

Analysis of Due Process Decisions In Idaho: 2004 To 2012

A Dissertation

Presented in Partial Fulfillment of the Requirements for the

Degree of Doctor of Education

with a

Major in Education

in the

College of Graduate Studies

University of Idaho

by

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May 2014

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Authorization to Submit Dissertation

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Abstract

This study used an explanatory mixed methods design to examine special education due process outcomes in Idaho for the time period of January 1, 2004 to June 30, 2012.

The study was done in two phases. Phase one of the study explored what types of special education related issues are being brought before the state hearing officer(s) as due process complaints in Idaho (as measured by the DSF). Phase two of this study explored common themes in the findings/outcomes of the due process decisions between lawyers perspective and the DSF, and the lawyers perspective what implications do these have for the future of special education services in Idaho. The guiding hypothesis is that there is a correlation between the DSF themes and lawyers perceptions.

From the two research questions there were five themes that emerged. In question one three themes emerged. The three themes were (1) the disability areas brought before hearing officers are specific learning disability, severe multiple disability, other health impairment and autism; (2) highest area of complaint was evaluation and eligibility; and (3) outcome of decisions was predominantly dismissal. In question two, two themes emerged. The two themes were (1) there was an increase of due process decisions after the newest release of the State of Idaho Special Education Manual in 2007; and (2) majority of decision were brought by the student and/or their families.

Acknowledgements

“The fact is, there is no foundation, no secure ground, upon which people may stand today if it isn’t the family. If you don’t have the support and love and caring and concern that you get from a family, you don’t have much at all. Love is so supremely important. As our great poet Auden said, ‘Love each other or perish’.”

--Mitch Albom, *Tuesdays With Morrie*

To my husband Don, your strength and support through this process has been invaluable and wonderful. Without it I would not be where I am now.

DJ and Madi remember that no matter where you go in life, be the best that you can and give all of yourself. Remember to try or you will never know. I will love you no matter what!

Thank you to my parents for instilling in me the value of an education and the belief that education is a noble profession.

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Chapter One

Introduction

Special education law (*PARC v. Commonwealth of Pennsylvania [1972]*; *Board of Education v. Rowley [1982]*) in the United States is a growing and dynamic field that continues to define policy and practice in American schools. The evolving nature of special education statutes and law, dictates a need for school districts to be informed about legal issues brought to the attention of courts and how different legal decisions affect their students and/or teachers (Maass, 2005). School districts have an obligation to stay current with trends in litigation and make staff members knowledgeable regarding the trends and changes in special education law in an attempt to minimize opportunities for due process hearings. They also need to be proactive, instead of reactive, recognizing situations which may arise in their districts. Improved staff knowledge about current trends in special education and special education litigation will decrease conflict between school district personnel and parents/adult students. The state has developed a new procedure for conflict resolution in special education dispute resolution. The hope of this procedure is to increase the amount of resolved conflicts and decrease the number of due process hearings brought before hearing officers in the state of Idaho. With the decrease in due process hearings the monies spent on hearings can be spent on educational programming for special education services.

According to the State of Idaho's *Special Education Manual (2007)*, a parent/guardian (student's parents, guardian or appointed surrogate) and/or adult student (a student that has been identified on their Individual Education Plan (IEP) to make educational decisions for themselves) or a school district may request IEP facilitation or dispute

resolution (State of Idaho, 2007). The term “parent” will be used hereafter to be all inclusive of parent/guardian and surrogate parent to eliminate confusion. School districts and parents of children with disabilities often disagree about the nature of a child’s special education program. Many disagreements can be resolved amicably; they can also degenerate into protracted, acrimonious, expensive legal conflicts, exacting a terrible emotional toll on parents, children and school personnel (Alexander & Alexander, 2009). The intent of this analysis of due process hearings in Idaho is to identify emerging themes and issues benefiting for lawyers, schools, districts, and parents in order to minimize further litigation and develop positive working relationships.

Statement of the Problem and Purpose of the Study

Examining due process hearings since the last reauthorization of the Individual with Disabilities Education Act (IDEA) in 2004 is valuable for all involved in order to improve the practice of special education in the state of Idaho. To date, there has not been a focused examination of special education due process decisions with regards to outcomes and trends in the State of Idaho. This study specifically focused on the State of Idaho due process decisions and outcomes from 2004 to 2012. It is envisioned educational leaders will use the results of this study to inform professional practice through proactive decisions regarding the delivery of special education services and minimize the probability of future litigation. An examination of the due process hearings would help ascertain if the state is similar to current national trends, if the new conflict resolution process is successful and determine future training for staff and faculty.

For the period of time, 1991 to 1997, Zirkel and Gischlar (2008) found the total number of adjudicated hearings nationally had a steady upward trajectory. During 2005, the

last year of Zirkel and Gischlar's study, there were an average of approximately 2,800 due process hearings in the United States. The examination of due process hearings in the State of Idaho for 2004 to 2012 will determine if the Idaho is on a parallel path with the national trend. Idaho is a one-tier hearing officer, limited due process state (Zirkel & Scala, 2010). This means that the decision is limited at the hearing officer level. During the time period defined by this study the State of Idaho had 27 formal due process hearings (http://www.sde.idaho.gov/site/special_edu/dispute.htm).

