off-campus self-contained program to

receive instruction until inclusion in general education became achievable. The parents later changed their mind, claiming that the program was not the least restrictive placement for the student, therefore, was a violation of IDEA. Both the district court and court of appeals ruled in favor of the school district. The courts ruled this way because the student's disruptive behavior in the general education classroom prevented him from academic learning, there was no evidence that he modeled his behavior after peers, and his behavior had a negative effect on his peers in the class. The court also asked an essential question: Will the student make adequate progress and benefit academically from a placement in a general education classroom? This essential question became referred to as the "Progress" test which has been referenced in other seminal cases (*Clyde K. v. Puyallup School District* 35 F.3d 1396 (9th Cir. 1994); Rozalski, Miller, & Stewart, 2011;).

Prior to the passage of IDEA in 1975, children with disabilities were not entitled to a free appropriate public education (Imber & Van Geel, 2010; Rozalski, Miller, & Stewart, 2011). With the inception of IDEA, children with disabilities have had the elemental right to a publicly funded education (Bateman, 2011; Rozalski, Miller, & Stewart, 2011). The primary objective for parents of children with disabilities has been to have their children receive education with students without disabilities (Bateman, 2011; Rozalski, Miller, & Stewart, 2011). In fact, the mandate for LRE actually requires that "to the maximum extent appropriate," students with disabilities be educated alongside their peers without disabilities (Bateman, 2011; IDEA, 20 U.S.C. § 1412 (612)(a)(5)(A); Rozalski, Miller, & Stewart, 2011). School districts are required to offer a continuum of

placements that vary in degree to which a student is removed from the general education classroom (Bateman, 2011; Rozalski, Miller, & Stewart, 2011). If a student with a disability is removed from the general education classroom, the school bears the burden of documenting all services and supports that have been considered in an attempt to serve the student in the general education classroom (Bateman, 2011; Rozalski, Miller, & Stewart, 2011). The seminal cases highlighted in this section illustrate the importance of the assurance that students with disabilities are education in the least restrictive environment possible (Bateman, 2011; Rozalski, Miller, & Stewart, 2011).

In the previous sections, the history of special education, including legislation and seminal court cases addressing special education issues have been discussed. The question remains, when there is conflict, how does a parent move through the system to ensure that their voice is heard? There are three IDEA dispute resolution procedures available to parents: mediation (IDEA 34 C.F.R. § 300.506), state complaint procedures (IDEA C.F.R. § 300. 151-153), and due process (IDEA C.F.R. 300.511) (Mueller, 2015). These dispute procedures are addressed in the sections to follow.

Overview of the Dispute Resolution System

State complaints.

When a parent believes that an IDEA violation has occurred, the parent has the option to file a formal complaint with the State Education Agency (SEA) (GAO, 2003; Mueller, 2015). A state complaint procedure requires a review by the SEA to determine whether a state or local school district has violated IDEA (GAO, 2003). A complaint is generally an expression of some disagreement with procedure or a process regarding

special education programs, procedures, or services. A formal complaint is considered a request that the SEA investigate an alleged IDEA violation of a parent or eligible child's rights. When a formal state complaint is filed, the SEA has 60 days in which to complete the investigation (Mueller, 2015). Each SEA must adopt written procedures for resolving complaints related to IDEA, (34 CFR §300.151 (a)). The SEA must create filing procedures and widely disseminate information about the procedures (34 Code of the Federal Register [CFR], §300.151). Typically, a form is available in the dispute resolution section of the SEA's special education website. Once the complaint is received by the SEA, the SEA must: (a) carry out an independent on-site investigation, if necessary; (b) give the complainant the opportunity to respond to the complaint; (c) review all relevant information; (d) make an independent determination as to whether the public agency is violating the act; and, (e) issue a written decision to the complainant that addresses each allegation in the complaint, contains findings of fact and conclusion, and the reason for the SEA's final decision (IDEA 34 CFR §152). If a complaint is also the subject of a due process hearing, the SEA must set aside that complaint, in whole or part, until the due process hearing's conclusion (IDEA 34 CFR §300.152(c)).

Due process hearing request.

If parents believe that a school district has not adhered to IDEA and the rights of their child have been violated, they have the right to file a complaint with respect to the evaluation, identification, and placement of their child, and the provision of FAPE (Huefner, 2006; IDEA 34 CFR §300.507(a)(1); Zirkel, 2012). The intent of the IDEA due process provisions is to resolve conflict between parents and school districts (Mueller,

2009). In IDEA 2004, the amendments placed a statute of limitations of two years on the ability to file a due process complaint (Huefner, 2006). Filing a due process complaint initiates a formal review of the actions of the school district and allows for a more complete consideration of the school's intended actions prior to implementation (Huefner, 2006; Mueller, 2015; Zirkel, 2012).

After filing the complaint, parents have the opportunity for a due process hearing (Huefner, 2006). In 2004, the IDEA implemented a mandatory **resolution session** (Huefner, 2006). The resolution session provides the opportunity for the school district to come to a resolution with the parents (Huefner, 2006). The resolution session must be held within 15 days of filing the due process complaint and if a resolution is not reached within 30 days of complaint, a due process hearing may take place (Huefner, 2006).

Mediation.

The process of mediation requires the use of an impartial mediator to facilitate with both parties sharing information and reaching mutual agreement (Government Accountability Office [GAO], 2003; Mueller, 2015). The role of mediators is critical as they are not a member of IEP teams and do not offer any judgement or opinions (Mueller, 2015). According to IDEA, mediation includes the following requirements: (a) is voluntary on the part of the parties; (b) is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and (c) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. [34 CFR 300.506(b)(1)] [20 U.S.C. 1415(e)(2)(A)]

As part of the 1997 IDEA amendments, mediation was added as a voluntary process available upon request for a due process (Blackwell & Blackwell, 2015; GAO, 2003; Huefner, 2006; Mueller, 2015). Congress had recognized the value of mediation when, by 1994, 39 out of 50 states had instituted mediation as a first step prior to due process (Mueller, 2015). Mediation was recognized for the impartial process and likelihood at arriving at a resolution in comparison to other costly dispute options (GAO, 2003; Huefner, 2006; Mueller, 2015). Given this, and the success of mediation, the 2004 IDEA reauthorization included mediation available to parents at any time, not only as part of due process (Huefner, 2006; Mueller, 2015). Despite the demonstrated successes of mediation, mediation has variable factors including mediator background and training as well as the willingness of both parties to come to a successful resolution (Mueller, 2009, 2015).

Due process hearing.

The due process hearing, unlike the mediation, is a formal hearing presided by an impartial hearing officer (Huefner, 2007; Mueller, 2009; Zirkel, 2012). Due process hearings require the testimony of witnesses and presentation of evidence (Mueller, 2009, 2015). Under the IDEA provision for due process hearings, states have the option to operate as a one or two tier system (Zirkel, 2010, 2012). The two tier system offers an additional layer of review, that being a review officer, prior to the case going to the court system should a party appeal (Zirkel, 2010, 2012). However, a predominant number of states, 41, operate a single tier system (Mueller, 2015; Zirkel, 2012). Figure 3 illustrates the relationship and flow of due process, mediation, and the role with the U.S. court

system (Rozalski, Miller, & Stewart, 2011).

Figure 4. Mediation, Due Process, and the Role of the U.S. Courts. Adapted from Rozalski, M., Miller, J., & Stewart, A. (2011). Least Restrictive Environment. In Kauffman, J.M. & Hallahan, D.P. (Eds.), *Handbook of Special Education* (p.110). New York: Routledge.

Like the other tenets in IDEA, the due process procedure has been contested and challenged.

In 2005, The Supreme Court issued a highly anticipated ruling in the case of *Schaffer v. Weast Superintendent, Montgomery County Public Schools* (Yell, Katsiyannis, Ryan, & McDuffie, 2009). This case directly addressed the issue of which party bears the burden of proof in a due process hearing (Yell et al, 2009). This case was

especially important because IDEA did not specifically address who bears the burden of proof in cases when a parent of a child with disabilities challenges the district (Yell et al, 2009). As defined by Yell, Katsiyannis, Ryan, and McDuffie (2009), "the term burden of proof when used in legal proceedings refers to two related concepts: the burden of production and the burden of persuasion" (p.242). Historically, it was up to the Hearing Officer to determine which party had the burden of proof (Yell et al, 2009). However, the district courts were divided, some placing the burden on the school district, some on the parents (Yell et al, 2009). In 2005, the Supreme Court determined that the burden of proof is placed on the party seeking relief (Hoagland- Hanson, 2015; *Schaffer v. Weast Superintendent, Montgomery County Public Schools*, 2005; Yell et al, 2009).

Due process hearings are by far the costliest of the dispute resolution options for parents and school districts (Blackwell & Blackwell, 2015; Mueller, 2009, 2015; Zirkel, Reiman et al., 2007). In 2009, it was estimated that the cost of a due process hearing could be as high as $50,000, which includes attorney fees and court costs (Blackwell & Blackwell, 2015; Mueller, 2009). If a case reaches the federal level, costs could go astronomically higher, potentially as high as $100,000 (Mueller, 2009). More than the financial cost of a due process hearing, the emotional tool taken on both parties is staggering (Blackwell & Blackwell, 2015; Cope-Kasten, 2013). Despite these high costs and emotional toll on participants, the number of due process hearings rose steadily throughout the 1990s and remained consistent at over 2,000 hearings conducted annually (Blackwell & Blackwell, 2015).

As mandated by IDEA, states must annually report the number of due process

hearing requests, state complaints filed, and mediation requests. For the year 2013- 2014 as reported by the U.S. Department of Education [US DOE] (2015), the number of due process hearings was 2,813, which indicates that due process litigation is continuing to grow. This figure does not include 11,222 due process hearing requests that were dismissed or withdrawn and the 3,976 hearings that were pending decisions (US DOE, 2015).

However, the number of due process hearings is not spread evenly across the United States (Blackwell & Blackwell, 2015; US DOE, 2015). Some states experience a greater number of due process hearing requests, which has triggered research as to why this may be occurring (Blackwell & Blackwell, 2015; Reiman et al, 2007; Zirkel & Scala, 2010). Minimal studies have been conducted in the area of special education litigation (Blackwell & Blackwell, 2015; Reiman et al, 2007). The most recent state by state analysis conducted in 2010 indicated that nine states accounted for 91% of due process hearings (Zirkel & Scalia, 2010). The nine states were New York, Connecticut, New Jersey, Pennsylvania, Maryland, Hawaii, Texas, Massachusetts, and Illinois (Zirkel & Scalia, 2010). Despite this analysis and the high volume of due process hearing requests, this information already seems obsolete (DOE, 2015). In the 2015 report of due process filings for the 2013-2014 year, it appears as though Puerto Rico, New York, California, and District of Columbia grossly outweigh any other states. This highlights the need for additional research in this area.

The research in special education due process is limited in addressing the characteristics of students at the center of due process hearing requests, issues addressed

during due process cases, prevailing parties, and level of legal representation of the parents (Blackwell & Blackwell, 2015). Earlier studies indicated that students with learning disabilities and students with autism were the most prevalent eligibility categories in due process hearings (Mueller & Carranza, 2011; Newcomer & Zirkel, 1999). Recent research indicates that children who were identified as having a multiple disability (29.1%) were most common in due process hearings (Blackwell & Blackwell, 2015), followed closely by specific learning disability (23.6%) and autism (14.3%) (Blackwell & Blackwell, 2015).

Research shows that the most prevalent procedural and FAPE issues in due process hearings were IEP, educational placement, assessment/evaluation, and service delivery (Cope-Kasten, 2013; Mueller & Carranza, 2011; Newcomer & Zirkel, 1999; Rickey, 2003). Despite the relative depth of these studies, the amount of due process cases studied varies. Some researchers only considered one or two states, which can be limiting in generalization given the variability of due process filings in the United States. For example, Cope-Kasten (2013) examined 210 due process cases from Minnesota and Wisconsin over a 12- year span and found that IEP (47%) and placement (35%) were frequent issues. These figures were similar in a study conducted by Rickey (2003) in which 50 due process cases in Iowa over a span of 12 years were examined. Rickey (2003) identified that placement/LRE was the most common area of dispute, followed by evaluation.

Research regarding prevailing parties has yielded inconsistent results (Cope-Kasten, 2013; Mueller & Carranza, 2011; Newcomer & Zirkel, 1999; Rickey, 2003). In a

recent study, Blackwell and Blackwell (2015) examined the legal representation of parents and conducted an analysis of due process decisions in Massachusetts. One purpose of the research was to determine the level of legal representation and the impact on whether the party prevailed (Blackwell & Blackwell, 2015). The researchers found that when parents are represented by attorneys, the rate of prevalence is higher (30.8%), however, school districts had a higher rate of prevalence regardless the type of representation of the parent (55%).

Summary

As highlighted, the history of special education includes societal, political, and philosophical shifts. Special education has evolved out of a seminal Civil Rights movement, and through the advocacy of organizations and parents, equal rights and protections are in existence for children with disabilities. Through procedural safeguards like due process, parents have been able to ensure that their children have equal footing in the school system. Seminal court cases have and will continually shape how we provide education and services to children with disabilities. Given the vast amount of due process hearing requests annually and current limited research in due process litigation, there is room to grow.

The purpose of this study was to examine due process hearing request trends in the Ninth Circuit and student demographic information leading to the request. A second purpose was to determine whether procedural issues identified in due process hearing requests in the Ninth Circuit are independent of specific eligibility categories and age ranges. Chapter Three provides the methodology utilized for this study.

CHAPTER THREE- RESEARCH METHOD

This quantitative study was designed to examine the due process hearing request trends in the Federal Ninth Circuit and determine whether due process issues and student demographics are independent of each other. An analysis of violation of procedural safeguards and eligibility categories led to an understanding of trends in the Ninth Circuit Court system. As highlighted in the literature review, research of Ninth Circuit Court due process filings is absent, thus, a primary rationale for selecting this circuit court for the study. In this chapter, the research rationale used to study the problem is explained, and research sample and data sources are described, as well as discussion of data analysis procedures. Finally, a discussion of study limitations, delimitations, and summary complete the chapter.

Rationale for Research Approach

The research questions guiding this study were constructed based upon a review of the literature and current case law trends. All research methodologies were considered and after close examination of prospective data sources, the quantitative method of research was selected for this study. Quantitative research can be defined as "explaining phenomena by collecting numerical data that are analyzed using mathematically based methods" (Muijs, 2011, p. 1). Quantitative research tests a theory by examining the relationship between variables and is a collection of data that through mathematical equations can be validated, replicated, generalized, and analyzed (Creswell, 2009, 2014). Quantitative research allows for a numerical answer that would not be provided with another research method (Muijs, 2011). Further, the quantitative method also allows for

the analysis of change in numerical data (Cresswell, 2014; Mujis, 2011). For example, a change in test scores over time can be analyzed using a quantitative approach. Quantitative methodology allows a conclusion to be drawn for a large sample, is an efficient way in which to analyze data, controls bias, is preferable for people who prefer to see numbers, and uses data to analyze relationships (Creswell, 2014, 2015).

For this study, descriptive statistics were utilized. Green and Salkind (2003) define descriptive statistics as the summary of "distributions by developing tabular or graphical presentations and computing descriptive statistical indices" (p.123). Specifically, this study utilized the descriptive statistical measure chi-square. Chi-Square is a statistical test used in instances in which information regarding the frequency of occurrence within categories is needed (Sprinthall, 2007). For this study, all of the data gathered was nominal, in essence, counted and sorted into categories. One limitation of utilizing a chi-square is that unless the sample is large, the statistic is an approximation (Creswell, 2009, 2015; Field, 2013).

Research Questions

This study was guided by the following question: Does an analysis of due process hearings in the Ninth Circuit states during the years 2010-2016 contribute to a comprehensive understanding of student and parent rights balanced with IDEA requirements? In order to answer this, the following questions were addressed:

1. What are the demographics of children for whom due process is being filed?
    a. Gender
    b. Age

c. Disability category

2. What were the categories and procedural issues for the due processes filed by parents?
3. Are parents of students in a specific disability category more likely to identify procedural issues in due process hearing requests?
    e. Autism and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
    f. Specific Learning Disability and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
    g. Social Emotional Disturbance and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
    h. Intellectual Disability and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
4. Are parents of students in a specific age range more likely to identify specific procedural issues identified in due process hearings?
    i. Students ages 3-5 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?

j. Students ages 6-12 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?

k. Students ages 13-18 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?

l. Students ages 19-22 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?

Parameters of the Study

Data collection.

Data was gathered through a search for all due process hearing decisions in the Ninth Circuit Court for the years January 1, 2010 - December 31, 2016. Key words used in the search were "Due Process Hearings" and "Ninth Circuit." As noted in the previous chapter, nine states are within the Ninth Circuit: Alaska, Washington, Oregon, Nevada, California, Arizona, Idaho, Montana, and Hawaii (Huefner, 2006). This purposive sampling includes all due process hearing requests using a nationally recognized clearinghouse of special education law decisions, LRP Splash Connection. According to their website, LRP Splash Connection offers users the ability to conduct legal searches for all due process and federal court decisions regarding special education issues (http://www.specialedconnection.com/LrpSecStoryTool/splash.jsp#). This clearinghouse has been utilized in other special education law research studies, which adds to study

reliability (Blackwell & Blackwell, 2015; Zirkel & Skidmore, 2014). This clearinghouse is most likely used in part to the difficulty of gaining access to otherwise unpublished, or specific information that is widely unavailable (Zirkel & Skidmore, 2014).

One limitation in utilizing LRP Splash Connection is that it is not a public access website. In fact, there is an annual fee associated with access to all website materials, including due process summaries. This limits public access to the due process summaries. However, all due process hearing requests are public records, so an alternate way in which to have conducted this research would have been to contact each state department and request access to the documents. Since this researcher currently has access to LRP Splash Connection because of employment, it was determined that using LRP Splash Connection would be a more efficient way in which to conduct the research. This method of data collection is appropriate given the emphasis on numerical data needed to answer the research questions (O'Dwyer & Bernauer, 2013). After entering key words in the search engine, the clearinghouse yielded 1,081 due process hearing requests in the Ninth Circuit states during the years 2010 and 2016.

Coding procedures.

After identifying the 1,081 due process hearing requests within the Ninth Circuit, each hearing file was logged into a project database. The information logged included the following: state of hearing request, date of hearing decision, and case number (See Appendix C). Each written decision was read thoroughly and coded for demographics and procedural issues (See Appendix A). Initial codes were based on previous research (Blackwell & Blackwell, 2015; Cope-Kasten, 2013; Newcomer & Zirkel, 1999) as well

as the authors' experience with due process hearing requests. The initial coding was refined during establishment of inter-coder reliability. To establish the codes and ensure reliability, an initial set of 20 hearings was randomly selected and both the researcher and the inter-rater read and coded the hearings (See Appendix B). After comparing codes and discussion, those cases plus an additional 89 hearings were coded, thereby establishing inter-rater reliability. According to Miles and Huberman (1994), a formula that is typically used to ensure reliability is as follows: reliability = (number of agreements) / (number of agreements plus disagreements). In this study, the final inter-rater reliability calculation was .87. Miles and Huberman (1994) state that inter-rater reliability should be close to .90 depending on the size and range of the coding scheme.

The final coding was as follows:

1. *Gender* – The student gender identified for each due process hearing request.
2. *Age range* – The age range for the student at question in the dispute request. Age ranges were identified as the following in order to capture ages at all levels: 3-5 (typically early childhood), 6-12 (typically elementary school), 13-18 (typically middle-high school), and 19-22.
3. *Disability category* – Primary disability category as stated in the due process hearing request. In cases where there were secondary and tertiary disability categories, only the primary was coded. If a hearing request specifically stated "multiple impairment", the code for multiple impairment was used.
4. *Issues* – The identified issue(s) in dispute. Issues were identified first through previous research and then later, in order to collapse for analysis, identified

from current legal case summaries and trends (Slater, 2017). Given the sometimes voluminous nature of the due process hearing requests, each separate issue addressed within the dispute was coded. Codes for issues were as follows:

a) *IEP content* – Components and development of the IEP - including Extended School Year (ESY) services that extend beyond the 10-month school year (Blackwell & Blackwell, 2015), transition services (practices and procedures in place to prepare secondary students for post-secondary activities (Blackwell & Blackwell, 2015), and related services (transportation, counseling, occupational therapy, speech and language, etc.).
b) *Behavior* – Includes development or implementation of behavior intervention plans, suspension/expulsion (the removal of a student from the current placement due to disciplinary reasons).
c) *Placement* – The location of special education services for a student with a disability, including unilateral placement of the child by the parent and dispute regarding placement in the least restrictive environment.
d) *Identification* – The determination of eligibility for special education services.
e) *Evaluation* – The evaluation process for determining area of need and potential services. This includes the following: request for independent

educational evaluation, procedures, refusals and proposals to grant evaluation, and selection of evaluators.

f) *IEP Implementation* – District implementation of the IEP as agreed to by the parents and school.

g) *Procedural Safeguards* – Special education laws and regulations designed to protect parents of and students with disabilities. Procedural safeguards coded were: prior written notice, parental consent, parental participation, records, and confidentiality.

Data analysis.

A chi-square test of independence was used to examine the quantitative data (Field, 2013). According to Field (2013), a chi-square test determines whether a relationship exists between two variables. A variable is defined as a characteristic that varies among people or groups; something that changes (Field, 2013; O'Dwyer & Bernauer, 2013). Variables may vary between people (IQs, behavior, weight), locations, or time (Field, 2013). Thus, an independent variable is a variable that is hypothesized to lead to changes in another variable that is being studied (Field, 2013; O'Dwyer & Bernauer, 2013). Independent variables may be manipulated, like treatment versus. control group, or naturally occurring like pretest scores (O'Dwyer & Bernauer, 2013). A dependent variable is something that may be affected by changes in the independent variable (Field, 2013; O'Dwyer & Bernauer, 2013). Independence assumes that one data point does not impact another data point (Field, 2013). A chi-square analysis is commonly used when the frequency of cases may fall into different categories (O'Dwyer

& Bernauer, 2014). Therefore, when calculating a chi-square analysis, the researcher is attempting to determine in which category the variable will fall (Field, 2013). A cross-tabulation chi square analysis is used when there are three or more variables (Field, 2013). Using these analyses, it allows the researcher to determine whether the frequency counts differ from what was expected, which indicates significance. Given these parameters and the data that was collected, descriptive statistics was the likely choice for this study.

***Independent and dependent variables*.**

Question 1 sought to determine demographic information for students whose parents filed due process hearing requests. This question was divided into three subsections: 1a, 1b, and 1c, respectively. Question 1a addressed the gender of the child for whom a due process hearing request was filed. The independent variable for this question was due process hearing requests. The due process hearing decision component had two levels: expected value and observed value. The dependent variables for question 1a was gender, male and female, respectively.

Question 1b sought to determine the number of due process hearing requests for each age range. The following age ranges were selected: 3-5, 6-12, 13-18, and 19-22. Age ranges were selected as opposed to grade levels because grade levels are not always consistently identified in due process hearing requests. Further, earlier studies also identified age ranges as opposed to grade levels (Blackwell & Blackwell, 2015). The dependent variables were the specified age range categories. The independent variable for this question was due process hearing requests. The independent variable had two levels:

expected value and observed value.

Question 1c sought to identify the number of due process hearing requests for each IDEA eligibility category. As the case in the previous subsections, there is one independent variable, which is due process hearing requests and two levels: expected value and observed value.

Question 2 sought to determine the number of due process hearing requests for each IDEA identified disability category and the relationship between disability category and the specific procedural issues identified in due process hearings. There were seven subsections identifying the procedural issues for Question 2, specifically: (a) IEP development, (b) behavior, (c) placement, (d) identification, (e) evaluation, (f) IEP implementation, and (g) procedural safeguards. Each subsection was analyzed with all IDEA disability categories. As in the previous questions, there were both expected and observed levels for each procedural issue.

For Question 3, "Are parents of students in a specific disability category more likely to identify procedural issues in due process hearing requests? ", there were seven dependent variables, specifically: (a) IEP development, (b) behavior, (c) placement, (d) identification, (e) evaluation, (f) IEP implementation, and (g) procedural safeguards. The independent variables consisted of the following identified disability categories: autism, specific learning disability, social emotional disturbance, and intellectual disability. These eligibility categories were chosen after a thorough review of previous research in which they were identified as frequently occurring in disputes (Blackwell & Blackwell, 2015; Newcomer & Zirkel, 1999; Rickey, 2013). As in the previous questions, there were

both expected and observed levels for each eligibility category. The null hypothesis is that there are no differences between identified disability categories and specific procedural issues in due process requests.

Question 4 sought to identify whether students in a specific age range were more likely to identify specific procedural issues in due process hearings. There were seven dependent variables for Question 4, specifically: (a) IEP development, (b) behavior, (c) placement, (d) identification, (e) evaluation, (f) IEP implementation, and (g) procedural safeguards. The independent variables consisted of the following age ranges: 3-5; 6-12; 13-18; and 19-22. These age ranges were chosen after a thorough review of due process hearing requests and previous research in which it became imperative to identify some way to categorize a student's grade or age level (Blackwell & Blackwell, 2015; Newcomer & Zirkel, 1999; Rickey, 2013). As in the previous questions, there were both expected and observed levels for each age range. The null hypothesis is that there are differences between age ranges and specific procedural issues in due process requests.

When analyzing several categories, it is best to use a cross-tabulation chi square analysis (Field, 2013). A cross-tabulation analysis is the same analysis of variables as the chi-square, with the ability to analyze more than two categorical variables (Field, 2013). Using this analysis, allows analysis of more categories at the same time, leading to an increased understanding of the reasons for filing a due process hearing request. Further, statistical analyses can assist in formulating guiding hypotheses for future qualitative studies in this area (O'Dwyer & Bernauer, 2014).

Validity and reliability.

Good research also encompasses the ability to verify and rely on the collected data and analysis (Creswell, 2011). One of the primary goals in quantitative measures is to ensure the quality as well as the gathering and interpretation of data (Creswell, 2011; O'Dwyer & Bernauer, 2013; Krefting, 1990). Validity is a term widely used in quantitative research (Creswell, 2011; Krefting, 1990). Creswell (2011) defines quantitative validity as the data received from the source are reflective and true indicators of what is being measured.

Quantitative reliability means that the scores received from the data sources are consistent and remain stable over time (Creswell, 2011; Field, 2013; O'Dwyer & Bernauer, 2013). Quantitative reliability is extremely vital to the understanding and interpretation of the study (Creswell, 2011; O'Dwyer & Bernauer, 2013). In order to ensure validity of the data and reliability of the quantitative data, the Statistical Package for the Social Sciences (SPSS) for Macintosh was utilized. This program ensured the accuracy of the statistical formulas. Additionally, an inter-rater reliability process as described above was used to ensure that data was entered correctly and accurately coded (O'Dwyer & Bernauer, 2014). This cross-check ensured that all due process hearings were coded correctly.

Further, to increase reliability and validity, this study was a close replication of previous studies in which due process hearing requests and outcomes were studied; however, the specific data sources for this study differ in scope (Blackwell & Blackwell, 2015; Cope-Kasten, 2013; Mueller & Carranza, 2011; Newcomer & Zirkel, 1999;

Rickey, 2003). Replicating a previously successful study will help ensure that the proposed study will have transferability to future studies.

Summary

This quantitative study examined due process hearing request trends in the Ninth Circuit and student demographic information leading to the request. Procedural issues identified in due process hearing requests in the Ninth Circuit were examined to determine independence of specific eligibility categories and age ranges, which may lead to future understanding of issues for school districts in regards to special education.

In this study, due process hearing decisions from the Ninth Circuit for the years 2010-December 2016 were selected and analyzed. Nationally recognized online legal searches were utilized to collect and sort the data for the study. Computer software was utilized to assist with conducting valid statistical analysis. In order to maintain reliability, a second person assisted in coding data and reputable data sources were utilized to ensure that the data and interpretation is accurate and reflective. The results of the data analysis are addressed in the following chapter.

CHAPTER FOUR- RESULTS

The purpose of this quantitative study was to analyze the due process hearing request trends in the Federal Ninth Circuit and student demographic information leading to the request. A second purpose was to determine whether procedural issues identified in due process hearing requests in the Ninth Circuit are independent of specific eligibility categories and age ranges. As highlighted in the literature review, research of Ninth Circuit Court due process filings is absent, thus, a primary rationale for selecting this circuit court for the study. In this chapter, rationale for how data were analyzed is provided, and the results for the data analysis for the four stated research questions and two null hypotheses are displayed and discussed. Finally, a summary completes the chapter.

Study Rationale

Chapter four provides the results of the analysis of the data gathered for this research study. Descriptive statistical techniques were used in order to report and interpret the data gathered from the 1,081 due process cases. Specifically, a chi- square test of independence was utilized to analyze the data sets. Conducting a cross-tabulation analysis allowed the researcher to determine whether a relationship between the variables exists. This was vital in order to answer the research questions.

As stated in Chapter three, the data source used for this study was the LRP Splash Connection, a nationally recognized clearinghouse of all special education due process hearing requests and decisions. While this clearinghouse is not available to the public, it is one that has been used in previous due process studies, therefore, it is considered to be

reliable. This study focused on the due process hearing requests in the Ninth Circuit. As a review, the states in the Ninth Circuit system are: Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. This study analyzed all due process hearing requests in the Ninth Circuit states for the years January 1, 2010 through December 31, 2016.

As cases were read, codes for demographic and procedural issues were applied and entered into an Excel spreadsheet, which was then imported into SPSS. The data was then analyzed using frequency and descriptive statistics. A review of the research questions and analysis for each question is discussed in the following sections.

Research Questions

Does an analysis of due process hearings in the Ninth Circuit states during the years 2010-2016 contribute to a comprehensive understanding of student and parent rights balanced with IDEA requirements? In order to answer this, the following questions were addressed:

1. What are the demographics of children for whom due process is being filed?
    a. Gender
    b. Age
    c. Disability category
2. What were the categories and procedural issues for the due processes filed by parents?
3. Are parents of students in a specific disability category more likely to identify procedural issues in due process hearing requests?

   a. Autism and IEP development, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
   b. Specific Learning Disability and IEP development, IEP, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
   c. Social Emotional Disturbance and IEP development, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
   d. Intellectual Disability and IEP development, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?

4. Are parents of students in a specific age range more likely to identify specific procedural issues identified in due process hearings?
   a. Students ages 3-5 and IEP development, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
   b. Students ages 6-12 and IEP development, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
   c. Students ages 13-18 and IEP development, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?

d. Students ages 19-22 and IEP development, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?

To investigate the third question, a 2x7 chi-square test of independence was conducted for each of the four selected eligibility categories on the observed and expected frequencies of the seven due process issue categories. The cross-tabulation is shown in Table 4.7 and the results from the chi-square test of independence is shown in Table 4.8.

To investigate question 4, a 2x7 chi-square test of independence was conducted on each of the four selected age ranges on the observed and expected frequencies of the seven due process issue categories. The cross-tabulation is shown in Table 4.9 and the results from the chi- square test of independence are shown in Table 4.10.

Findings

This analysis began with comparing the number of due process hearing requests that occurred in each state. Table 4.1 summarizes the frequencies of due process hearing requests. In total, there were 1,081 due process hearing requests filed and heard in the Ninth Circuit for the years January 1, 2010 through December 31, 2016. Of those, California received 670, or 62% of the due process hearing requests. The next closest state, Hawaii, received 211, or 19.5% of the due process hearing requests. In reviewing the total special education population of each state, the number of due process hearing requests in Hawaii is alarmingly high given that states with similar population numbers experience much less.

Table 4.1

Frequency Counts for Due Process Hearing Requests in the Ninth Circuit States in Comparison with Total Special Education Count for Each State

State/Territory	Due Process Frequency counts	Percent of total Due Process Hearing requests	Total Population of students with disabilities
Alaska	9	.8	18, 390
Arizona	35	3.2	132,592
California	670	62.0	727,718
Guam	2	.2	2,038
Hawaii	211	19.5	19,223
Idaho	15	1.4	29,718
Montana	4	.4	17,387
Nevada	33	3.1	55,452
Oregon	16	1.5	84,517
Washington	86	8.0	135,757
Total	1081	100.0	

Note. Total special education counts nationwide obtained by: U.S. Department of Education, EDFacts Data Warehouse (EDW): "IDEA Part B Child Count and Educational Environments Collection," 2015-16. Data extracted as of July 14, 2016 from file specifications 002 and 089.

Research question 1.

What are the demographics of children for whom due process is being filed? Specifically, what are the demographics for gender, age range, and disability category?

Table 4.2 indicates the number of male and female students for whom a due

process hearing request was filed. One state, Hawaii, did not indicate any demographic information in 199 of the 211 hearing summaries. Although there were 199 cases in which there was no gender information given, the number of hearing requests for parents of male children greatly outnumber those for females. Specifically, 61 percent of the hearing requests were for male students versus roughly 21% who were for females. These results are expected as nationally, males are more frequently identified as having a disability.

Table 4.2

Gender Demographics Identified in Due Process Hearing Requests in the Ninth Circuit for the years 2010-2016

Gender	Frequency	Percent within the due process hearing requests	Total count of gender identified for special education in Ninth Circuit states
Female	223	20.6	390,510
Male	659	61	814,893
Not Indicated	199	18.4	-
Total	1081	100	

Note. Total special education counts nationwide obtained by: U.S. Department of Education, EDFacts Data Warehouse (EDW): "IDEA Part B Child Count and Educational Environments Collection," 2015-16. Data extracted as of July 14, 2016 from file specifications 002 and 089.

The second prong of Question 1 sought to determine the number of due process hearing requests for students in the indicated age ranges: 3-5 years, 6-12 years, 13-18 years, and 19-22 years, respectively. Table 4.3 indicates the frequency counts for the identified age ranges. As the case in Table 4.2, Hawaii did not indicate demographic

information for most of the hearing requests, this made it challenging to determine the age ranges for that state. Specifically, 172 out of the 211 due process hearing requests were missing an age range for the student. As evident in Table 4.3, the number of students in the ranges of 6-12 and 13-18 are similar in size, while students in other categories are significantly less. Why this is may indicate a need for additional research in this area.