Research Questions

This explanatory mixed methods case study examined Idaho due process outcomes to find common themes and trends that can inform future practice. The research questions emerged based on a review of the literature, and through prior court decisions that have been used as a basis for reasoning in hearing outcomes. The following questions guided this study:

- 1. What types of special education related issues are being brought before the state hearing officer(s) as due process complaints in Idaho?*
- 2. What are common themes in the findings/outcomes of the due process decisions, and what implications do these have for the future of special education services in Idaho?*

The information gathered from this study may be useful to parents, educational leaders, educators, service providers and the Idaho State Department of Education to ensure compliance in special education is achieved and maintained. Furthermore, areas of concern were illuminated as to where there have been issues in the past with a quantifiable number or reasoning by practitioners.

Due process hearings can easily cost a school district \$40,000 per student (Feinberg, Beyer, & Moses, 2002). School administrators aware of the results of this study would be better equipped to educate their staff. Leaders will become mindful of the areas of possible financial obligation incurred if the proper procedure or policy is not followed or in place, and have the potential to develop new policies and procedures. Most importantly, this research will help parents, educators, and students with disabilities receive better service in schools and the community through identification of areas for further training and improvement in the school environment.

Role of the Researcher

The researcher has been a practitioner for 17 years and has served as a general education teacher, school counselor, school psychologist, special education consulting teacher and special education administrator. Therefore, the information collected and analyzed is based on an educational perspective.

As a new administrator, the researcher wanted to know where there may be pitfalls in Idaho, with regards to interpretation of special education law or if there were errors in compliance. While conducting initial research during coursework, coupled with a natural curiosity regarding special education law, the researcher determined that this is an area she wanted to pursue. The researcher maintains certain beliefs regarding special education. These beliefs are:

1. Special education educators went into education to teach and in particular, to teach students with special needs.

2. Special educators want to act legally. They want to know current trends along with following the intent of the law. Educators often times need to know what these trends and outcomes of litigation are and how they impact their practice(s).
3. Keeping good educators in the field is difficult due to the number of high need cases that are in public schools and educators experiencing burn out. Burn out of special education educators is often attributed to compliance with the law and additional paperwork (Rock and Bateman, 2009).

The topic was selected due to interest in special education law and natural curiosity in regards to the topic. One of the researcher's first mentors instilled the necessity to have an eye for compliance as a way to avoid a due process hearing. Special education directors need to be mindful of compliance issues, as well as, to follow the trends in special education and, in particular, special education litigation to aid in the development of trainings for all school staff.

Conceptual Framework

There has been a "virtual explosion" in special education due process hearings and litigation (Newcomer & Zirkel, 1999, p. 470; O'Shea, Bateman, Algozzine, & O'Shea, 2004). Lawmakers made changes to the due process requirements in the reauthorization of IDEA in 2007. One such change resulted in prohibiting school districts and personnel from filing for due process if parents do not consent to special education services and outcomes. Both parties' attorney fees can be awarded to a prevailing state or local education agency if the courts view the litigation as frivolous or unnecessary (Smith, 2005).

The conceptual framework utilized for this study is based on the work of Rock and Batemen (2009), "Using Due Process Opinions as an Opportunity to Improve Educational

Practice.” Rock and Batemen (2009) brought together the concepts of due process cases, potential benefits overlooked in the literature and in practice to give reason as why due process cases are instructional and to give suggestions on how to apply the decision summaries into practice. Rock and Bateman (2009) dovetailed the work of Yell, Rogers and Rogers (1998), by adding the historical perspective of the legislation and litigation in special education. “The history of special education law is a chronicle of the efforts of parents and advocacy groups in the courts and the legislatures of this country” (Rock and Bateman, 2009, p.1).

Teachers enter the profession with the philosophy that they became teachers to teach students, not lawyers (Rock & Batemen, 2009). Practices in special education are based on litigation. Special education is different from general education, in that the foundational framework is not from a theory or philosophy but instead based on litigation. Similarly, special education is different from general education due to the fact that policy and procedures are derived from case law which then becomes policy. “Nevertheless general and special education professionals need to enhance their knowledge about special education law and find practical benefit in present-day due process opinions for two reasons: legal and practical” (Rock & Bateman, 2009, p. 2).

Zirkel (2005, 2010); Zirkel and Gischlar (2008); Zirkel and D’Angelo (2002); Zirkel, Karanxha, and D’Angelo (2007) and Zirkel and Scala (2010) have repeatedly cautioned education professionals about the legalization of special education in the 2004 reauthorization of IDEA, and they suggest a decrease in the rising number of due process hearings. The findings of this study may be able to reverse the negative perceptions of due process hearings and decisions and turn them into positive experiences to learn from;

providing knowledge about the trends and patterns in Idaho. This will further assist educators to develop better practices for their students.

The next two sections address the legal and practical components of special education law. The practical application section takes into account how legislation and case law affects the family and the educational staff, as well as, the implementation of guidelines provided by law. The examination of the legal piece is based on the 1997 statute entitled the Individuals with Disabilities Education Act (IDEA) and the 2004 reauthorization referred to as Individuals with Disabilities Education Improvement Act (IDEIA). The legal section focuses on the provisions and foundation of IDEA and IDEIA, Individual Education Plan (IEP) development, and due process rights and protections.

Legal considerations.