Table 4.3

Frequency Counts for Age Ranges for Students Identified in Due Process Hearing Requests in the Ninth Circuit

Age Range	Frequency count	Percentage of due process sampling	Total count of students identified for special education in Ninth Circuit states for students in this age range
3-5 years	53	4.9	136,560
6-12 years	409	37.8	496,193
13-18 years	374	34.6	500,866
19-22 years	73	6.8	62,684
Not Indicated	172	15.9	
Total	1081	100	

Note. Total special education counts nationwide obtained by: U.S. Department of Education, EDFacts Data Warehouse (EDW): "IDEA Part B Child Count and Educational Environments Collection," 2015-16. Data extracted as of July 14, 2016 from file specifications 002 and 089. Age ranges used: 3-5, 6-11, 12-17, and 18-21.

Finally, the third prong of Question 1 seeks to answer what are the disabilities of children for whom due process hearing requests are filed in the Ninth Circuit. Table 4.4 summarizes the frequency distributions of the eligibility categories for students whose parents filed a due process hearing request. There were due process hearing requests filed

for children who were not eligible or not eligible under IDEA and eligible under Section 504. In these cases, parents disputed identification, or lack of, under IDEA. These combined categories amounted to just over 6% of the due process filings.

Table 4.4

Frequency Counts for Eligibility Categories Identified in Due Process Hearing Requests in the Ninth Circuit

Eligibility Category	Frequency	Percent	Total count of students ages 3-22 identified for special education in Ninth Circuit states for students in these categories
Autism	281	26.0	120,514
Deaf/Hard of Hearing	17	1.6	14,766
Developmentally Delayed	14	1.3	17,442
Intellectual Disability	53	4.9	61,458
Multiple Impairment	30	2.8	13,449
Not eligible	50	4.6	-
Not indicated	165	15.3	-
Orthopedically Impaired	15	1.4	11,897
Other Health Impaired	149	13.8	142,062
Section 504	17	1.6	-
Serious Emotional Disturbance	97	9.0	45,946
Specific Learning Disability	129	11.9	458,340
Speech and Language Impaired	53	4.9	177,413
Traumatic Brain Injury	8	.7	2,891
Visual Impairment	3	.3	4,661
Total	1081	100.0	

Note. Total special education counts nationwide obtained by: U.S. Department of Education, EDFacts Data Warehouse (EDW): "IDEA Part B Child Count and Educational Environments Collection," 2015-16. Data extracted as of July 14, 2016 from file specifications 002 and 089. Only 4 states reported numbers for Developmentally Delayed; 8 states for multiple disabilities.

Research question 2.

What were the categories and procedural issues for the due processes filed by parents?

To analyze the hearing requests, due process issues were organized into larger categories so that data could be captured easier. The following were the identified due process issues: IEP development, behavior, placement, identification, evaluation, IEP implementation, and procedural safeguards. Table 4.5 summarizes the frequencies of the due process issues identified in the due process hearing requests. Overwhelmingly, IEP development was the most frequent due process hearing issue, with almost 55% of the issues identified. Followed closely at almost 43%, evaluation was also an issue that caused parents to file for a due process hearing. The category with least frequency was

Table 4.5

Frequency Counts for Due Process Hearing Request Issues Raised in the Ninth Circuit

Due Process Issue	Frequency Counts	Percentage
IEP Development	589	54.5
Behavior	129	11.9
Placement	391	36.2
Identification	178	16.5
Evaluation	458	42.5
IEP Implementation	267	24.7
Procedural Safeguards	414	38.3

behavior, with only 129 instances out of 1,077 cases (four cases were not counted as they resulted in a judgement that was dismissed with prejudice and was not heard).

In order to gain a deeper understanding of the due process issues and specific eligibility categories, a frequency analysis was conducted. Table 4.6 summarizes the due process issues identified within each eligibility category. In all eligibility categories, IEP development was a prevalent due process hearing issue, with ranges from 43% to 63% of due process issues. Behavior was not an issue that was identified with high frequency, even for students with serious emotional disturbance. In fact, behavior was only identified in 19% of all due process hearing requests for students with serious emotional disturbance. For those students with a serious emotional disturbance, placement was a more prevalent issue in a due process hearing with 54%. The due process issue with the lowest frequency was identification, with ranges from 0%- 21%. Because some cases identified multiple procedural concerns, the percentages do not add up to 100%.

To gain an understanding of the frequency distributions for age ranges and due process issues, a frequency analysis was conducted. Table 4.7 summarizes the frequency distributions for the four age ranges and due process issues. As the case in the eligibility distribution, the due process issue that had the greatest frequency was IEP development, ranging from 42% to 55% of all due process hearing requests in each age range. The highest frequency of IEP development as a due process issue was in students who are much older.

However, the issues are consistent amongst the age ranges with the exception of placement in which there is a difference of 17% between the age range 6-12 year-olds

and 13-18 year-olds and 11% between the age range 6-12 year-olds and 19-22 year-olds. Placement does not appear to be as large of an issue with students who are older as it is when they are much younger.

Table 4.6

Frequency Counts and Percentages of Due Process Issues for Selected Eligibility Categories in the Ninth Circuit

Due Process Issue	Autism n= 281 (%of n)	Specific Learning Disability n=129 (%of n)	Serious Emotional Disturbance n=97 (%of n)	Intellectual Disability n=53 (%of n)
IEP Development	165 (59%)	82 (63%)	42 (43%)	29 (55%)
Behavior	31 (11%)	19 (15%)	19 (19%)	3 (5%)
Placement	93 (33%)	39 (30%)	52 (52%)	20 (38%)
Identification	26 (9%)	27 (21%)	14 (14%)	0 (0%)
Evaluation	116 (41%)	72 (56%)	36 (37%)	22 (41%)
IEP Implementation	71 (25%)	25 (27%)	18 (18%)	12 (23%)
Procedural Safeguards	118 (42%)	49 (48%)	29 (30%)	27 (51%)

Table 4.7

Frequency Counts and Percentages of Due Process Issues for Selected Age Ranges in the Ninth Circuit

	3-5 Years n=53 (% of n)	6-12 Years n=409 (% of n)	13-18 Years n=374 (% of n)	19-22 Years n=73 (% of n)
Due Process Issue				
IEP Development	22 (42%)	210 (52%)	196 (48%)	40 (55%)
Behavior	6 (11%)	48 (12%)	55 (13%)	3 (4%)
Placement	20 (38%)	125 (30%)	55 (13%)	14 (19%)
Identification	5 (9%)	80 (20%)	72 (19%)	8 (11%)
Evaluation	24 (45%)	209 (51%)	161 (42%)	28 (38%)
IEP Implementation	13 (25%)	92 (22%)	95 (25%)	21 (29%)
Procedural Safeguards	20 (38%)	187 (46%)	134 (35%)	20 (27%)

Research question 3.

Are parents of students in a specific disability category more likely to identify procedural issues in due process hearing requests? In this question, there were four prongs that were each answered using a cross-tabulation of a chi-square test of independence. The cross-tabulation is shown in Table 4.8. The adjusted residuals in boldface indicate observed frequencies that differ significantly from expected

frequencies. The adjusted residuals greater than 2 and - 2 are those that contributed to the significance of the chi-square.

Placement was an area of significance for both Serious Emotional Disturbance and Specific Learning Disability, however, with opposite expected frequencies. Specifically, parents of students who have a Specific Learning Disability had lower observed than expected frequencies for placement issues. The count for placement issues for students with a Specific Learning Disability was expected to be 50.2, however, coding showed that only 39 due process hearing requests involved placement as an issue. This discrepancy resulted in a -2.1 residual which contributed to a significant chi square. Conversely, students with Serious Emotional Disturbance experienced greater frequencies for placement issues.

Both eligibility categories of Specific Learning Disability and Intellectual Disability experienced difference between observed frequencies and expected with identification issues. Specifically, students identified as having an Intellectually Disability had no identification issues identified in due process hearing requests. This was significantly fewer than the expected frequency of 6.0. On the other hand, students identified as having a Specific Learning Disability had greater observed than expected frequencies in this issue.

Table 4.8
Cross-tabulation of the 4 x 7 Chi-Square test of Independence for Eligibility Categories and Specific Due Process Issues

	IEP Development	Behavior	Placement	Identification	Evaluation	IEP Implementation	Procedural Safeguards
	fo *(fe)* Ar	*fo* *(fe)* Ar	*fo* *(fe)* ar	*fo* *(fe)* ar	*fo* *(fe)* ar	*fo* *(fe)* ar	*fo* *(fe)* ar
Autism	165 (157) 1.0	31 (35.5) -1.1	93 (100.7) -1.2	26 (33.1) -1.8	116 (121.4) -.8	71 (62.2) 1.7	118 (110.1) 1.2
Specific Learning Disability	82 (79.2) .4	19 (17.9) .3	39 (50.8) **-2.1**	27 (16.7) **3.0**	72 (61.3) 1.8	25 (31.4) -1.4	49 (55.6) -1.1
Serious Emotional Disturbance	42 (53.2) -1.9	19 (12) **2.3**	52 (34.1) **3.7**	14 (11.2) .9	36 (41.1) -1.0	18 (21.1) -.8	29 (37.3) -1.6
Intellectual Disability	29 (28.6) .1	3 (6.5) -1.5	20 (18.4) .4	0 (6.0) **-2.6**	22 (22.1) .0	12 (11.3) .2	27 (20.1) 1.8

Note. The first number (*fo*) in each cell is the observed frequency, the number in parenthesis is the expected frequency (*fe*), and the last number is the adjusted residual (ar). Adjusted residuals > 2 and -2 are in boldface.

As discussed above and indicated in Table 4.9, several areas contributed to the significance of the chi-square. The chi-square test of independence was significant: x^2 (18) = 48.241, p<.000. N= 1256. As discussed earlier in Chapter Three, while the number of valid cases was 1,077, several due process hearing requests indicated multiple issues, which resulted in 1,256 total issues that were coded for eligibility and due process issues. The effect size, Cramer's V is considered to be small at .113. Effect size is a way of calculating the difference between groups and measuring the difference (Coe, 2002). When the effect size is small, it is considered to be weak.

Table 4.9

Chi-Square Test of Independence for Eligibility Categories and Specific Due Process Issues

	Value	Df	Asymptotic Significance (2- sided)
Pearson Chi-Square	48.241	18	.000
Likelihood Ratio	52.269	18	.000
Linear-by-Linear Association	.019	1	.890
Phi	.196		.000
Cramer's V	.113		.000
N of Valid Cases	1256		

0 cells (0%)have expected count less than 5. The minimum expected count is 6.03.

Overall, the results indicate that eligibility categories are not independent of procedural issues in due process hearing requests. As indicated in the analysis, the procedural issues identified in due process hearings are not spread equally amongst the eligibility categories. Therefore, a relationship exists between the eligibility category and

procedural issues; however, the relationship is weak as indicated by the small effect size.

Research question 4.

Are parents of students in a specific age range more likely to identify specific procedural issues identified in due process hearings? In this question, there were four prongs that were each answered using a cross-tabulation of a chi-square test of independence. The cross-tabulation is shown in Table 4.10.

Table 4.10

Cross-tabulation of the 4 x 7 Chi-Square Test of Independence for Age Ranges and Specific Due Process Issues

	IEP Development *fo* *(fe)* ar	Behavior *fo* *(fe)* Ar	Placement *fo* *(fe)* ar	Identification *fo* *(fe)* ar	Evaluation *fo* *(fe)* ar	IEP Implementation *fo* *(fe)* ar	Procedural Safeguards *fo* *(fe)* ar
3-5 years	22 (26.2) -1.0	6 (6.3) -.1	20 (12.0) **2.5**	5 (9.2) -1.5	24 (23.6) .1	13 (12.4) .2	20 (20.2) -.1
6-12 years	210 (226.7) -1.8	48 (54.3) -1.2	125 (103.7) **3.1**	80 (79.9) .0	209 (204.4) .5	92 (107.1) **-2.2**	187 (174.9) 1.4
13-18 years	196 (183.1) 1.4	55 (43.8) **2.2**	55 (83.7) **-4.3**	72 (64.6) 1.2	161 (165.1) -.5	95 (86.5) 1.2	134 (141.2) .9
19-22 years	40 (31.9) 1.7	3 (7.6) -1.8	14 (14.6) -.2	8 (11.3) -1.1	28 (28.8) .2	21 (15.1) 1.7	20 (24.6) -1.1

Note. The first number *(fo)* in each cell is the observed frequency, the number in parenthesis *(fe)* is the expected frequency, and the last number (ar) is the adjusted residual. Adjusted residuals >2 and -2 are in boldface.

The adjusted residuals in boldface indicate observed frequencies that differ significantly from expected frequencies. The adjusted residuals greater than 2 and -2 are those that contributed to the significance of the chi-square. Across three of the four age categories, placement was an issue that contributed significantly to the chi-square. In the cases of students ages 3-5 and 6-12, the observed frequencies were greater than expected. However, for students in the age range of 13-18, the observed frequency was significantly fewer than expected. At -4.3, this significant residual difference likely contributed greatly to the overall chi-square.

Students who are in the age range of 13-18 experienced greater observed frequencies than expected in the area of behavior. Specifically, it was expected that there would be 43.8 due process hearing requests in which behavior was an issue. However, there were actually 55, which led to the significance of the chi-square. Conversely, students in the age range of 6-12 experienced fewer observed frequencies than expected for IEP implementation. Specifically, it was expected that 107.1 due process hearing requests for students in this age range would have IEP implementation as an issue. However, in actuality, there were only 92 cases in which this was an issue. This difference also contributed to the chi-square significance.

Table 4.11

Chi-Square Test of Independence for Age Ranges and Specific Due Process Issues

	Value	df	Asymptotic Significance (2- sided)
Pearson Chi-Square	42.263	18	.001
Likelihood Ratio	43.371	18	.001
Linear-by-Linear Association	1.416	1	.234
Phi	.147		.001
Cramer's V	.085		.001
N of Valid Cases	1256		

As indicated in Table 4.11, the chi-square test of independence was significant: $\chi 2$ (18) = 42.263, p <.001, N=1256. Therefore, the alternate hypothesis that due process hearing issues and student age ranges are not independent of each other is rejected. As mentioned above, while the number of valid cases was 1,077, several due process hearing requests indicated multiple issues, which resulted in 1,256 total issues that were coded for eligibility and due process issues. The effect size, Cramer's V is considered to be small at .085. As in the case with research question three, when the effect size is small, it is considered to be weak.

Overall, the results indicate that age ranges are not independent of procedural issues in due process hearing requests. As indicated in the analysis, the procedural issues identified in due process hearings are not spread equally amongst the age ranges. Therefore, a relationship exists between the age range and procedural issues; however,

the relationship is weak as indicated by the small effect size.

Summary

In this chapter, an introduction was given regarding the purpose of the study and the analysis used to answer the research questions. Immediately following a review of research questions, the demographic data was analyzed and discussed. Chi-square and cross-tabulation analysis was utilized to analyze questions three and four. All analyses were presented in table and narrative format for ease of interpretation. The next chapter will present a summary, discussion, conclusion of this research, as well as suggestions for further research.

CHAPTER FIVE- SUMMARY, DISCUSSION, AND RECOMMENDATIONS

The purpose of this study was to examine due process hearing request trends in the Ninth Circuit and student demographic information leading to the request. A second purpose was to determine whether procedural issues identified in due process hearing requests in the Ninth Circuit are independent of specific eligibility categories and age ranges. In the preceding chapter, the presentation and analysis of data were highlighted. This chapter will summarize the results of the study and link findings to the research highlighted in chapter two. Implications for practice and recommendations for future research will follow. Finally, the chapter will commence with a summary.

Summary of the Study

A thorough review of the literature on special education litigation revealed deep holes and no research specific to the Ninth Circuit. The pockets of limited research led this researcher on a journey to understand the demographics and reasons why a parent files for due process hearings. Ultimately, the purpose is to assist school administrators and teachers understand the procedural issues that are at the root of why parents file for due process hearings. As indicated earlier, this is critical because not only are due process hearings costly financially, they often destroy relationships between the family and school. Thus, the following research questions were examined.

Does an analysis of due process hearings in the Ninth Circuit Court contribute to a comprehensive understanding of student and parent rights balanced with IDEA requirements? In order to answer this, the following questions were addressed:

1. What are the demographics of children for whom due process is being filed?

   a. Gender
   b. Age
   c. Disability category

2. What were the categories and procedural issues for the due processes filed by parents?
3. Are parents of students in a specific disability category more likely to identify procedural issues in due process hearing requests?
   a. Autism and IEP development, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
   b. Specific Learning Disability and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
   c. Social Emotional Disturbance and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
   d. Intellectual Disability and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
4. Are parents of students in a specific age range more likely to identify specific procedural issues identified in due process hearings?

a. Students ages 3-5 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
b. Students ages 6-12 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
c. Students ages 13-18 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?
d. Students ages 19-22 and IEP development, IEP content, behavior, placement, identification, evaluation, IEP implementation, and/or procedural safeguards?