IDEIA necessitates educators need to have a frame of reference with regard to educational rights, federal mandates, and civil statutes extended to students with exceptionalities and their families (deBettencourt, 2002; Getty & Summy, 2004; O'Shea et al., 2004). In Idaho, special educators are taught in their preparatory programs to refer to the *Idaho State Special Education Manual* for guidance on the state requirements. The *Idaho State Special Education Manual* is derived from IDEA and IDEIA. "Understanding the implications of IDEA is the first step toward complying with the complexities of the law and providing these students with Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE)" (Rock & Bateman, 2009, p.3).

The language in IDEA outlines federal statutory rights and civil protections for students with disabilities, although the overall policy was written to be intentionally vague (Dagely, 1995; Drasgow, Yell & Robinson, 2001). Newcomer and Zirkel (1999) suggested

that Congress may have adopted ambiguous statutes because of academic deference, a practice in which legislators abstain from substituting their judgment for that of educators who have special expertise. This ambiguity tends to breed conflict and questions regarding interpretation of the law. Under IDEA, Lawmakers initially established procedural safeguards to assist families with their rights, and establishing expectations and guidelines that need to be followed.

Procedural safeguards outlined in IDEIA protect the rights of students and their families. “Specifically, the law ensures that parents have the right to examine records, receive independent evaluations, receive prior written notice, and challenge educational decisions at an impartial hearing” (Rock & Bateman, 2009, p. 3). If parents decide to pursue due process, they have the right to retain counsel, cross-examine witnesses, present evidence, compel witnesses, and receive a written or a taped hearing transcript (O’Shea et al., 2004). A due process complaint may be classified as procedural, substantive, or both. Procedural matters are related to upholding the letter of the law, whereas substantive issues center on preserving the spirit of the law (Lombardi & Ludlow, 2004).

The steps leading to due process in Idaho are as follows: first, the IEP team meets and one of the parties does not agree to a certain part or parts of the meeting. After an attempt at agreement is unsuccessful one of the parties can then file with the Idaho State Department of Education to request a mediation or due process hearing (*State of Idaho Special Education Manual*, 2007). Due process hearings are convened with a third-party hearing officer. Examples of this third party can be a mediator, due process hearing officer, or an administrative law judge. The intent of having a third party is impartiality, competence in conducting hearings, knowledge of special education law, and ability to write legally

appropriate decisions (Zirkel & Gischlar, 2008). The outcome or decision of a due process hearing is legally binding. The next step to appeal a hearing is to file in federal district court and then, if an appeal is needed, it would proceed to a federal circuit court. In Idaho due process hearing officers are licensed Idaho attorneys who receive additional training from the State Department of Education.

There is a need for additional education of school personnel to better understand special education law. Teachers need to have knowledge of the law as a frame of reference in special education programming. General education teachers are required members of the IEP team. Their role at the IEP meeting is the curriculum expert. In many IEP meetings the general and special education teachers work together to help students reach educational goals in the Least Restrictive Environment. General education teachers are often times responsible for implementing accommodations developed in the IEP meetings and articulated in the accommodations section of the IEP. The IEP is a contract between the school district and the student or their parents if the student is under 18. It documents specialized instruction and accommodations to be implemented in assisting the students learning and giving them a chance to be successful in their school programming. In two different surveys, principals and practicing teachers indicated that they had not received any training in special education law in their licensure programs (Gartin, Murdick, Thompson, & Dyches, 2002; Wakeman, Browder, Flowers, & Ahlgrim-Delzell, 2006).

Educators can obtain further training in law through in-service, trainings, web-based instruction, or professional development from the local or state level. Another way practitioners can obtain knowledge is through reviewing decisions that have been brought before the state. This would enable practitioners to improve their understanding of particular

cases that are the basis of the hearing officer's findings and help them to not make the same mistakes that possibly lead to litigation. In their article, Rock and Bateman (2009) cite (Lombardi & Ludlow, 1998; Margolis, 1998; Miller & Connolly, 2003; Rickey, 2003; Scheffel et al., 2005; Weishaar, 1997) in that the understanding of special education law and due process has three main benefits. The benefits are as follows:

1. Practitioners might be better prepared to provide appropriate services, thereby ensuring the letter and the spirit of IDEIA.
2. School personnel might participate more effectively in dispute resolution.
3. Educational professions might avoid due process all together.

When educators understand the law, then applying the law in practice needs attention and refinement. This is the practical perspective of special education. Different areas of practical application are working with families, possibility of due process, the negative connotation and retention rate in special education, financial impact, social and emotional impact, and decision making.

Practical considerations.

Provisions of IDEIA require a partnership between the school and parents. Special educators in schools are aware that IDEIA requires parents to have meaningful participation in the education of their students. Another expectation is teachers need to work with parents to design and implement Free and Appropriate Public Education (FAPE) programs in the Least Restrictive Environment (LRE) for the student. There is documentation that many parents are not afforded this opportunity (Caruso, 2005). School staff and parents need to develop a working relationship. By utilizing a working relationship trust is built. This, in turn, will have an end result of strengthened partnerships between parents and educators,

better special education services for students with disabilities, improved academic and behavioral outcomes, and fewer court battles (Dagley, 1995).

Due process has a negative connotation and is often viewed with “fear” and “resentment” (Lombardi & Ludlow, 2004); this perception may be partially responsible for the high turnover rate in special education. Billingsley (2004) stated this turnover is dependent on several variables such as; high stress environment and dissatisfaction of having to do more paperwork versus working with students. Additionally, “...attrition was high among younger teachers, low for teachers during the midcareer period, and high again as teachers retired” (Billingsley, 2004, p. 43). Some researchers have asserted that negativity often influences practitioners’ perceptions about due process and might influence the increasing number of professionals who are deciding to prematurely leave the field (Boe, Bobbitt, Cook, Witener, & Weber, 1997; Getty & Summy, 2004). With due process there are some tangible and intangible consequences. One of the tangible consequences is the financial burden of due process suits on schools and districts. Cost of due process hearings can range from \$10,000 to millions of dollars for each party. On average a due process case will cost a school district around \$40,000 (Feinberg, Beyer, & Moses, 2002). Bateman and Linden (2006) stated “...the loss of time and money in dispute resolution is undeniable” (p. 209). The costs of dispute resolution are derived from legal fees, human resources for substitute teachers, and time for professionals to gather and organize documentation and attend meetings. Another consequence is the effect on student learning due to the teacher not being able to provide instructional/support services because they are not in the classroom and are in meetings and/or hearings.

An intangible effect is the weakened or destroyed relationships, and strained confidence and trust between the school and the parent (Lake & Billingsley, 2000). The cost effect on the family is both monetary and emotional. Lake and Billingsley (2000) stated “...parents have reported feeling overwhelmed by the conflict, and the stress may be exacerbated in situation such as single-parent families, foster or adoptive homes, homeless families and families with a large number of children” (p. 241). The social and emotional piece is hard to measure; one cannot quantify emotions. One way to ease the cost of the tangible and intangible expenses is to become more familiar with due process cases in order to make informed recommendations in regards to programming and decision-making for students with special needs.

Special education decision-making is based on an implicit process of assessing the risks, costs, and benefits of various placement and programming options (Meinhold, Mulick, & Teodoro, 1994). Decision-making in schools is not only for special education but for all educators. General education staff also needs to be familiar with special education law and special education process because they are often responsible for delivering content and implementing accommodations from a student’s IEP.

Definition of Terms

The following terms are defined for the purpose of this study:

Adult student. An “adult student” is a student who is at least 18 years of age to whom special education rights have transferred under the IDEA 2004 and Idaho Code (*State of Idaho Special Education Manual*, 2007).

Alternative dispute resolution. Alternative dispute resolution refers to an advisory opinion, settlement agreements, and pre-hearing agreements (Caretta, 2005).

Change of placement. Removal of a child with a disability from the child's current educational placement. When the removal is for disciplinary purposes, regulations apply (34 CFR §300.536).

Change of placement for disciplinary reasons. A removal from the current educational placement for more than 10 consecutive school days or a series of removals that constitute a pattern when they total more than 10 school days in a school year. Factors such as the length of the removal, the proximity of the removals to one another, and the total amount of time the student is removed are indicators of a pattern (State of Idaho, 2007).

Children with disabilities. Includes children, ages 3-21, with intellectual impairments, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), a serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities who, because of one or more disabilities, need special education and related services (20 USC, Section 1401, (1)(A)(B)).

Civil action. A judicial action that any party who is aggrieved by the final decision of a due process hearing officer may bring in either a federal district court or a state court of competent jurisdiction (as designated by the state) (State of Idaho, 2007).

Dispute resolution. Dispute resolution refers to: complaints, mediation, and due process hearings as described in federal and state special education regulations (Caretti, 2005).

Due process hearing. An administrative hearing conducted by a State Department of Education (SDE)-appointed hearing officer to resolve disputes on any matter related to

identification, evaluation, educational placement, or the provision of a free appropriate public education (State of Idaho, 2007).

Expedited due process hearing. An administrative hearing conducted by an SDE-appointed hearing officer to resolve disputes concerning discipline for which shortened timelines are in effect in accordance with the IDEIA 2004 (State of Idaho, 2007).

Free appropriate public education (FAPE). Defined by the IDEA as providing full educational opportunity to all disabled children between the ages of 3 and 21, at public expense, including children with disabilities who have been expelled or suspended from school (20 USC, Section 1412 (1)(A)).

Expulsion. Removal of a student from school for an extended period of time. For general education students, services usually cease during an expulsion (State of Idaho, 2007).

Individuals with Disabilities Education Act (IDEA). Originally enacted by Congress in 1975 as the education for all Handicapped Children Act. It has been amended and reauthorized by congress over the years (1978, 1986, 1990, 1997, 1999, 2004). IDEA mandates a free and appropriate public education (FAPE) for all children with disabilities, ages 3 through 21 (20 USC, Section 1401).

Individualized Education Plan (IEP). A written-plan for each disabled child that is developed, reviewed, and revised by a team comprised of parents and school personnel, and in accordance with Section 1414 (d) of the IDEA.

IEP team. A team of qualified professionals and the parent(s) who meet to develop an IEP for the child (Caretta, 2005).

Least Restrictive Environment (LRE). It requires a student with a disability, to the maximum extent appropriate, be educated with non-disabled children. Education in separate classes, separate schooling, or removal of disabled children 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” (20 USC Section 1412 (5)).

Mediation. Form of assisted dispute resolution in which participants come together to resolve their differences with the aid of a neutral third party (Nowell & Salem, 2007).