To answer the research questions, 1,081 due process hearing requests were coded and analyzed for demographic and due process issues. Additionally, analysis was conducted to determine whether relationships exist between eligibility categories, age ranges, and due process issues. Four of the 1,081 due process hearing requests were eliminated due to summary judgements without issues stated. Therefore, a total of 1,077 cases were actually analyzed. It is important to note that the due process hearing requests reported by states and published in the LRP are the ones in which there was no mediation or settlement. This means that school districts and parents were unable to settle their differences, thus, the case proceeded to a due process hearing. This is important to note because the actual number of due process hearing requests are most likely higher but not

reported because they were settled outside of a hearing. The Statistical Package for the Social Sciences, SPSS, was used and descriptive statistics were applied to help answer the research questions.

Discussion of Findings

As indicated in the literature review, limited studies regarding special education litigation have been conducted (Blackwell & Blackwell, 2015, Reiman et al., 2007). The goal of this study was to deepen understanding of the demographic factors and due process hearing issues in the Ninth Circuit states. The most recent state by state analysis was conducted in 2010, in which nine states accounted to 91% of the due process hearing requests (Zirkel & Scalia, 2010). In this present research, the state that amounted to the most due process hearing requests, California, was conspicuously missing from Zirkel and Scalia's 2010 study. In this research study of due process hearing requests within the Ninth Circuit, California's 670 requests amounted to 62% of those from the Ninth Circuit; overwhelmingly the most due process hearing requests. Further, Hawaii, earlier identified as one of the nine states with the most due process hearing requests, had significantly fewer due process hearing requests with 211 requests equaling only 19.5 in the Circuit. Further, Hawaii had a significantly more amount of due process hearing requests in comparison with similar populations. This vast difference from the previous study points to the ever changing field of special education litigation and is indicative of the need for an updated state by state analysis. The following section addresses the implication of findings for the four research questions.

Research question 1.

What are the demographics of children for whom due process is being filed? Specifically, gender, age, and eligibility category? Overwhelmingly, parents of male children file more due process hearing requests than those with female children. In fact, approximately 60.1% of the due process filings were for male children. Unfortunately, Hawaii did not indicate either gender or eligibility categories in their hearings. This amounted to 18.4% of the total requests as not identified. Despite this lack of gender information, males were overwhelmingly represented in comparison with females. This representation could be attributed to the fact that more males are made eligible for special education services nationwide.

In this research study, students in age range of 6-12 and 13-18 years experienced the largest number of due process hearing requests. These ranges were represented at 37.8% and 34.6%, respectively. These are similar numbers as to what Blackwell and Blackwell (2015) reported although in that study the age levels were examined differently: early childhood/elementary (27.1%), middle school (29.1%), and high school (36%). Another similarity with the Blackwell and Blackwell 2015 study was in the age range for students post high school. This study yielded 73 or 6.8% of the due process hearing requests were for students ages 19-22. Blackwell and Blackwell (2015) found similar results for this age range, 5.4%. As was the case in gender and eligibility categories, age range was another demographic piece of information that Hawaii did not share. This amounted to 172 cases in which information was not available. It is

challenging to speculate how the age ranges would have been distributed, especially given the closeness in distribution for two ranges.

School professionals should take note that parents of students with disabilities in elementary through high school are more likely to file for a due process hearing request. It is interesting that more due process hearing requests were not filed for students 19-22 years. One fascinating trend observed in the due process hearing requests in California for students in this age range was for students who had graduated with a diploma. In these cases, the student had graduated with a standard diploma but afterwards, the parent filed for a due process hearing as it was felt that the student had not been adequately prepared for post-secondary options. In almost every case, school districts had to provide compensatory education for post-secondary activities because adequate vocational and transition planning was not appropriate. School professionals must grasp the importance of developing transition plans for students that will lead to meaningful post-secondary outcomes. Development of meaningful post-secondary outcomes may lessen the number of due process hearing requests filed for this age range.

Another interesting finding was the low numbers of due process hearing requests filed by parents of very young children with disabilities. Perhaps parents of children in early childhood are not yet aware of their legal rights to due process through IDEA. This would be an interesting follow-up study that could glean parental awareness of due process rights under IDEA.

Earlier studies indicated that parents of students with learning disabilities and autism filed more due process hearing requests. The findings from this study showed that

parents of students with autism file for a due process more than any other disability. Approximately 26% of the due process hearing requests analyzed included students with Autism as their primary eligibility category. Surprisingly, this research did not replicate the findings found in the most recent study conducted by Blackwell and Blackwell (2015) in which students whose eligibility category Multiple Disabilities was the most prevalent. Unlike previous studies, findings indicated that the top three eligibility categories in due process hearings were Autism (26%), Other Health Impaired (13.8%), and Specific Learning Disability (11.9%). Because one state, Hawaii, did not indicate eligibility categories in 165/211 due process hearing requests, the eligibility counts are lower. It is quite possible that if those eligibility categories had been indicated, the numbers of students with Autism and Specific Learning Disability would have been higher.

The high percentage of students identified as Other Health Impairment is concerning. It would be curious to ascertain whether those students truly qualify as a student with a health impairment or whether school teams determined that another eligibility category was too challenging for the parent to accept. Personal experience has shown that school district numbers for students eligible under the category of Other Health Impairment have exploded and other eligibility categories decreased. A thought-provoking follow-up to this study would be to gain access to number of students within each eligibility category and survey teams to determine whether other categories were considered but rejected and why.

Research question 2.

What were the categories and procedural issues for the due processes filed by parents? To answer the second question all due process hearings were read and coded. The SPSS for Macintosh was used to determine frequencies. More than half, 54%, of the due process hearings had at least one issue in regards to IEP Development. This finding was similar across all eligibility categories and age ranges, deeming it a critical concern. This due process issue encompassed all components and development of the IEP. The prevalence of this due process issue in hearing requests highlights the importance of teacher training in IEP development. Special education teachers must receive high levels of practical training on development and required components of the IEP that align with state and federal standards. School districts must provide special education teachers with ongoing training so that skills are continually developed and updated as laws change. Special education teachers must be diligent to ensure that all components of the IEP meet the IDEA and state standards. Doing so will ensure that the district is offering every child on an IEP a FAPE. Congruent to this, school leaders must also receive robust training in special education and special education school law if they are going to successfully lead a school. As school leaders, they represent the school district as the LEA. In doing so, it is imperative that they ensure all federal and state requirements are met by becoming very familiar with what they can and cannot provide as a district representative.

Following IEP Development, Evaluation was the second most frequent category in which parents filed for due process hearings. Specifically, 42.5% of parents filed for a due process hearing request with this issue. Often, parents disagreed with the evaluation

the district conducted, which led to a request for an independent educational evaluation. In many cases, this due process issue was central to the hearing request. These results speak to the need for multidisciplinary teams to ensure that evaluations are conducted in line with state and federal guidelines. In doing so, the parent is assured that the evaluation is compliant with procedures. Parents may still seek an independent educational evaluation, however, when it is compliant with federal and state standards, school districts will be better able to defend their work.

The third most prevalent issue for due process hearing requests was Procedural Safeguards. Procedural safeguards include parental participation, prior written notices, and access to records. Procedural safeguards encompassed 38.3% of the overall due process hearing requests. School administrators and special education teachers must become intimately familiar with IDEA requirements. Further, a deep understanding of the IDEA and IEP development requirements for students with disabilities must begin at teacher and leader preparation programs. It is not sufficient to teach future leaders and educators the components and strategies to meet the needs of all learners, they must also be prepared to meet the IDEA requirements specific to family involvement in the IEP process. These results highlight the need for positive relationship development between parents and school personnel. If there is trust in what the school is doing and good communication is established between schools and home, disagreements can often be remedied through a meeting and not a due process hearing. Once a parent files for a due process hearing, the relationship has already been damaged.

Remarkably, IEP Implementation was not found to be a significant due process hearing issue. This is contradictory to several cases in Hawaii in which IEP implementation was the key issue indicated. In order for the state to save money, for a period of a year or two, the number of school days were reduced, which resulted in an IEP implementation challenge. As a result, several due process hearings were filed, and resulted in the parent prevailing and the school district having to provide compensatory education. This speaks to the importance of adhering to the IEP and ensuring that all components are implemented with fidelity. When an IEP has not been implemented as specified, the student has potentially been denied a FAPE.

Research question 3.

Are parents of students in a specific disability category more likely to identify procedural issues in due process hearing requests?

To answer question three and the four sub-questions, a cross-tabulation chi-square analysis was conducted. The results indicate that eligibility categories and procedural issues identified in due process hearing requests are not independent of each other. This analysis showed that procedural issues such as behavior, identification, and placement are not independent of eligibility categories. Therefore, it can be concluded that specific procedural issues are not distributed evenly amongst eligibility categories and that parents of students in specific eligibility categories are more likely to identify specific procedural issues in a due process hearing request.

Parents of students identified as having a serious emotional disturbance are more likely to file for behavior issues. This is similar to findings from earlier research studies.

As explained in chapter three, the researcher collapsed several topics within each larger category. Given this, behavior consists of behavior plans, behavior analysis, and manifestation determination. With this analysis, it can be asserted that parents are more likely to file hearing requests for these issues. School districts should heed this and ensure that behavior programs that support students with emotional disturbance are research based and designed to meet the needs of the student. School district personnel must ensure that procedural safeguards are followed, especially when looking to potentially remove a student from their current setting for behavior reasons.

Placement was another procedural issue prevalent in due process hearing requests for students with Serious Emotional Disturbance. As highlighted in chapter two, earlier research studies also indicate that placement is a common due process hearing issue. Students with Serious Emotional Disturbance are at greater risk to demonstrate behaviors that impede participation in a general education setting, which often results in removal to a more restrictive setting. Because placement is an IEP team decision, it is important that school teams consider the parent perspective when proposing to change a placement for a student with a disability. It may be that parents who file for a due process hearing for this procedure issue feel as if their voice was not heard when the team proposed to change the placement for their child. Interviewing parents to understand their perspective would be an informative follow-up study that could help inform school district personnel as they develop professional development for their teachers.

The analysis showed that identification occurred at a higher than expected frequency for parents of students with a Specific Learning Disability. This could be

attributed to the fact that, in reading the due process hearing requests, it appeared that many parents disagreed with the district evaluation and identification of their child. Identification became a contentious situation when the findings from the district indicated that the student did not qualify for special education, or that the eligibility category was one in which the parent disagreed. In the previous studies, identification was not a prevalent issue for students with Specific Learning Disability, so this may be a future area of research.

Interestingly, the analysis revealed identification was significantly less than expected for students for students with an Intellectual Disability. This was noteworthy because no parents of students with an Intellectual Disability identified this as an issue. Could it be that most parents feel that identification is not worth the effort when their child is receiving services and eligibility of a student does not drive placement? Why this is the case would be a great follow-up qualitative study, as previous studies have not addressed the parent perspective about hot button issues.

Research question 4.

Are parents of students in a specific age range more likely to identify specific procedural issues identified in due process hearings? To answer question four and the four sub-questions, a cross-tabulation chi-square analysis was conducted. The results indicate that age ranges and specific procedural issues are not independent of each other. Specifically, Placement, IEP Implementation, and Behavior were all procedural issues for the various age ranges. Significant residuals were reflected in placement for all but one age range. Due process hearing requests for students who were 19 – 22 years old did not

reflect higher than expected frequencies for placement. It is curious why this was not an issue of prevalence in due process hearing requests. It is possible that once students reach late high school and post-secondary transition activities are prominent, the attention moves away from placement and fixates on the activities and curriculum. This shift would be interesting future area of research.

Based on these findings, parents of children in age ranges 6-12 are more likely to file for a due process hearing. These results are similar to previous studies that indicated that IEP Development and Placement are issues that cause parents to file for due process (Blackwell & Blackwell, 2015; Cope-Kasten, 2013). It would be interesting to continue this study and examine other circuit courts to see if the results would also be similar. Combined with the analysis for the first two research questions, the potential impact to the school district is extensive and potentially financially impacting.

Of equal importance is the impact of this finding for children and parents of children with disabilities. Based on the analysis of the 1,077 due process hearing requests, many more parents of children ages 6-12 filed for a hearing. Interestingly, parents in the age ranges 3-5 and 19-22 had significantly fewer hearing requests. This could be attributed to the relationship that is developed with families earlier in a school career and the transfer of rights to the student at age 18. It is possible, that parents of students ages 6-12 have become more knowledgeable of their rights and are better equipped to ensure that procedural safeguards are followed. It is possible that with this knowledge base they are better equipped to file for a due process hearing request when they cannot resolve disagreements. Without qualitative follow-up with parents who have

filed due process hearings, it is only a speculation as to why this age group experiences more due process hearing requests. This would be an interesting follow-up study.

In conclusion, procedural issues are not distributed evenly amongst age ranges. Parents of students who are ages 6-12 are more likely to file for a due process hearing. Further, parents of students in specific age ranges are more likely to identify specific procedural issues in a due process hearing request.

Limitations

During the coding process, it was noted that there were inconsistencies amongst the states, sometimes even within individual states, regarding the written summary of the due process hearing. This was most evident for Hawaii, in which most, but not all of the cases had no demographic information available. This made it impossible for the researcher to determine codes for the demographic information for this state for the majority of the cases. Interestingly, there were a handful of cases in which the hearing officer chose to include demographic information in the case summary. Thus, those cases were included where applicable. It is unclear why the hearing officers chose to redact this information other than protecting identities.

Another limitation was identification of eligibility categories. In many cases, there were secondary and tertiary eligibilities identified. Therefore, the researcher determined to utilize the primary eligibility category when identified as such and use the multiple impairment category only when it was identified as a multiple impairment. Potentially, this could have impacted the percentages of eligibility categories. However, this was

consistent in how earlier studies have been conducted given the amount of variability with the multiple eligibility categories.

Coding the due process hearing requests could be considered a limitation as categories were grouped in a way to allow ease of coding. However, a limitation is that it became impossible to code every single procedural issue within each larger category. Therefore, there was a blending of some issues into a larger procedural category. An example of this is the IEP development procedural issue. It would have been interesting to determine how many due process hearing requests evolved out of related service issues versus goal and objective development. This could be a follow-up study using only one or two states within the Ninth Circuit and looking at those two procedural issues.

Implications for Practice

This study demonstrated that specific procedural issues are more prevalent and more likely to cause a parent to file for a due process hearing request. Therefore, it is critical that special educators and school administrators are diligent during the IEP development process and IEP meetings to ensure that all procedural safeguards are followed. This study offered no perspectives from either party, however, in reading and coding the hearings, it was apparent to the researcher that many of these hearing requests likely resulted from small issues that were unresolved and subsequently grew into a much larger issue that became untenable. It appeared from the hearing summaries that school teams, albeit good intentioned, were unprepared on how to mediate and prevent potentially hostile situations. As a result, many of the due process hearings were

incredibly damaging to the relationship between the school team and parents. In fact, in some cases the student involved in the due process had to be moved to another school.

IEP development was identified as a significant procedural issue. Therefore, training for special education teachers must be an area for increased professional development by ensuring that teachers understand pertinent aspects of IDEA law and all essential, required components of an IEP. This training must start in higher education teacher preparation programs and continue on a regular basis once a teacher is hired. Administrative preparation programs must respond to the level of responsibility that school administrators have in regard to their role as the LEA. Preparation programs must increase the level at which they provide training for school administrators in special education law and requirements. Doing so will ensure that school administrators, at every level of the district are fully prepared to take on the role of LEA.

Pre-service teachers should have classes that focus on relationship building strategies that enable them to take the parent perspective in developing IEP programs for their students. This skill set would assist them in learning how to build relationships with the parents of the students with whom they work.

The theme of continued professional development for school personnel was highlighted in earlier studies on conflict resolution between parents and school district personnel. As indicated in the literature review, filing for a due process hearing is both costly financially, but also emotionally for both sides. Lake and Billingsley (2000) conducted an early analysis of factors that contribute to why a parent files a due process hearing request. This study found that increased conflict arose from differing views of

what their child needed as far as services and programming (Lake & Billingsley, 2000). Overwhelmingly, parents felt that they did not hold the power in the conflict, thus an imbalance occurred which resulted in litigation (Mueller, 2009b). This imbalance led to a lack of trust in what the school was doing for their child (Lake & Billingsley, 2000; Mueller, 2009b).

School district personnel must develop strong and trusting relationships with the families with whom they work. As research has shown, conflict escalates when there are differing ideas on what a student needs (Lake & Billingsley, 2000). It is critical that school personnel take the time to bridge the gap of differing ideas and listen to the parent's vision and goals for their child (Lake & Billingsley, 2000). School personnel who focus on building strong relationships with parents that are built on trust are more likely to work through conflicts (Lake & Billingsley, 2000). Through the development of meaningful relationships, parents feel valued and know their input is respected (Lake & Billingsley, 2000; Mueller, 2009b).

To assist in relationship building, school personnel must understand and be trained in conflict resolution strategies. School administrators, as the LEA for the school district, should be continually trained on both IDEA tenets and conflict resolution strategies. These skills sets may assist in preventing escalating emotions and issues that lead to due process hearing requests. With special education litigation on the rise, school teams must be equipped and given the necessary tools.

Nowhere is this more evident than the recent Supreme Court Case, *Endrew F. v. Douglas County School District* (2017). In this case, the parents felt that the school had

denied their son a FAPE because substantially similar goals had been proposed year after year. After seeing progress stalled, the parents unenrolled him and unilaterally placed him into a private school with specific targeted instruction for students with Autism. After demonstrated success, the parents approached the school district with intent to incorporate these strategies into his program at the school district. The school district refused, which subsequently resulted in the due process hearing moving to the Supreme Court. The end result is a finding for the parent, but at what cost? The relationship has no doubt soured completely between that parent and school district. In all likelihood, that parent will probably never enroll their son in the district again. Could this have been prevented? More than likely yes. If the school district had built a solid relationship with the parent, grounded in knowledge of IDEA and procedural requirements, more than likely the parent could have approached school personnel with concerns.

Recommendations for Further Research

The literature review called attention to the holes in the research on due process litigation. This led to the development of research questions that attempted to fill in the gap and seek to understand the demographics of due process hearing requests in the Ninth Circuit. This study filled gaps in the literature as demographic and procedural issues were analyzed, which has led to a deeper understanding of the procedural issues that are the most prevalent in this circuit. Despite attempting to fill the literature gap, more questions arose regarding due process hearing requests, not only within the Ninth Circuit, but nationwide.

This present study speaks to the need for additional research in comparisons amongst the circuits. This is especially critical given the last state by state analysis was done in 2010 and the number of due process hearing requests continue to rise. Other possible questions or areas of future research include the following:

- In another circuit, would these results be replicated?
- Who prevails most often in due process litigation?
- What category is most prevalent amongst all of the circuits in due process hearings?
- What is the parent perspective of requesting a due process hearing? What was the impact on the relationship with school teams after filing for a due process hearing?
- What is the school district team member perspective after a parent files for due process? What is the impact on the relationships school personnel have with the family?
- Does participation in a facilitated IEP resolve conflicts?

Conclusion

Few studies have been conducted in the area of special education litigation, none in the Federal Ninth Circuit, which made findings from this study critical. This was important because the federal circuits differ in how law is interpreted and there was no information regarding the Ninth Circuit. This made it challenging for school districts and state departments within the Ninth Circuit to understand where potential due process

issues may lie. As a result of this study and potential subsequent studies, school district personnel may begin to gather ways in which to avoid costly due process hearings.

As demonstrated by this study and the few others, special education litigation is an area for continued research. As more children are made eligible for special education services, school districts must ensure that services provided to students with disabilities are rigorous and defensible. This is evident in the recent Supreme Court decision *Endrew F. v. Douglas County School District* in March 2017. As highlighted above, this landmark case has lessons for school personnel in developing relationships and professional development areas. However, this groundbreaking case also has great impact to the central tenet of the provision of FAPE under IDEA. In the Tenth Circuit, where this case originated, the state did not employ the Rowley standard, rather a more lenient view of FAPE, referred to as the *de minimis* standard. The *de minimis* standard is not as rigorous as the more common FAPE Rowley standard and only required school districts to ensure that some educational progress was made.

The Supreme Court, with their decision, established that a special education program must be reasonably calculated to enable a child to make progress in light of each child's individual circumstance. Therefore, it is imperative for school district to become collaborators with parents in development of IEPs that meet the needs of the student. Building a strong relationship with parents will build trust and collaboration so that if there are issues, they can be resolved informally, without the need for litigation. This understanding is key for all stakeholders as they seek to build relationships and protect individual student's IDEA rights.

Appendix A

Redacted Due Process Hearing Summary from Ninth Circuit with Coding Highlighted

116 LRP 37281
ANCHORAGE SCHOOL DISTRICT

Alaska State Educational Agency
HR 16-02
May 9, 2016

Judge / Administrative Officer

Jonathon A. Katcher, Hearing Officer

Full Text

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

I. INTRODUCTION

This is a special education due process hearing under the federal Individuals with Disabilities Education Act ("IDEA"), corresponding Alaska statutes, and federal and state regulations. 20 U.S.C. §§ 1401 et seq.; AS 14.30.180 et seq.; 34 C.F.R. § 300.1 et seq.; 4 AAC 52.090 et seq. The Parents are represented in these proceedings by attorneys [redacted], Anchorage, Alaska. Anchorage School District ("ASD") is represented by attorney [redacted] Anchorage, Alaska.

Student ( ) is currently a fifth-grade student at [redacted] Elementary ABC School ("[redacted]"), in the Eagle River area of ASD. Student has a primary diagnosis of autism which affects his educational needs.

The core issue is whether ASD's program at [redacted] provides Student with a Free Appropriate Public Education ("FAPE"). On the final day of the hearing, after oral argument by counsel, I put on the record my oral decision that ASD's program does provide Student with a FAPE. These written findings of fact and conclusions detail the bases and reasons for my decision.

II. PROCEDURAL HISTORY

The Parents filed their request for due process on January 5, 2016. ASD answered on January 14, 2016. After a pre-hearing conference, I issued a Pre-Hearing Order, stating the following issues to be decided:

a. Does the District's program provide Student a FAPE?

b. Should the hearing officer order the District to pay for the Student to attend a private program at District expense?

The hearing was held on February 4, 5, 22, 23, 24, 25, 26, 29 and March 1, 2016, at [redacted], and [redacted]. Present at the hearing for Student were Student's Mother and Father, their attorneys [redacted], as well as attorney [redacted], and advocate [redacted]. Present at the hearing for ASD were attorney [redacted], as well as [redacted], ASD Executive Director for Special Education, and [redacted], consultant for ASD. At the Parents' request the proceedings were confidential and not open to the public. The proceedings were recorded by a court reporter, who has prepared a transcript.

The parties presented testimony from the following fifteen witnesses:

[redacted], Pediatric neuropsychologist.

[redacted], Board Certified Behavior Analyst ("BCBA") and Owner of [redacted], a private program for autistic children in Eagle River.

Student's Mother.

[redacted], Behavior Technician at [redacted].

[redacted], BCBA and Program Director at [redacted], a program affiliated with and in the same building as [redacted].

[redacted], ASD Supervisor of Elementary Special Education.

[redacted], ASD Instructional Support Lead for Speech Language Pathologists ("SLP").

[redacted], ASD Special Education Department Chair. [redacted], Applied Behavior Analyst ("ABA") and Behavior Consultant for ASD.

[redacted], BCBA and ASD Special Education Coordinator.

[redacted], Student's special education classroom teacher at [redacted].

[redacted], Student's occupational therapist ("OT") at [redacted].

[redacted], Principal [redacted].

[redacted], Assistive Tech consultant and SLP at [redacted].

[redacted], Student's SLP at [redacted]

Prior to and during the hearing the parties presented a number of exhibits. ASD did not object to Parents Exhibits 1 through 40, and all were admitted. The following ASD Exhibits were admitted: Al, A2 (pp. 1-2), A3-A5, B9, B11 (1st email of August 21), B15, B47, B55, B64, B74, B76, B80, B91, B97, B105, B107, B108, D, E1-E6, F1-F5, H3-H5, 11-16, J1-J3, J5, J7, M2, N1-N6, N9, 02, P2, P4, Si, S2, T.

On February 29, 2016, the next to last day of the hearing, I ordered the parties to come to the final day of the hearing prepared to make their oral arguments based on the evidence presented. I advised the parties that after the oral argument I intended to issue a preliminary oral order deciding the case.

On March 1, 2016, the parties presented their oral arguments. After a recess, we went back on the record and I issued my oral ruling, finding that ASD's [redacted] program provided a FAPE to Student. I ordered ASD to submit proposed findings of fact and conclusions of law by April 1, and the Parents to submit their objections by April 18. I granted ASD's request for an unopposed extension until April 8 to submit their proposed findings and conclusions, and extended until April 25 for the Parents to submit their objections. ASD submitted its proposed findings and conclusions on April 8. On April 26, Parents' counsel sent an email stating that Parents "have elected to not file anything further in the due process case #16-02."

The record is closed. I now enter these Findings of Fact, Conclusions of Law, Decision and Order.

Federal and state regulations require that due process hearings be fully decided within 45 days of the passing of the deadline for a resolution meeting. 34 CFR § 300.515(a); 4 AAC 52.550(k)(4). The Alaska Department of Education and Early Development ("DEED") declared the decision deadline to be February 18, 2016. Under the circumstances of this hearing, including the length of the hearing, the timing of the hearing dates, the need for a transcript, and the timing of the parties' submissions regarding proposed findings of fact and conclusions of law, I find that there was good cause to extend the deadline to issue this final findings of fact, conclusions of law, decision and order until May 9, 2016.

III. FINDINGS OF FACT BACKGROUND

1. Student is a student with significant needs. He is diagnosed with Autism Spectrum Disorder, and has a diagnosis of static encephalopathy, disruptive behavior disorder, neuromotor dysfunction, and sensory modulation disorder. Parents Ex. 5, p.9. Student meets the criteria for special education certification under the category autism. Parents' Ex. 10, p.l. Student is nonverbal. TR 76. Student began attending [redacted] in August of 2010 during his first year of kindergarten.

In March of 2015, the Parents requested private placement for Student at [redacted], and ESY service, both to be paid for by ASD. The parties agreed to resolve the matter through mediation.

A mediation was held with the parties and their attorneys. TR 373. The parties executed a settlement agreement that memorialized the parties' agreement reached during mediation. Parents Ex. 7. As part of the settlement agreement, the parties agreed that: Student would receive ESY [Extended School Year] services from Behavior Matters for the summer of 2015 at ASD's expense; Student's Parents would execute necessary releases for an exchange of information between ASD and Behavior Matters and would procure a detailed progress report that would be provided to ASD ten (10) days prior to the start of the school year for Student's IEP team to review; Student's stay-put IEP would be the February 2015 IEP [Parents Ex. 10]; ASD staff in Student's life skills classroom at [redacted] would receive forty (40) hours of ABA training by a BCBA and that training would occur in June 2015. The Findings of Fact, Conclusions of Law, Decision and Order STUDENT v. A.S.D., DEED Case No. HR16-02 Page 4 of 33 staff to be trained would include two teacher aides and Student's special education teacher; The BCBA would provide four (4) hours a month of indirect services and monitoring, including supervision of staff and data review; The BCBA would provide two (2) hours of behavioral support to Student; Student's Parents released all claims against ASD arising before June 2015. As a result of the settlement agreement, Student received services at [redacted] from June until August 2015. He did not, however, receive ESY services. TR 419-20.

Instead, Student received services based on new goals determined by the service providers at [redacted]. Id. Student's IEP goals were not implemented at [redacted]. Id. [redacted] produced a detailed progress report for Student. That progress report was not provided to ASD within the timeline outlined in the settlement agreement ten days before the start of the school year in mid-August. TR 578580. ASD received the progress reports in September 2015. Id.

Based on the receipt of those progress reports, the parties convened in November 2015 to amend Student's February 2015 stay-put IEP. TR 598. Several amendments were made and the Parents requested additional time to review and make comments. TR 854. Before those comments were received by ASD, the Parents filed the instant due process complaint.

STUDENT'S PROGRAM AT [redacted]

Student is diagnosed with Autism Spectrum Disorder. Parents Ex. 5. Autism is primarily a disorder of reciprocal social interaction. Students with autism typically have communication challenges in the social aspects of language, and may also have more sensory processing differences making it difficult to cope with the stimulation of a classroom. TR 1099 1100, 1105. Students who experience autism also have

difficulty with transitions and disruptions in their schedule. TR 87-88, 844, 847. Schedules and structures are thus extremely important for these students, as is ensuring structured social interactions. Student also has significant cognitive impairments, making traditional educational advancement difficult. TR 1442-45.

The educational setting for Student at [redacted] was and is a self-contained life skills classroom, with full-time teacher assistants in the room. TR 1385-86. [redacted] has been Student's special education teacher since fall 2014.

TR 1386. [redacted] has a bachelor's degree in social psychology, a master's degree in education, and is actively pursuing her Board Certified Behavior Analyst ("BCBA") certification and a doctorate degree in educational leadership.

. [redacted] testimony was offered by the Anchorage School District. I find Ms. Wolfe knowledgeable of Student, his education program and needs, and her testimony to be credible.

[redacted] is the special education coordinator for ASD. Ms. Paley designed Student's current program and provided forty hours of ABA training to ASD staff in June 2015. TR 1158,

[redacted] has a bachelor's degree in English from the University of California, Davis, and a master's degree in special education from the University of Oregon. TR 1158. [redacted] has taken a series of Applied Behavior Analysis ("ABA") courses, and was previously employed by ASD for five years as a special education teacher. TR 1159. [redacted] also has her BCBA certification. [redacted] provided direct and indirect services to Student's IEP team, including his special education teacher and the teaching assistants. TR 1162, 1165-67. I find [redacted] knowledgeable of Student, his education program and needs, and her testimony to be credible.

[redacted] is the supervisor for elementary special education at ASD. TR 571. [redacted] has a bachelor's degree in elementary education, a master's degree in special education with an emphasis on learning disabilities, a master's degree in special education administration, and is a trainer for nonviolent crisis intervention. TR 571-72. [redacted] has worked closely with Student's IEP team to review progress reports from [redacted], implement the recommendations, and act as a facilitator at IEP meetings. TR 574, 575, 599. I find [redacted] knowledgeable of Student, his education program and needs, and her testimony to be credible.

[redacted] is the instructional support lead for ASD speech-language pathologists. TR 757. [redacted] holds a bachelor's degree in speech language and hearing science, a master's degree in communication disorders, and has an American Speech and Hearing Association ("ASHA") certificate of competence. TR 757, 759. [redacted] has been a SLP in Alaska for fifteen years. TR 757, 758[redacted]

[redacted] worked directly with Student's IEP team to transition SLPs and attended MR's IEP team meetings. TR 760-62. I find [redacted] knowledgeable about Student, his education program and needs, and her testimony to be credible.

[redacted] is a SLP who provides services to [redacted], beginning in October of 2015. TR 1911. [redacted] has a bachelor's degree in speech and hearing communication and worked for [redacted] for seven years, the [redacted] Unified School District for three years, and has been with ASD since December 2009. TR 1912-14. [redacted] provides direct speech services for at least sixty minutes a week to Student and has observed him regularly throughout the school week. TR 1919-20. [redacted] is responsible for implementing many of Student's communication goals outlined in his IEP. TR 1923-29. I find [redacted] knowledgeable of Student, his education program and needs, and her testimony to be credible.

[redacted] is the SLP for ASD's assistive technology department and has served in this role for the past five years. TR 1797-98. [redacted] consults with Student's team to help meet his communication needs and has observed him in the classroom forty to fifty times over the last five years. TR 1800, 1805. [redacted] has a master's degree in early childhood special education, early intervention with an emphasis in "low incidence" disabilities, a master's degree in communication disorders, a certification in speech and language pathology, and a certificate of clinical competence. TR 1794-95. [redacted] has observed Student regularly in his classroom setting and provides indirect services related to his communication devices. TR 1805, 1810-11. I find [redacted] knowledgeable of Student, his education program and needs, and her testimony to be credible.

[redacted] served as Student's occupational therapist at Birchwood beginning in the August 2015. TR 1662. [redacted] has a bachelor of science in psychology from [redacted], a master's degree in education and professional development from the University of Wisconsin, 60 credits towards her doctorate in occupational therapy, and is certificated in ABA, transition specialist, and autism. TR 165759. [redacted] is a licensed occupational therapist and has both a national licensure as well as an Alaska licensure. [redacted] worked with Student on the occupational therapy goals of his IEP and was present in his classroom three times a week for four or five hours. TR 1666. I find [redacted] knowledgeable of Student, his education program and needs, and her testimony to be credible.

[redacted] has been the Principal of [redacted] since August 2015. TR 1758-59. [redacted] has a liberal arts degree from the University of San Francisco, a master's degree in special education from the University of Alaska, a master's degree in educational leadership from the University of Alaska, a special education endorsement, and a k-8 classroom certification. Id. Prior to becoming Principal, [redacted] served as a special education resource teacher, a general education teacher, and an

assistant principal for ASD. Id. Since starting as Principal at [redacted], [redacted] has had contact with Student on a regular, daily but not scheduled basis. TR 1761. [redacted] observed Student in various settings at the school on a regular basis, including the life skills classroom, the hallway, the playground, and daily lunch. TR 1761-64. I find [redacted] knowledgeable about Student, his school program and educational needs, and her testimony to be credible.

[redacted] is the ASD Department chair who worked with Student by administering his Verbal Behavior Milestones Assessment and Placement Program ("VB-MAPP"), supervising [redacted] for her BCBA certification, and holding monthly meetings with classroom staff about ABA training. TR 823-25. [redacted] has a bachelor's degree in psychology from Siena College, and a master's degree in special education and literacy from the University of Albany. TR 817. [redacted] has regularly observed Student one to two times a week, and has observed Student in his life skills classroom, whole-group instruction, lunch, recess, Adaptive Physical Education ("APE"), and in other common areas. TR 834-35. [redacted] also participated on Student's IEP team and attended Student's IEP team meetings. TR 830, 853. I find [redacted] is knowledgeable, familiar with Student's program and education needs, and her testimony to be credible.