Parent. A biological, adoptive, or foster parent of a child; a guardian (but not the state if the child is a ward of the state); an individual acting in the place of a biological or adoptive parent (including a grandparent, step parent, or other relative) with whom the child lives; an individual who is legally responsible for the child’s welfare; an adult student; or a surrogate parent who has been appointed by the district (*State of Idaho Special Education Manual*, 2007).

Related services. Supportive services such as speech-language pathology, audiology services, psychological services, physical and occupational therapy, recreational social work services, counseling services, orientation and mobility services, and medical services (only for diagnostic and evaluation purposes) that are required for a disabled child to benefit from his/her special education program (20 USC, Section 1401 (22)).

Special education. Specially designed instruction, at no cost to parents, to meet the unique needs of a disabled child, including instruction occurring in the classroom, home, hospital, institution or other settings. (20 USC, Section 1401 (25)(A)).

Summary

Special education due process decisions are an area of case law that is continuing to expand and define education for students with disabilities in the U.S. Disagreement about services and supports for students with disabilities often cause conflict between schools and parents. If common ground cannot be found, either party may file a formal complaint with the State Department of Education and, if necessary, file for a due process hearing. To date, there has not been an examination of due process decisions and commonalities for the state of Idaho. Due process decisions with a common theme may help educators and parents to conceptualize the best education for the student with special needs. The findings of this study can inform teacher preparation programs, affiliated specialty programs (PT, OT, SLP), the professional practice of special education services, maximize the working relationship with parents, and minimize the likelihood of future due process hearings. In the next chapter a review of literature encapsulates the historical timeline of special education with regard to legislation and court decisions.

Chapter Two

Review of Related Literature

The research for this dissertation focused on special education law and specifically case law that has defined due process. Strategies used for acquiring articles and information for the literature review included using the University of Idaho library databases; *Westlaw*; Google Scholar; obtaining articles from electronic databases and reference material; State of Idaho Department of Education website; searching online research databases using a variety of search strategies including keywords, subjects and author names and using the reference sections of books, journal articles and dissertations to search for cited references. Key words such as: due process, Idaho, formal complaint, mediation, special education, Least Restrictive Environment, litigation, and historical timeline were used to gather articles pertaining to this review. Although over 55 articles, books and dissertations were reviewed, approximately 15 were not used for the literature review. Sources of information were rejected if the data of the research and publication was greater than 10 years old or the author targeted data for a specific disability category. The documentation used in this review was chosen because it provided background information on, and proof of, the historical significance of special education, case law that influenced legislation and outcome possibilities when disagreement is present.

This review of related literature explored the relevant information in the following areas: (a) sources of law; (b) the history of special education practices; (c) the history of special education law; (d) formal complaints, due process and mediation. These topics assisted in the development of the framework of this study on the reasoning of formal complaints and due process decisions.

Sources of Law

The Individuals with Disabilities Education Act (IDEA) 1997 evolved through three primary sources of law within the American legal system: federal and state constitutional law, statutory law, and case law (Zenick, 1999). While the U. S. Constitution is silent about public education, the federal government has become involved in education through two different ways. The first is through funding of programs and the other one is through due process and equal protection clauses of the Fifth and Fourteenth amendments (Zenick, 1999). Both of these amendments protect citizens with disabilities from the arbitrary use of government power to deny an individual to life, liberty, or property (Vontz, 2003). The Fifth Amendment stated:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation (U.S. Const. art. V).

The Fourteenth Amendment, Section One states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (U.S. Const. amend. XIV, § 1).

IDEA is an example of “statutory law with fairly extensive and highly specific regulations for compliance” (Zenick, 1999, p. 24). Case law has been shaped at both the state and federal level. In order to see how special education law has evolved, an examination of historical and foundational cases in special education litigation needs to be reviewed.

History of Special Education Law Practices

Acceptance and civil rights for people with disabilities has been a slow process. People with disabilities have been shunned, ostracized and abused and have always required protection and special consideration (Podemski, Marsh, Smith & Price, 1995). Podemski et al., (1995) stated in 1968, the trend of mainstreaming encouraged all municipalities to become more aware and integrate people with disabilities into being active members of society through increased access to public buildings, public transportation and public services. In order to obtain a perspective on how slow this acceptance has been, one must look at how the sequential order of legislation and litigation are intertwined. The outcomes of these two factors influenced states to develop special education manuals to serve as guidance for professionals to perform their duties.

Chronological Timeline of Special Education Legislation and Litigation

The best way to examine the history of special education law and guidelines is to look at the litigation that has been brought before several different courts around the United States. These cases serve as a guide for practitioners and families for expectations of

services and outcomes. Special education in the United States is impacted by two different governing factors. The following national statutes, regulations, and lawsuits are presented in chronological order due to the fact that they build on each other. Special education law, more so than any other type of educational law, has been defined more by the outcomes of legal disputes and judicial orders. Foundational laws like the Rehabilitation Act of 1973, Education for All Handicapped Children Act (EAHCA), the Individuals with Disabilities Education Act (IDEA), and the Americans with Disabilities Act (ADA) have all emanated from prior legal rulings in circuit courts around the country. These policies provide the civil rights framework and compliance guidelines for teachers, administrators and other school personnel. Tracing the historical progression of these cases and policies will provide a picture of the central role of the legal dispute process in defining and driving civil rights protections, policies, and practice within American schools for students with disabilities.

Brown v. Board of Education (1954)

Brown v. Board of Education (1954) was a class action case with plaintiffs from the states of Kansas, South Carolina, Virginia, and Delaware. It was heard before the United States Supreme Court in 1952 and then reargued in 1953 with a decision and opinion given in 1954. The premise of the case was African-American minors, through their legal representative, sought the aid of the courts in obtaining admission to the public schools of their community on a non-segregated basis. This segregation was alleged to deprive the plaintiffs of the equal protection of laws of the 14th Amendment. The plaintiffs contended that segregated public schools were not “equal” and could not be made “equal,” and that hence they were being deprived of the equal protection of the laws.

In the court's opinion, written by Chief Justice Warren, it was stated that education "is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment" (*Brown v. Board of Education*, 1954). The court examined the question of "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities?". The court came to the conclusion that they believed that it did. The Supreme Court ruled "the field of education separate but equal has no place. Separate educational facilities are inherently unequal" (*Brown v. Board of Education*, 1954; Hurwitz, 2008). *Brown v. Board of Education* (1954) was a pioneer in American education and set a precedent to have education be accessible by all.

Pennsylvania Association of Retarded Children (PARC) v. Commonwealth of Pennsylvania (1972)

Another case known as *The Pennsylvania Association of Retarded Children et al. v. Commonwealth of Pennsylvania et al.* (1972), was a civil rights case brought before the court by the *Pennsylvania Association of Retard Children (PARC)* and their parents for thirteen students that brought suit due to the fact that they did not have free or appropriate education. The outcome was that in the area of pre-school program of education, students were not being allowed to access services before school age. The court acknowledged that this was incorrect and should include this age range. Another finding was that the school district needed to pay for tuition or tuition maintenance when a student attends a private school. This also included care (*PARC v. Commonwealth*, 1972). The last outcome of the case was that the Commonwealth could not deny homebound instruction. The overreaching

theme of the case established the concept of LRE. This enabled students to access a general education classroom, not solely a special education classroom or in a different building. The court also identified and recognized due process “requires a hearing before retarded children may be denied a public education” (*PARC v. Commonwealth*, 1972). *PARC v.*

Commonwealth (1972) was the foundational ruling that outlined the central construct of a free and appropriate education that is currently enshrined as a fundamental civil right in IDEA.

Mills v. Board of Education (1972)

Mills v. Board of Education (1972) was a civil action case in which special needs students were excluded from public education and facilities or alternative placement at a public expense based on their disabilities. There were two outcomes from the case. The determinations were (1) the District of Columbia failed to provide public supported education and training to plaintiffs and other “exceptional” children, members of their class, and (2) the excluding, suspending, expelling, reassigning and transferring of “exceptional” children from regular public school classes without affording them due process of law (*Mills v. Board of Education*, 1972).

In District Judge Waddy’s written opinion of the court, he wrote “a fortiori, the defendants’ conduct here, denying plaintiffs and their class not just an equal publicly supported education but all publicly supported education while providing such education to other children, is violative of the Due Process Clause.” The court found in favor of the children declaring:

The District of Columbia shall provide to each child of school age a free and suitable publicly-supported education regardless of the degree of the child’s

mental, physical or emotional disability or impairment. Furthermore, defendants shall not exclude any child resident in the District of Columbia from such publicly-supported education on the basis of a claim of insufficient resources (*Mills v. Board of Education*, 1972).

Hurwitz (2008) restated the ruling and the intent of the court as “Free and Appropriate Education” (FAPE) for all children. Also, included in the outcome of the case were: (a) provisions for individualized education programs (IEPs); (b) an alternate placement of education if a student with special needs cannot be educated in a general education setting; (c) periodic reviews of a child’s status, progress, adequacy of any educational alternative; and (d) due process procedures. *Pennsylvania Association of Retarded Citizens v. Commonwealth* (PARC, 1972) and *Mills v. Board of Education* (1972) were anticipatory cases and provided many of the central policies and protections that were formally adopted within the Education for All Handicapped Children Act of 1975.

Section 504 of the Rehabilitation Act (PL 93-112)

Section 504 is defined as “an individual with a disability as one who (i) has a physical or mental impairment which substantially limits one or more of a such person’s major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment” (29 U.S.C.A. Section 706 (7)(B)). Major life activities could include seeing, hearing, and walking, but also may include exerting oneself and attending school (Section 504, 1973). Section 504 applies to all agencies receiving federal funds for any purpose, and such funds may be forfeited if charges of agency discrimination against persons with disabilities are sustained (Alexander & Alexander, 2009). Section 504 requires the schools to reasonably accommodate the child but is far less prescriptive than the IDEA.

The difference between Section 504 and the IDEA is that IDEA establishes a very detailed set of rules and procedures for states to follow in providing FAPE, whereas Section 504 prohibits discrimination against all persons with disabilities, including school-age children, regardless of whether they require educational services. Another provision is that an appropriate education program that meets the IDEA requirements will also satisfy Section 504. Section 504 applies to all governmental entities that receive federal financial assistance and IDEA only applies to state and local schools. Lastly, parents of children with disabilities may be entitled to services under Section 504 (Section 504, 1973). Section 504 provides accommodations for people so that all have the same opportunities to accomplish tasks. Section 504 is a component of the IEP and is referenced as accommodations.