[redacted] is the behavior consultant for ASD. TR 1095. [redacted] has a bachelor's degree in education, physical education, and psychology, a master's degree in special education with an emphasis in behavior disorders and autism, a doctorate degree in autism and emotional disorders with a minor in rehabilitation services, a doctorate degree in educational research with a minor in psychology, and has all credit hours for a doctorate in computer science. TR 1095-96. [redacted] worked as a research director for the United States Department of Education, the coordinator of a doctoral and master's program in emotional disturbance and autism, and a tenured professor. TR 1097-98. [redacted] provided ABA training in the summer of 2015 to staff at ASD. I find [redacted] knowledgeable of the ABA and Unique Learning System ("ULS") techniques and programs applied at ASD, and her testimony to be credible.

STUDENT'S ACADEMIC PROGRAM AT [redacted] Student's February 2015 stay-put IEP included 13 goals relating to goals in the area of Behavior (Goal 1-3), Self-help (Goals 4-8), Reading (Goal 9), Writing (Goal 10), APE (Goal 11), Speech/Language (Goal 12), and Math (Goal 13). Parents Ex. 10, pp 12-26. The person primarily responsible for working with Student in the area of his academic goals and objectives was [redacted], his classroom teacher. Student's academic instruction takes place in a self-contained intermediate life skills classroom. TR 1385. A life skills classroom focuses on learning communication, self-help, and other basic, functional skills to enable intensive need students to gain independence. TR 1385, 1760. The life skills classrooms also provide academic instruction.

Student's life skills classroom shares a partitioned wall with the other life skills classroom. TR 1386-87. This partition allows the teachers to provide group instruction by

combining both classes. Id. Student's classroom has a library, a circle time area, a calendar area, a visual schedule, a grouping of six desks, smaller tables for individual work, cubbies, seven computers, the TA desk, a teacher desk, and a sink for brushing teeth and washing hands. TR 1387-89. The teachers have the ability to use rolling partitions in the classroom to allow for one-to-one instruction, when necessary. TR 1390-91.

Student maintains a consistent, routine daily schedule that begins with a staff member greeting him when he gets off the bus. TR 1393. Student goes straight to his cubby, occasionally requiring prompting. Id. At this point, Student removes his safety vest, backpack, and coat. TR 1394. He then removes his boots with prompting and changes into his shoes. TR 1394-95. Next, he participates in morning work, which is tailored to meet his IEP goals. TR 1396. The Student's curriculum in [redacted] classroom is the ULS. TR 1402. Each week, students receive an individualized packet with the work to be accomplished that week. Id. Following morning work, Student will transition to calendar where the students come to the carpet and depending on Student's daily behavior, he either sits in a chair or on the carpet. TR 1397. The teacher then engages Student by giving him choices. TR 1398. The teachers discuss special days or months on the calendar, assist students in determining the day, discuss code dates, talk about the weather, and look at the newspaper. TR 1399-1400. Student remains engaged throughout this activity. TR 1399. When Student does not appear engaged, [redacted] allows him to come up and hold the pointer and point to the days as the class sings the "days of the week song." TR 1401. The class then gets out their clocks and practices time. TR 1402. Student sometimes requires "hand over hand" assistance of a TA for this activity. Id. If there is a current event that day that is part of the ULS curriculum, [redacted] will get on the floor and pull-up the event online. Id. After the current event, the students get a sheet with three questions. TR 1404. Student does not always pick an answer, but he is engaged and knows that he must select one on the computer screen. Id.

Following the calendar and current events, the students do individual IEP goal work, such as Student writing or tracing his name. TR 1405. The teacher or a teacher assistant assists Student on working on this goal (Objective 10), for example, by using sheets provided by the OT, performing discrete trial training, tracing on the whiteboard, using magnets or plastic letters to assist in letter recognition. TR 1406-07. Next, Student will have a snack. TR 1408. Student then attends a special activity, which may be music, physical education, or library. TR 1407.

2Following this activity, Student has reading group with the teacher assistants where the students sing and work on phonics and reading (Objective 9). TR 1411. [redacted] follows the ULS curriculum, but also supplements it with a phonics-based program which allows the students to sing along. Id. Next, Student participates in a social studies program that is based on the overall curriculum's weekly or monthly theme. TR 1413. Student then goes to lunch after putting on his outdoor gear for recess. Id. After recess, the students have computer time, but Student does not go to the computer. TR 1416.

Instead, related services providers, such as the OT or SLP, will work with Student during that time. Id. On days where special activities occur, they alternate between art, health, and music. TR 1411. Next, the students get together for whole-group instruction to work on vocabulary games, and sometimes do math and writing as well (Objectives 10 and 13). TR 1416-17. Science follows afterwards. TR 1417.

At the end of the day, the students clean their desks, stack their chairs, and clear the floor. Id. The students then pack up their stuff, but occasionally during the week, Student gets picked up early. TR 1418.

Student's IEP goals and objectives are addressed throughout the day, either by one-to-one instruction, whole group instruction, or basic daily tasks. TR 1408, 1460. For example, Student's Goal #2 is he "will exhibit the ability to effectively manage transitions in the school setting." Parents Ex. 10, p. 13. The specific objective is for Student to line up appropriately for specials, lunch, and going to the bus with verbal gesture prompt (Level 4 support). Id [redacted] incorporates this objective into Student's transitions throughout the day, whether it be going to lunch or transitioning in between classroom activities. TR 1460.

At least twice a week, Student's teacher and the teacher assistants meet to discuss his progress and collaborate. TR 1434. Once a week, both life skills classrooms' staff will meet to collaborate. Id. The principal or department chair attends some meetings. Id. The teachers also attend Special Education Department meetings. Id.

The ULS curriculum is applied in Student's classroom. It is a comprehensive program designed to allow students to learn communication skills along with academic instruction. TR 1767. See also, ASD's Exhibits J1-J#, J5, J7. ULS assists students in learning independence by introducing them to things such as their community or neighborhood to provide them context for their daily lives. TR 1771-72. ULS is a research-based curriculum that is based on thematic units of study with a built-in differentiation system to allow for differing ability levels and student performance. TR 631-32. In other words, the staff can use the standards to determine what kind of activity and what level of support is needed for each individual student to be able to best participate in the curriculum. Id. Each teacher has access to interactive lesson plans and those plans are directly correlated to the essential element standards developed for each child. TR 633. Further, ULS provides comprehensive lessons in math and reading. Id. ULS is a data-driven teaching system that provides multiple methods for teachers to collect information, collect data, and administer ULS based assessments. TR 634. ASD expects and requires life skills classrooms, such as Student's, to use the ULS curriculum. TR 636.

As part of the ULS curriculum, [redacted] and [redacted] the primary life skills classroom teacher, send out a weekly newsletter. TR 1448; ASD Ex. D. These newsletters provide the monthly or weekly themes, a cooking lesson with an ingredient list, and other information about the classroom activities. TR 1448-49; ASD Ex. D. These

weekly newsletters were intended to inform parents of what was taking place in the classroom and generally, [redacted] reported, parents had a very positive response to the newsletters. TR 1768.

30. Student's life skills classroom staff also received forty (40) hours of ABA training in June 2015 by [redacted] The class was designed to introduce ASD staff to the concepts of Antecedent Behavior Consequence, operationalizing behaviors, stimulus response, stimulus reinforce, peer-mediated instruction, and discrete trial training. TR 1128-29. During this ABA training, ASD staff actually observed a classroom of students, described what they saw in operationalized terms, and then went back to the classrooms. TR 1137. The ASD staff were required to operationalize the behaviors observed, list Antecedent Behavior Consequences, identify preference reinforcers, and practice these skills on the students in the classroom. TR 1140. This training included PowerPoint presentations, handouts, and direct observation of life skills classrooms. TR 1136-38. Both of the [redacted] life skills classroom teachers, including [redacted], and the teaching assistants, received this training. TR 1166. The staff also received Registered Behavior Technician ("RBT") training in the fall of 2015. TR 1166-67. This included four to five hours of face to face training over the course of three months. TR 1167. The staff were given a manual to accompany the online training modules used at RBT training and other training materials. TR 1169; ASD Ex. 1.1. through 1.6.

[redacted] explained that she believed the ULS curriculum is appropriate for Student and testified that she believed he could and does learn all the time. TR 1450, 1453-54. [redacted] also testified that Student's greatest educational need is independence, which is the main focus of the life skills classroom. TR 1454. [redacted] also testified that it is in Student's best interest to remain in the life skills program at B[redacted] because they work on communication daily, the ULS curriculum is strong, and the classroom and school have structures for Student to build meaningful connections within his classroom and the larger school community. TR 1772-73. [redacted] testified that the ULS curriculum is an appropriate curriculum for Student. TR 640. [redacted] testified that the ULS curriculum is important for Student because it is a multimodal learning strategy for individual learners, like Student. TR 1716. [redacted] further testified that the life skills classroom at [redacted] is an appropriate placement for Student because he likes peers and likes interacting with peers. TR 1718-19. [redacted] testified that the life skills classroom is the appropriate placement for Student because he needs more opportunities to socialize with peers in order to generalize his skills. TR 1968-70.

OT GOALS

Student's stay-put IEP included three occupational therapy goals in the areas of food intake, removing/putting on shoes and using a zipper, spelling and tracing his name, and improving fine motor skills. Parents Ex. 10, pp. 15-16, 22-23. In particular, [redacted]

[redacted] was responsible for implementing Goal 4, Objective 1; Goal 5, Objectives 1 and 2; and Goal 10, Objectives 1, 2, and 3. TR 1671.

For Student's food intake goal (Goal 4, Objective 1), [redacted] usually worked with Student at snack time and focused on having him fully chew in between bites, open his mouth in between bites, count how many times he chewed, and high five him when he was done. TR 1672. Student was given small bites to work on food sequencing and food intake regulation. TR 1733-34, 1753-54. [redacted] also worked with him to use his augmentative communication device to signal for more food. TR 1699

For Student's goal of taking off his boots and putting on his shoes, [redacted] worked with the teacher and teacher assistants who were present daily to find a solution to assist him in removing his boots and putting on his shoes. Id. After finding a proper chair or bench that provided Student enough support, he has been able to get his boots off. TR 1664, 1673. Student still requires assistance with tightening the Velcro on his shoes and getting his foot in the back of his tennis shoe. TR 1673.

For Student's goal of using a zipper (Goal 5, Objective 2), [redacted] focused on a metal ring with a ribbon on the zipper and cloth boards for practice. TR 1673. MR has been successful in using the zipper with Level 5 support (independent), but other times he used hand over hand to engage the zipper (Level 1). TR 1673-74.

For Student's goal of learning to spell his first name using manipulatives (Goal 10, Objective 1), [redacted] mainly used letter cards in the classroom and tracing hand over hand. TR 1674. He has been able to identify the letter "M," but not consistently or on command. Id. [redacted] also worked with him to trace shapes, such as a triangle and square, because those lines are necessary for the development of writing. TR 1681.

For Student's goal of tracing his first name using a writing tool with Level 3 support (Goal 10, Objective 2), Ms. Christiansen worked with him using built up crayons and worked on increasing his coloring and writing. TR 1675. He was able to trace the letter "M" pretty well. Id. [redacted] noticed that he was writing his letters on top of each other, decreasing his ability to write or trace his first name. Id. Based on that observation, Student received hand over hand support (Level 1). Id. By December, he was able to consistently trace or write his name within two inch lines with hand over hand support. TR 1711.

For Student's goal of improving his fine motor skills (Goal 10, Objective 3), [redacted] focused on having him manipulate scissors, putty, and other fine motor manipulatives. TR 1675. [redacted] used Theraputty or Playdough to work on thumb and finger pinches, tripod pinches, and lateral pinch grasps. TR 1677. He has progressed in completing the tasks outlined in Objective 3, but is unable to do it

spontaneously and still requires a level of support. TR 1711. He has also learned to open small containers. TR 1717.

[redacted] worked with Student inside the classroom, lunchroom, or at adaptive physical education. TR 1712. [redacted] began working with Student by bringing him into the OT room, but she found that the transitions back and forth between his classroom and the OT room were highly distracting. Id. Instead, she began working with Student on transitioning with APE. Id. [redacted] also testified that she believes that Student benefits from having peers present in the classroom while he is working on his OT goals because he must learn to regulate his responses within a sensory environment. TR 1717. Overall, [redacted] reported that Student made progress in his OT goals, and "he's a kid who has the ability to do everything." TR 1749-50.

Speech-Language Goals

[redacted] is Student SLP at [redacted] for the 20152016 school year. [redacted] worked with Student directly in pull-out sessions on specific skills, and in the classroom and other settings as appropriate. TR 1919-20. Student's IEP included two speech-language goals. Parents Ex. 10, pp. 20-21, 25. These goals relate to comprehending meaning from text and selecting answers to questions using his Speech Generating Device ("SGD") (Goal 9, Objective 2 and 3), and expressing and communicating wants and needs by using his "SGD" and technology free communication systems (Goal 12, Objectives 1 and 2). Parents Ex. 10, pp. 20-21, 25.

42.

[redacted] works with Student on both speech and language goals while he is at Birchwood, and provides direct speech services for at least sixty (60) minutes a week. TR 1919. Currently, [redacted] is focusing on getting Student to produce phrases with his communication devices as opposed to singular words. TR 1920.

Goal 9, Objective 2 is important for Student because it allows him to build a receptive vocabulary. TR 1925. [redacted] collaborates with [redacted] and the teacher assistants to work on this goal throughout the day. Id. Goal 9, Objective 3 allows Student to use that receptive vocabulary in order to express himself. TR 1982.

Ms. [redacted] works one-on-one with Student at times, and other times, there are other children present so that there can be communicative interaction with peers. TR 1922. Having reciprocal communication skills is an important component of overall communication because children need social interaction to create more spontaneous communication. TR 1922-23. [redacted] uses discrete trial training as one methodology for working with Student, and this is in conjunction with ABA methodology. TR 1930. Ms. [redacted] generates treatment notes, also called service capture notes, after each session with Student. TR 1934.

[redacted] reports that Student has good functional communication skills and has communicative intent without descriptive language. TR 1931-32. Student has exhibited the ability to generate phrases to request items at snack time, but requires prompts. TR 1932-33. Student can independently communicate wants and needs by single words. TR 1933.

Student's Behavior and Social Interactions at [redacted]

Student is generally described as a happy, affectionate child who loves attention and interacting with staff and peers. TR 1921; 1408-09. [redacted] described seeing Student's response to interacting with his peers "I see the smile on his face, the excitement. He claps, he makes eye contact with them. He's communicating. I believe it creates that community and connection." TR 1769. Each professional that has observed or worked directly with Student at [redacted] testified that he enjoys social interaction with his peers and benefits from that interaction.

Promotion of Student's socialization skills are woven into almost all aspects of his school day. Every Monday, Wednesday, and Friday, Student has adaptive physical education ("APE") with general education students. TR 1408. The general education students come to the life skills classroom and pick up the life skills students.

[redacted] stated that Student "loves individual attention and being picked up . . . . he can always sucker one of them into holding his hand." Id. [redacted] also observed that at APE, Student makes a "happy squealy sound" and he runs around with all of the general education children. TR 1409. [redacted] testified that Student benefits from his APE time with the general education students. TR 1418.

Student is exposed to students from several classrooms at lunchtime, which occurs in the lunchroom that is packed with students. TR 1414. He mainly interacts with staff during lunch to assist with his food intake. Id. He takes recess with fourth, fifth, and sixth graders. Id. At recess, he mostly interacts with kids from general education. Id. A few of the general education students seek out Student to walk and talk with him. TR 1415. He has also been observed playing ball at indoor recess and had social interactive play with other kids, which is not common for highly autistic children such as Student. TR 1457.

Student also has music with general education students. TR 1418. [redacted] testified that the value of this music class couldn't be overstated because Student participates for the entire fifty minute class. TR 1419. He is usually the only student from her classroom that is able to stay the whole time. Id. In fact, he was successfully able to attend a concert at the Performing Arts Center in downtown Anchorage with his general education music class. TR 1420.

Student also participates with his peers at all-school activities, including the holiday sing along. TR 1421-22. This took place in the school gym and the kids helped build toy trains

that they wore as a costume. TR 1422. Student has experienced other opportunities to interact with his peers, including swimming. TR 1687. [redacted] observed that Student was hesitant to get into the pool, but once he observed his peers getting in, he played in the shallow area and engaged with the other students, including some high school students. TR 1686-87.

Student benefits from the structure of his life skill classroom and the opportunities it provides him. TR 1418. For example, on Fridays, a military life consultant comes to the classroom and talks about feelings like being sad and lonely. She also talks about how to be kind, and targets a component of the social emotional spectrum. TR 1411-12. Student appears to benefit from these social-emotional learning lessons. TR 1418.

[redacted] testified Student should be placed at [redacted] in the life skills classroom for "the social piece alone . . . and for a typical kid with autism to be able to interact with others, play with others, mirror - empathize, do any of those things - that's a big thing. [Student]'s experience with other students in my class, with staff members,

. with general education peers, that's exactly what he needs. That's what - exactly what he needs to be able to exist for the rest of his life in society." TR 1456. [redacted] testified that Student benefits greatly from his interactions with typically developing peers, and one student told a parent that she could not advance to middle school because Student needed her. TR 1770.

Student needs to be surrounded by typically developing peers for social referencing, and he has exhibited social referencing, which is difficult for autistic children to do. TR 1808. Further, being around other children in his life skills speech generating other augmentative a similar modality to other kids." TR 1819-20. classroom assists Student in using his devices. TR 1819-20. Student can observe communication using device users communicate and "kids learn from Learning a language in isolation can be frustrating and impossible for a child, and children like Student require the equivalent of language immersion in order to be successful. TR

[redacted] testified that Student's peers at [redacted] reinforce his communication, involvement, and participation in school activities. TR 863. It is important for autistic children to have access to peers in order to generalize the knowledge and skills they have learned in the classroom and through direct services. TR 1117. In fact, in the training received by ASD staff on ABA techniques, they were taught that peer-mediated intervention would help a child understand how to use their augmentative communication device, communicate with peers, and build relationships. TR 1123-24. Student needs to be allowed to generalize his skills in everyday activities that he will face for the remainder of his life, and these activities and peers are available at [redacted]. TR 864; 1968.

Student's November 2015 IEP Development

Student's stay put IEP is the February 2015 IEP, developed by Parents and IEP team members. Parents Ex. 10. Student was to receive ESY services at [redacted] over the summer of 2015. ASD anticipated receiving detailed progress reports from [redacted], and recommendations for Student's school year services. Parents Ex. 7, p.2, para A2. Based on the need to incorporate the ESY results and recommendations, ASD initiated the process of amending Student's IEP.

ASD recognized the importance of receiving the instructional plan from [redacted] prior to the start of the school year because it would allow for an easier transition for Student. TR 1192. ASD did not receive the final graphs from [redacted] until September 1, 2015. TR 578; ASD

B.15. Both progress reports from [redacted] were received on September 9, 2015. TR 580. The school year began on August 19, 2015. TR 580.

ASD and the Parents actively attempted to schedule a Functional Behavior Analysis/Behavior Intervention Plan ("FBA/BIP") meeting for August and September 2015. On August 21, 2015, ASD sent an Invitation to Attend a Meeting on August 31, 2015 to discuss the FBA/BIP for Student. Due to a scheduling conflict, Student's Mother was unable to attend that meeting. That meeting was rescheduled for September 14, 2015, but due to multiple scheduling conflicts, that meeting was rescheduled as well. On September 24, 2015, ASD sent an Invitation to Attend a Meeting for the IEP team on October 5, 2015. In preparation for the IEP meeting, [redacted] prepared an IEP meeting agenda and emailed it to Student's Mother on October 2, 2015. TR 591; ASD. Student's Mother could not attend the October 5, 2015 IEP meeting and it was rescheduled. On October 8, 2015, a third Invitation to Attend was sent to the IEP team and Parents, scheduling a meeting for October 26, 2015.

An IEP meeting was held on October 26, 2015. TR 1221. Student's entire IEP team attended the meeting. TR 1225. [redacted] attended as the special education coordinator and as an ASD BCBA. TR 1221. The task for the IEP team was to determine whether Student needed a behavior plan, to review the [redacted] reports, and for the IEP team to make a decision as to implementation of [redacted] recommendations. TR 594, 1221-22; ASD Ex. A.2. At the IEP meeting, the team reviewed Student's present levels, strengths, parent comments, agency comments, present levels of academic achievement and functional performance, current functioning, progress in general education curriculum, and a statement of effect. TR 1223; ASD Ex. A.2 pp. 1-2. The team also decided to do a VB-MAPP assessment on Student before amending his IEP, and decided to start a FBA. TR 598, 1223. The Parents requested that a full IEP review not occur at that meeting, and that the team not got through the entire agenda. TR 594. The team could not decide on Student's functional communication device, and decided that his private SLP should be included at the next IEP meeting to assist the team in making this decision. TR 594, 1223-24. The team also decided that [redacted] would follow up with [redacted], specifically [redacted] to resolve outstanding

questions before amending the IEP. TR 1225. The Parent asked questions at the IEP meeting and those questions were timely answered by the IEP team or other ASD staff. TR 595, 1225-26. Prior Written Notice was sent on November 9, 2015 confirming the decisions made at the October 26, 2015 meeting. An Invitation to Attend a Meeting to review Student's IEP was sent out, and the meeting was scheduled for November 24, 2015. TR 596-97; ASD Ex. H.3.

On October 27, 2015, [redacted] performed a VB-MAPP assessment to assist the team in developing an appropriate IEP that reflected Student's current skill level. TR 827; ASD Ex. F.1. The VB-MAPP is a criterion-referenced assessment of Student's current verbal language and verbal behavior skills. TR 826. The Milestone portion of the assessment reviews Student's current skills, and the Barriers portion reviews his impediments to progress in those skills. TR 827. After completing the assessment, it was determined that Student's social skills and play skills are high, his listener response is his highest score skill, and his manding, tacting, and echoic skills are his lowest. TR 827-828. Student scored the age equivalent of one year, six months on the VB-MAPP. TR 830; ASD Ex. F.3. These results allowed the IEP team to create goals based on his age equivalent, rather than for his actual age. Student's IEP goals were amended to reflect the VB-MAPP results.

On November 24, 2015, the IEP team, the Parents, and Student's private SLP, [redacted] convened to amend and review the IEP. TR 1227. The IEP team consisted of [redacted], and Student's Mother. ASD Ex. H.4. [redacted] operated as a facilitator to ensure that after each agenda section, the Parents had an opportunity to ask questions or make comments. TR 599. The agenda prepared for the October 5, 2015 IEP meeting was used at the November 24, 2015 IEP meeting. TR 600; ASD Ex. A.4, pp. 32-33. In addition, the team prepared a "to do" list for the IEP meeting. TR 601; ASD Ex. A.4, pp. 3436.

At the meeting, the team conceptualized a program for Student. TR 1227. The private SLP assisted the team in working the Dynavox SGD program into Student's use of the iPad. TR 1228. The team learned that the Dynavox program could be replicated on the iPad, allowing Student to only have one device that was not large and bulky. TR 1228-29. The IEP team also discussed placement for Student and considered the recommendation for private placement. TR 602. As an alternative option, the IEP team also considered a structured learning classroom in a self-contained program. Id. As a third alternative, the IEP team considered continuing placement of Student in his current life skills classroom. Id. The Parents requested private placement at STAGES. TR 603. The IEP team, after reviewing and considering each option, determined that the life skills classroom was the most appropriate placement based on Student's educational needs. Id. The IEP team also decided that they would meet regularly as a team to review the data collected once the November 2015 IEP was implemented. TR 606. All IEP team members contributed to the

discussions and decisions. TR 603. Each item on the prepared agenda was completed at the meeting except a review of goals and objectives. TR 601; ASD Ex. A.4, pp. 34-36.

At the conclusion of this meeting, the Student's Mother agreed that the IEP team would send her a full draft of the IEP based on the meeting, and the draft IEP would include the goals and objectives. TR 603. After review of the draft IEP, the Parent agreed to send ASD her comments, questions, and suggested revisions. Id. Once those issues were resolved, ASD intended to send out a prior written notice and implement the November 2015 IEP. TR 604.

Based on that agreement, [redacted] sent the Student's Mother the draft IEP on December 17, 2015 for her to review. TR 604; ASD Ex. B.108. [redacted] received no response or comment from the Parents. TR 604. On January 6, 2016, as a follow-up, [redacted] again emailed the Student's Mother requesting questions, comments, and feedback on the draft IEP. TR 604; ASD Ex. B.108. The Parents did not provide any comments, questions, or concerns following the November 24, 2015 IEP meeting or following the receipt of the draft IEP. TR 604-05.

Based on the decision to meet regularly to review IEP data collection, [redacted] emailed the school-based IEP team on December 16, 2016 to schedule a data review meeting and to prepare for the annual review. TR 605. A data collection review meeting was scheduled for January 22, 2016. TR 606. That meeting never took place because the November 2015 IEP was not implemented, and no data was collected on that IEP as a result. Id.

During the 2015-2016 school year, Student has received and continues to receive services under his February 2015 IEP (Parents Ex. 10). TR 607. As this was Student's current educational placement at the time of the filing of the due process hearing request, the February 2015 IEP became his stay-put IEP.

The draft November 2015 IEP provides the ways in which it differs from the February 2015 IEP by stating "11/24/15 Amendment." Parents Ex. 25. Further, the Present Levels of Academic Achievement and Functional Performance ("PLAAFP") was updated to reflect the goals that Student has completed, and his current classroom, behavior, and self-help needs. Id. The draft IEP included an update based on the VB-MAPP Assessment. Id. at p.4. The draft IEP included updates on occupational therapy, speech therapy, and assistive technology. Id. at pp. 6-7. The draft IEP included new program modifications including a token economy, sensory motor breaks throughout the day, such as rhythmic opportunities or quiet times that Student chooses from a choice board, and data review to be completed with parents as needed. Id. at p. 12. In addition, the draft IEP provided for Student to have access to his Dynavox Maestro SGD, with backup access to an iPad, and provided that maintaining the program will be the responsibility of Student's private SLP. Id. at p. 13. Additionally, the draft IEP provided four hours of services per month from a district BCBA that includes supervision of classroom staff to ensure

fidelity of implementation of ABA training and to support data collection and analysis. Id. The BCBA will also provide two hours of behavioral support to Student. Id. The draft IEP provides that ESY services are required, as the February 2015 IEP did. Parents

The annual goals for Student changed, as well as did the short term objectives for those goals. The baselines for each objective were updated to reflect Student's current progress at the time of the IEP draft.

Based on the expected implementation of the draft IEP that included ABA techniques, [redacted] observed Student's classroom to model discrete trial training. TR 1256. [redacted] used different sets of flash cards to work on specific skills and modeled errorless learning with Student. TR 1256. She prompted Student to get the correct answer and gave him a reinforcer. Id. [redacted] did this with multiple trials because Student is responsive to this teaching method. TR 1256-57. When this took place, [redacted] would run a trial, [redacted] would model, and then [redacted] would run another trial. TR 1258. In addition, [redacted] assisted the classroom staff with taking data based on the ABA training and they would review the data to operationalize behavior. TR 1261-62. [redacted] has worked with [redacted] to go through the process of operationalizing behavior, to create a data-taking system, and to develop baselines. TR 1265. [redacted]. [redacted]'s supervision, training, and modeling took place in order to prepare the staff to implement Student's new IEP, and to continue to build on the skills the staff acquired in their summer ABA training.

[redacted] collaborated to review each of the goals in Student's February 2015 IEP in order to address the training connected to his communication. TR 1310. This review was to ensure that the goals were written in a way that would implement the discrete trial program and to isolate the skills that could be replicated across all learning opportunities at the school. Id. [redacted] then wrote individual programs that supported the starting point for each of the skills identified as target skills by the VB-MAPP. TR 1311; ASD Ex. A.5; ASD Ex. A.1, p. 99. [redacted] aligned their schedules so that they would be present for two to three days a week at the beginning of the new IEP implementation. TR 1316. They planned to model the implementation of the program, observe [redacted] implementing the program, and create a fidelity checklist for consistency. Id. In addition, they would have boxes with data sheets ready for discrete trials and planned to run these trials a minimum of five times daily. Id.

[redacted] developed samples of the programs. Unfortunately, this program was never implemented because the Parents did not consent to the November 2015 IEP, and the February 2015 stay put IEP did not provide for these programs. TR 1317-1318.

Data Collection

Student's February 2015 stay-put IEP requires daily data collection for three goals, including utilizing skills to manage aggressive behavior (goal #1), effectively managing transitions at school (goal #2), and demonstrating compliance with school expectations (goal #3). Parents Ex. 10, pp. 12-14. Goals 4-13 require the collection of weekly data.

The responsibility for data collection lies primarily with [redacted] Student's teacher, Ms. [redacted], his OT, and [redacted], his SLP.

The data collected on Student from August 2015 until January 2016 was produced by ASD and admitted into evidence as ASD Ex E.1-E.6. This data included Student's ULS data, daily behavior logs, service capture records, IEP data, and service notes. Student's progress reports were also entered into evidence as Parents Exhibit 23.

The progress reports provided to the parents by ASD indicated whether Student was progressing on his IEP goals and if so, what level of progression occurred. Parents Ex. 23. [redacted] was primarily responsible for generating these progress reports. The Parents challenged the underlying data and calculations of the progress Student made as reported in the progress reports. TR 1487.

[redacted] testified extensively as to her method of data collection, data interpretation, and calculations of progress. TR 1376-1643. [redacted] testified that there are reasons why she occasionally does not take data, including the first week of school, the days after returning from holidays, if a student is sick, if a parent has notified of a change in medications, or if the main caregiving parent is out of town. TR 1425-27. [redacted] makes her best judgment as to whether some external factors would affect the child in such a way as to make the data unreliable. TR 1427. In those instances, she would not collect data because data is intended to inform her instruction and assist her in meeting the child's educational needs. Id.

At the end of each quarter, [redacted] goes through the data for Student and counts data opportunities. TR 1428. She then goes through and counts the pluses marked on the data sheets. Id. Pluses indicate Student successfully completed the task with the level of support indicated in his IEP. Id. Even if Student successfully completes the task, it only counts as a plus data opportunity if he did so with the appropriate level of support. Id. A copy of the IEP goals is kept in the data binders for Student to ensure that each person taking data knows the proper level of support. TR 1430-31. The data is not the only information informing [redacted] of Student's progress. [redacted] reviews Student's work samples for the quarter. TR 1476-77. [redacted] and her staff meet twice a week and the full life skills classrooms meet once a week to discuss and review data. TR 1434. In addition, [redacted] reviews the daily back-and-forth sheets to communicate with Student's mother to track bowel movements and behaviors. TR 1439-41; ASD Ex. E.3, p.101[redacted] regularly consults with the teacher assistants, other teachers, related service providers, and those that work closely with Student to gather information regarding his progress. TR 1473. This information informs [redacted] progress reports

and the calculations of progress provided. Id. The progress reports are not created in a vacuum of quantifiable data. TR 1486. Whether a child with intensive needs is progressing on a particular skill is not a purely objective determination; it requires some subjective valuation on the part of the observer.

[redacted] testified that based on the data, her observations, and the observations of others, Student is making progress. TR 1643. That progress is more readily identifiable in a big picture context Student can now attend a full-length inclusion class like music, when he could not do that a few years ago, and his maladaptive behaviors have significantly decreased. TR 1642-45. I find that [redacted] data system provides substantial and persuasive data reflecting Student's progress.

[redacted] testified that she entered treatment notes after each session into a program tied to the IEP program. TR 1934. These notes are called service capture notes. Id.; ASD Ex. E.6. These notes reflect the activity, service, intervention, comments, and outcome. TR 1934; ASD Ex. E.6. In order to create the progress notes on Student's speech goals, [redacted] compiles the data from the service capture notes and incidental opportunities of observation. TR 1940, 1942. Ms. [redacted] testified that Student has demonstrated progress. TR 1967. I find that [redacted] data system provides substantial and persuasive data of Student's progress.

ASD offered extended school year services at [redacted] to Student pursuant to a settlement agreement between ASD and the parents. TR 1163; Parents' Ex. 7, p.l. [redacted] did not provide ESY services to Student. TR 171; TR 51011. ESY is necessary for Student because he shows regression when there are breaks or changes in providers. TR 1076. Student's ESY program should be consistent with his current IEP goals to lessen that regression. Id.

Instead of implementing the goals in Student's IEP, [redacted] used different goals developed by reviewing his IEP, the 2014 FBA, the old VB-MAPP, a report from [redacted], and assessments from [redacted]. TR 523. These goals had differing baselines, differing standards for developing baselines, and did not track the progress Student made compared to his progress during the school year. [redacted] also did not use the same augmentative communication device that Student utilized during the school year and at home. TR 525-26. Instead, [redacted] switched Student to a Picture Exchange Communication System ("PECS"). TR 525. [redacted] did not use Student's SGD because the Parent did not ask them to use it, and they assumed it was not effective or the Parent would have brought it to them. TR 526.

At [redacted], the peers that Student had access to include a seven year-old, a fifteen year-old, and a sixteen year-old. TR 156. There are no other students in the age range of Student at STAGES. Id. In fact, while Student received services from [redacted] in the summer of 2015, he shared a classroom with only one other student. TR 184. [redacted], a behavioral technician at [redacted],

testified that she always worked one on one with Student during a daily three-hour session. TR 183. The classroom is a single classroom with a restroom. TR 184. One student shared the room, but each student had their own desk. Id. Next to Student's desk, there was a corner with pillows and a cushioned break area. Id.

76. During August of 2015, [redacted] prepared the final progress report, final graph summary, and other progress report. TR 173; Parents Ex. 11, 15, 16.