Education for All Handicapped Children Act (PL 94-142)

The Education for All Handicapped Children Act (PL 94-142) or EAHCA was the first national statute that established the system of special education that we know today. There were six tenets of this Act. They were: (1) a free and appropriate public education, (2) an individualized education program, (3) special education services, (4) related services, (5) due process procedures, and (6) the least-restrictive environment (LRE) in which to learn (U.S. Department of Education, 1994). Students were brought into public schools from institutions. Students were then brought from the specialized classrooms into the general education classrooms.

It mandated that public schools provide a *free and appropriate public education* (FAPE) to all children with disabilities. This legislation ensured equal educational opportunities for all children with disabilities, akin to that available to non-disabled children (Alexander & Alexander, 2009). EAHCA looked to *PARC v. Commonwealth* (1972) and

Mills v. Board (1972) to establish that students with disabilities be educated in a program custom tailored to their needs at no cost to the student.

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

Amy Rowley was a student with minimal residual hearing and was an excellent lip reader (*Board v. Rowley*, 1982). Her parents were also deaf.

The disparity between Amy's achievement and her potential led the court to decide that she was not receiving a 'free appropriate public education,' which the court defined as 'an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children (*Board v. Rowley*, 1982).

This case regarded FAPE and how the EAHCA does not require a state to maximize the potential of each special-needs child. In the opinion that was written by Justice Rehnquist, stated, "The educational opportunities provided by our public school systems undoubtedly differ from student to student, depending upon a myriad of factors that might affect a particular student's ability to assimilate information presented in the classroom" (*Board v. Rowley*, 1982). He went on to state "The requirement that States provide 'equal' educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons." The court determined that Congress sought primarily to identify and evaluate handicapped children, and to provide them with access to a free public education and not to give them the maximum extend of the services (*Board v. Rowley*, 1982). Specifically the court stated:

Insofar as a State is required to provide a handicapped child with a ‘free appropriate public education,’ we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction (*Board v. Rowley*, 1982).

Honig v. Doe (1988)

In this case, two students were: proposed expulsions and indefinite suspension for conduct attributable to their disabilities deprived them of their congressionally mandated right to a free appropriate public education, as well as their right to have that education provided in accordance with the procedures set out in the EHA (*Honig v. Doe*, 1988).

The district court judge ordered the school district from taking any disciplinary action other than a 2 or 5-day suspension against any disabled student for disability-related misconduct, or changing the educational placement without parental consent pending completion of any EAHCA proceedings (*Honig v. Doe*, 1988). The Court of Appeals for the Ninth Circuit affirmed the orders with slight modification. The modification was as follows:

an indefinite suspension in aid of expulsion constitutes a prohibited ‘change in placement’ under 1415(e)(3), the Court of Appeals held that the stay-put provision admitted of no ‘dangerousness’ exception and that the statuette therefore rendered invalid under provisions of California Education Codes (*Honig v. Doe*, 1988).

The Act establishes a comprehensive system of procedural safeguards designed to provide meaningful parental participation in all aspects of a child's educational placement, including an opportunity for an impartial due process hearing with respect to any complaints such parents have concerning their child's placement, and the right to seek administrative review of any decisions they think inappropriate (*Honig v. Doe*, 1988).

One of these is referred to as "stay-put" which directs "that a disabled child 'shall remain in their then current educational placement' pending completion of any review proceedings, unless the parents and state or local agencies otherwise agree" (*Honig v. Doe*, 1988). The issue that faced the court was "in the face of this statutory proscription, state or local school authorities may nevertheless unilaterally exclude disabled children from the classroom for dangerous or disruptive conduct growing out of their disabilities" (*Honig v. Doe*, 1988). The school district may suspend a child who is dangerous to themselves or others for up to 10 days without violating the stay-put provisions. The overarching theme of *Honig v. Doe* is that the student stays put in their current placement unless the state or local educational agency and parent(s) disagree.

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

This case was brought forth by the student and his parents when the school district failed to comply with the EAHCA; in particular, the school district's refusal to place the child in a class with non-handicapped students which violates the Act (*Daniel R.R. v. State Board of Education*, 1989). The court referred to several factors that should be considered in deciding whether the regular classroom constitutes the proper placement, including the

special needs child's ability to profit from the regular curriculum, the nonacademic benefits such as social interaction, and the impact on the regular education in class (*Daniel R.R. v. State Board of Education*, 1989). "If however, the handicapped child requires so much of the teacher or the aide's time that the rest of the class suffers, then the balance will tip in favor of placing the child in special education" (*Daniel R.R. v. State Board of Education*, 1989). When reviewing the consideration of the impact of *Daniel R.R. v. State Board of Education* (1989), the case provides a standard to look at the balance of mainstreaming, special education and what is considered to be acceptable interaction with nondisabled peers. This case is based on the outcome of *Board v. Rowley* (1982) regarding the concept of providing an education while considering the maximum extent of education.

Timothy W. v. Rochester N. II School District (1989)

Timothy was a student that was a child with multiple disabilities that appealed a district court decision that ruled due to his disabilities, he would not benefit from or be eligible for special educational services. The district court ruled that "under EAHCA, an initial determination as to the child's ability to benefit from special education, must be made in order for a handicapped child to qualify for education under the Act" (*Timothy W. v. Rochester N. II School District*, 1989). The United States Court of Appeals of the First Circuit reversed the district court ruling based on the:

wording in the Act, its legislative history, and the case law construing it, mandate that all handicapped children, regardless of the severity of their handicap, are entitled to a public education regardless of the level of achievement that such children might attain (*Timothy W. v. Rochester School District*, 1989).