IV. CONCLUSIONS OF LAW

1. IDEA requires that all children with disabilities have available a FAPE that emphasizes special education and related services designed to meet their unique needs. 20 U.S.C.

1400(d). FAPE is defined as special education and related services that "(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with an individualized education program required under ... [20 U.S.C. § 1414(d)]." 20 U.S.C. § 1401(9). It is the third prong, the appropriateness of Student's IEP, that is at issue in this due process hearing.

2. A student receives a FAPE when his instruction (1) addresses his unique needs, (2) provides adequate support services so he can take advantage of the educational opportunities and (3) is in accord with the individualized education program." Park v. Anaheim Union High School District, 444 F.3d 1149, 1156 (9th Cir. 2006).

3. A district may violate the IDEA if the district runs afoul of the Act's procedural requirements in creating and implementing an IEP. J.W. v. Fresno Unified School District,

626 F.3d 431, 432 (9th Cir. 2010). Not all procedural violations of IDEA result in denial of FAPE. R.B. v. Napa Valley Unified School District, 496 F.3d 932, 938 (9th Cir. 2007). "A child is denied FAPE only when the procedural violation 'result[s] in the loss of an educational opportunity or seriously infringe[s] the parents' opportunity to participate in the IEP formation process.' Id., (quoting W.G. v. Bd. of Trustees of Target Range School Dist. No. 23, 960 F.2d 1479, 1484 (9th Cir. 1992)). Student's Parents did not timely claim that ASD failed to meet the procedural requirements of IDEA in developing the IEP. A party may not raise issues that were not addressed in the complaint absent the agreement of the other party. 4 AAC 52.500(i)(10). The Parents did not raise any procedural violations in their complaint. Parents did not raise the issue until their oral argument on the final day. Thus, the issue is waived.

Under IDEA and Alaska law, the Student's Parents, as the party demanding due process, bear the burden of proof, by a preponderance of the evidence, on the issues they raised in this

A. ASD's Program and the IEP Provide Student a FAPE.

1. A district meets its FAPE obligations under IDEA if the IEP is "reasonably calculated to provide educational benefits." Bd. of Educ. of the Henry Hudson Cent'l Sch. Dist. v. Rowley, 458 US 176 (1982). An appropriate public education does not require the absolutely best or "potential maximizing education." Gregory K. v. Longview Sch. Dist., 811 F.2d 1307, 1314 (9th Cir. 1987) (citing Rowley, 458 U.S. at 197 n. 21, 200)

2. In determining whether the IEP developed by the team was reasonably calculated to provide meaningful educational benefit, the educational decisions of Student's educational team, which included his special education teacher, general education teacher, speech language pathologist, occupational therapist, department chair, special education coordinator, district BCBA, and APE provider, are entitled to utmost deference. Cordery v. Evergreen Local School District, 917 F.2d 1460, 1464 (6th Cir. 1990) (citing Doe v. Defendant I, 898 F.2d

1186, 1188-89 (6th Cir. 1990)). This is because "the primary

responsibility for formulating the education to be accorded to a handicapped child ... was left by the Act to the state and local education agencies in cooperation with the parents or guardian of the child". Rowley, 458 U.S. at 207. IDEA "relies heavily" on the expertise of school districts to meet its goals. Schaefer v. Weast, 126 U.S. at 59. I find that the decisions of Student's educational team are entitled to utmost deference because the team and ASD have specialized knowledge and experience. Amanda J. v. Clark Cnty. Sch. Dist., 267 F.3d 877, 888 (9th Cir. 2001) (quoting Rowley); Cordery v. Evergreen Local Sch. Dist., 917 at 1464 (citing Doe v. Defendant I, 898 F.2d at 1888-89).

2. IDEA requires that IEPs be reasonably calculated to provide educational benefits or, in other words, be appropriate. Rowley, 458 U.S. at 189. "Appropriate" has been defined as "personalized instruction . . . provided with sufficient supportive services to permit the child to benefit from the instruction." Id. The Ninth Circuit "has emphasized that states are obligated to provide a basic floor of opportunity through a program individually designed to provide an educational benefit to a handicapped child, rather than potential-maximizing education." Hood by Hood v. Encinitas Union Sc. Dist., 486 F.3d 1099, 1107 (9th Cir. 2007) (quoting Ash v. Lake Oswego Sch. Dist., No. 7J, 980 F.2d 585, 587 (9th Cir. 1991)). This has been interpreted to mean that "any program which provides 'some benefit' has by definition provided 'meaningful benefit' and thereby satisfied Rowley and the IDEA." J.L. v. Mercer Island Sch. Dist., 2010 WL 3947373 (W.D. Wash. 2010). In fact, "even if the services requested by parents would better serve the student's needs than the services offered in an IEP, this does not mean that the services offered are

inappropriate, as long as the IEP is reasonably calculated to provide the student with educational benefits." B.M. v. Encinitas Union Sch. Dist., 2013 WL 593417, at *8 (citing D.H. v. Poway Unified Sch. Dist., 2011 WL 8833003, at *5 (S.D. Cal. Mar. 14, 2011); J.L. v. Mercer Island Sch. Dist., 592 F.3d 938, (9th Cir. 2010). This benefit need not be the exact benefit or as substantial a benefit as a child could receive in a private placement. I find that MR receives a measurable and meaningful educational benefit from his current placement at Birchwood.

Districts are required, to the maximum extent appropriate, to ensure that students receiving services under an IEP are educated with nondisabled students. See Hood v. Encinitas Union Sch. Dist., 486 F.3d at 1100; S.J. Issaquah Sch. Dist. No. 411, 109 LRP 25810 (9th Cir. 2009). In carrying out this mandate, the "state educational agency must develop and implement an IEP aimed at providing each disabled child with a [FAPE] in the least restrictive environment." B.M. v. Encinitas Union Sch. Dist., 2013 WL 593417, at *7 (S.D. Cal. Feb. 14, 2013) (citing Poolaw v. Bishop, 67 F.3d 830, 834 (9th Cir. 1995)). Access to non-disabled peers is particularly important for Student, whose particular social language and functional communication challenges indicate a need for him to communicate with his non-disabled peers and his disabled peers to assist him in developing these skills. While one-on-one instruction is appropriate for Student, his functional communication skills and needs require his participation in a general education setting, as well as his life skills class. Courts have recognized that a child "may benefit enormously from the language models that his nonhandicapped peers provide for him. In such a case, the benefit that the child receives from mainstreaming may tip the balance in favor of mainstreaming, even if the child cannot flourish academically." Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1049 (5th Cir. 1989).

Student's current placement in the life skills classroom complies with IDEA's mandate that students with disabilities be educated to the maximum extent appropriate with their non-disabled peers. The IEP developed for Student provides for services to be provided in an intermediate life skills classroom with access to regular education classes like music. Parents Ex. 10; Parents Ex. 25. Evidence in the record reflects Student's unique educational needs, including social language and functional communication needs, can best be met in an environment like his current placement, that allows him access to typically developing peers, other peers using speech generating devices, and regular education classes, like his music class. The record reflects extensive evidence that Student receives an enormous benefit from access to peers and that, although he is nonverbal, he has increasingly been able to interact with his general education peers. Student participates in all-school activities, field trips, general education music classes, APE with general education students, lunch and recess with general education students, and has peers of comparable age and skill level within his classroom. Student's current placement affords him the opportunity to generalize the specific skills targeted in his IEP through differing opportunities for transitioning and social interaction. The developmental benefit from this type of interaction with peers cannot be overstated for Student. There is also evidence in the record to suggest that these interactions aid Student

academically as well because through modeling and mimicking, he can increase his receptive vocabulary, his ability to express that vocabulary, and his ability to generate words and phrases with his SGD. Student's current placement in the life skills classroom at [redacted] is his least restrictive environment because it affords him daily opportunities to participate in general education and interact with typically developing peers. Those interactions are necessary for Student's development.

IDEA requires IEPs to be individually tailored to the unique needs of the child. Amanda J., 267 F.3d at 894. To be individually tailored, Student's capabilities and potentialities must be considered. Blake C. v. Dep't of Educ., 593 F. Supp. 2d 1199, 1213 (D. Haw. 2009). I find that the February 2015 and the November 2015 IEPs satisfy the substantive standard articulated in Rowley. The IEP is individualized on the basis of extensive assessments of Student's sensory needs, cognitive and adaptive skills, classroom observations, motor functioning, academic progress, speech and language, academic functioning, and behavior. The IEP includes objectives to address Student's identified academic deficits in the areas of math, reading and writing, speech/language, and behavior objectives focusing on figurative language, problem-solving strategies, and self-regulation strategies, social skills objectives for appropriate peer interaction, and self-help skills to assist Student in becoming more independent. Parents Ex. 25. These are all areas of need identified by ASD staff, [redacted] staff, [redacted] progress reports, as well as by Student's Mother, other educators, and private providers. Student's educators testified that the goals and objectives developed for Student were developed to address his unique needs and would benefit him educationally. Student's IEP provides for extensive specialized academic instruction, occupational therapy, speech therapy, direct services from a BCBA, ESY services, assistive technology services, and one-on-one support during APE. I am persuaded by the apparent thoroughness of the IEP, the program put together by [redacted] and [redacted], and the testimony of Student's educators at the hearing. I find Student's IEP is tailored to his unique needs, and is reasonably calculated to provide him with meaningful educational benefit.

I also find that Student's goals are measurable, and were adequately measured by the data collected by ASD staff, including [redacted] and [redacted]. Student's goals are meaningful, based on his present levels established in his Evaluation Summary and Eligibility Report ("ESER") and VB-MAPP, and are clearly describable and measurable. [redacted] testified credibly and extensively as to the formulas they used for calculating Student's progress.

Private Placement at [redacted] is not appropriate.

IDEA mandates that disabled children be educated in the least restrictive environment possible ("LRE"). 34 C.F.R. 300.114(a); 4 AAC 52.570. The Ninth Circuit adopted a four-part balancing test to determine whether a placement represents the least-restrictive environment. Sacramento City Sch. Dist. v. Rachel H., 14 F.3d 1398, 1404 (9th Cir. 1994). Consideration must be given to the following factors: (1) the academic benefits of

placement in a mainstream setting, with any supplementary aids and services that might be appropriate; (2) the non-academic benefits of placement, such as the benefits derived from social interactions with typically developing peers; (3) the negative effects the student may have on the teacher and other students; and (4) the cost of educating the student in the mainstream environment. Rachel H., 14 F.3d at 1400.

When comparing [redacted] with [redacted], [redacted] is not Student's least restrictive environment. IDEA requires "to the maximum extent appropriate, children with disabilities are educated with children who are not disabled and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. 1412(a)(5)(A). A private placement is proper if it provides "significant learning and confers meaningful benefit" and is provided in the least restrictive environment. Lauren W. v. Deflaminis, 480 F.3d 259, 276 (3d Cir. 2007).

[redacted] is a school for disabled students only. Placement in a private school which includes no non-disabled peers is contrary to IDEA's least-restrictive environment mandate. S.J. v. Issaquah Sch. Dist. No. 411, 109 LRP 25810 (9th Cir. 2009). In fact, evidence was put forth that Student would be in a classroom with three other [redacted] students a seven year-old, a fifteen year-old, and a sixteen year-old. Student benefits enormously from access to his typically developing peers at [redacted], and his educators testified extensively on this point. Student's access to typically developing peers benefits him both socially and academically. [redacted] does not offer access to any general education classes or students. Student would receive one-on-one training with an aide all day at [redacted]. I find that placement at [redacted] would not be Student's least restrictive environment because it offers no access to typically developing peers and the evidence is extensive that such access is necessary for Student to generalize and develop his communication skills. Student's placement at [redacted] would not be faithful to "Congress's preference for educating children with disabilities in regular classrooms with their peers." Rachel H., 14 F.3d at 1403.

V. CONCLUSION

11. These findings of fact and conclusions of law are not meant to disparage Parents' witnesses: [redacted]; and Student's Mother. I find all of Parents' witnesses to be knowledgeable of Student and his educational needs, and to be credible. Nor are these findings and conclusions meant to disparage [redacted] or [redacted]. Both appear to be very good programs with very able staff who provide educational benefits to autistic children. But the merits of [redacted] is not the issue here. Rather, the issue is whether Student's program at [redacted] provides him a FAPE - it does. Nor are these findings and conclusions meant to question the good faith criticism of the [redacted] program provided by Parents and their witnesses, or their belief that Student is not receiving educational benefit at

[redacted]. Based upon my review of the evidence I must respectfully disagree with these criticisms of the [redacted] program. I find and conclude that the [redacted] program provides Student with meaningful and substantial educational benefit in accordance with his right to a FAPE under IDEA.

Parents have failed to meet their burden of proof by a preponderance of the evidence that ASD's program at [redacted] fails to provide Student a FAPE. On the contrary, the evidence establishes that Student benefits educationally and receives a FAPE at the [redacted] program. Therefore, Parents' request for relief is denied.

VI. RIGHT TO APPEAL

This is a final appealable decision and order under AS 14.30.193(f) and 20 U.S.C. § 1415(i)(1)(A). The Parents have thirty (30) days from the date of this decision and order to appeal directly to the Alaska Superior Court under AS 44.62.560, 34 C.F.R. § 300.516(a), and applicable Alaska rules of court, or to the United States District Court under 20 U.S.C. 1415(i)(1)(A) and 34 C.F.R. § 300.516(a), and applicable federal rules of court.

DATED at Anchorage, Alaska this 9th day of May, 2016.

Appendix B

Due Process Coding Worksheet Used to Establish Inter-Rater Reliability

Due Process Coding Worksheet

State _____ **Case Number**_____

Date of hearing _____

Gender: _____male _____female _____ not indicated

Age range: ___3-5 yrs. ____ 6-12 yrs. ___ 13-18 yrs. ____ 19-22yrs. _____ not indicated

Primary Eligibility category: _____

Due Process Issues:

_____ **IEP Development** (content of IEP, goal and objective development, related services, ESY, transition, improper IEP team makeup, present levels of performance)

_____ **Evaluation** (any disagreement with the evaluation(s) that the district conducted, Independent Educational Evaluation request)

_____ **Procedural Safeguards** (parent consent, lack of records, lack of prior written notice and all notice issues, lack of progress reports, parent participation)

_____ **Identification** (child find –early childhood identification, all issues in regards to the identification of eligibility, disagreement over NOT determining eligibility)

_____ **Behavior** (issues with behavior plans, FBA, manifestation determination)

_____ **Placement** (LRE, placement disputes/disagreements with district proposal)

_____ **IEP Implementation** (not implementing the IEP as specified)

Who prevailed in the case: _____ parent _____ district _____ split

Appendix C

Due Process Coding Excel Worksheet Completed

State	Court case (name of family, ID number)	Date of case	Age Range of student	Age not specified	Gender	Eligibility category	IEP development	Behavior	Placement	Identification	Evaluation	IEP Implementation	Procedural Safeguards
[redacted]		5/9/2016	6 through 12		1	1	1	0	1	0	0	0	0	
		6/29/2012	13 through 18		1	5	0	0	1	0	0	0	0	
		6/29/2012	13 through 18		1	5	1	0	0	0	0	0	0	
		3/28/2012	6 through 12		1	?	0	0	1	0	0	0	0	
		12/30/2011	13 through 18		1	5	0	0	0	0	0	0	0	
		8/26/2011	6 through 12			2	1	0	0	0	0	0	0	
		6/15/2011	6 through 12		1	1	1	0	0	0	1	0	0	
		4/11/2011	13 through 18		1	2	0	0	0	0	0	1	0	
		6/18/2010	13 through 18		1	1	0	0	1	0	0	0	1	
		8/16/2016	6 through 12		1	1	1	0	0	0	0	0	0	
		7/29/2016	6 through 12		1	11	0	0	1	0	0	0	0	
		5/16/2016	13 through 18		1	5	0	1	1	0	0	0	0	
		10/6/2015	6 through 12		1	11	0	0	0	0	0	0	1	
		8/28/2015	6 through 12		1	1	0	0	1	0	0	0	1	
		6/12/2015	19 through 22		1	8	0	0	0	0	0	0	0	
		3/27/2015			1	1	0	0	0	0	0	0	1	
		3/2/2015	3 through 5		1	12	0	1	0	0	0	0	0	
		2/27/2015	6 through 12		1	1	0	0	0	0	0	0	0	
		2/18/2015	13 through 18		1	5	1	0	0	0	0	0	0	
		12/15/2014		x	2	1	0	0	0	0	0	1	0	
		8/4/2014			1	1	0	0	0	0	0	1	1	
		4/14/2014	6 through 12		1	2	0	0	0	0	0	0	1	
		3/18/2014	19 through 22		2	2	0	0	0	0	0	0	0	
		1/31/2014	6 through 12		1	1	0	0	1	0	0	0	0	
		8/12/2013	6 through 12		1	1	0	0	1	0	0	0	0	
		8/2/2012	6 through 12		1	2	0	0	0	0	0	0	0	
		3/13/2012	6 through 12		1	8	0	0	0	0	1	0	0	
		3/1/2012	6 through 12		2	2	0	0	0	0	0	0	0	

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