Individuals with Disabilities Education Act (IDEA) (PL 101-476)

In 1990, Public Law 101-476, also known as Individuals with Disabilities Education Act (IDEA), was passed. This law was essentially an expansion and reauthorization of the previous P.L. 94-142. Additions included the definition of disabilities to include head trauma and autism as well as a provision to prevent states from using the Eleventh Amendment as a shield against liability in actions by children with disabilities (U.S. Department of Education, 1990). IDEA (1990) went on to state further change of the requirement for transition services for special needs students to adult life would start at age sixteen.

Americans with Disabilities Act (PL 101-407)

The Americans with Disability Act (ADA) was passed in 1990. This act eliminated discrimination against individuals with disabilities and stated all public school services (activities and facilities) be accessible (Hurwitz, 2008). “Through the courts, parents and guardians pursued legal action against school districts for denying education to these children. Although these children are protected from exclusionary practices, many disputes exist today. Some issues can be easily resolved, while others cannot” (Caretti, 2005, pg. 10).

Individuals with Disabilities Education Act (IDEA 97) (PL 105-17)

Amendments to the IDEA in 1997 affected eligibility, evaluation, programming, private school placements, discipline, funding, attorney’s fees, dispute resolution, and procedural safeguards (Alexander & Alexander, 2009). Congress reaffirmed its preference for educating disabled children in the LRE with this Act. LRE is a continuum that is based on student need deemed necessary by the student’s IEP team. The LRE was considered to be a fully integrated general education student. Moving along on the continuum, the most

restrictive environment is being placed in a home environment. The continuum included regular education instruction, special education classes, special schools, home instruction, and instruction in hospitals and/or residential facilities (Champagne, 1997; Newcomer, 1995; Tarola, 1991). The law also clarified the right to FAPE by extending coverage to all resident children with disabilities between the ages of three and twenty-one, inclusive, to the age of twenty-two (U.S. Department of Education, 1997).

No Child Left Behind Act of 2001 (Reauthorization of ESEA) (PL 107-110)

The heart of this act is on student performance. NCLB (2001) stated “all children have a fair, equal, and significant opportunity to obtain a high quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and State academic assessments”. The law calls for a reduction in the achievement gap between high- and low-performing children and, more importantly, the Act holds school, local educational agencies, and states accountable for improving the academic achievement of all students (U.S. Department of Education, 2001).

Individuals with Disabilities Education Improvement Act of 2004 (PL 108-446)

The new law coordinated more closely with NCLB, allocated funds to stimulate school districts to provide services in clerical and other private schools, changed eligibility definitions for children with learning disabilities, modified dispute resolution procedures, and prescribed more refined, and possibly harsher disciplinary rules for children with disabilities. Also included in this law are the definition and the requirements for a “highly qualified teacher” (U.S. Department of Education, 2004). Accountability and assessment were also addressed. Individuals with Disabilities Education Improvement Act (IDEIA) stated LRE placement is determined by appropriate evaluation.

Schaffer v. Weast (2005)

Brian was a student who suffered from learning disabilities and speech-language impairments. He attended a private school prekindergarten through seventh grade in the state of Maryland and struggled academically. In 1997, the school informed Brian's mother that he needed a school that could better accommodate his needs (*Schaffer v. Weast, 2005*). The parents then contacted the public school system. Brian was evaluated and the committee generated an initial IEP offering Brian a place in either of two Montgomery County Public School (MCPS) middle schools (*Schaffer v. Weast, 2005*). Brian's parents were not satisfied with the arrangement, believing that Brian needed smaller classes and more intensive services and enrolled Brian in another private school and initiated a due process hearing, challenging the IEP and seeking compensation for the cost of Brian's subsequent private education (*Schaffer v. Weast, 2005*). The administrative law judges hear IEP hearings in the state of Maryland. They deemed that the parents bore the burden of persuasion, and ruled in favor of the school district (*Schaffer v. Weast, 2005*). A civil action was brought as a result of this ruling. "The United States District Court for the District of Maryland reversed and remanded, after concluding that the burden of persuasion is on the school district" (*Schaffer v. Weast, 2005*). Around this same time, MCPS offered a placement at a high school with a special learning center. He accepted and was educated there until he graduated. The suit continued, however, because the parents sought compensation for the private school tuition and related expenses (*Schaffer v. Weast, 2005*).

Under IDEA, school district must create an IEP for each disabled child. If parents believe their child's IEP is inappropriate, they may request an 'impartial due process hearing' (*Schaffer v. Weast, 2005*). "The Act is silent, however, as to which party bears the

burden of persuasion at such a hearing” (*Shaffer v. Weast*, 2005). The United States Supreme Court held the burden lies on the party seeking relief (*Shaffer v. Weast*, 2005).

***Arlington Central School District Board of Education v. Murphy* (2006)**

The Murphy family sought for the Arlington Central School District Board of Education to pay for their son’s private school tuition for specified school years (*Arlington Central School District Board of Education v. Murphy*, 2006). “As prevailing parents, respondents then sought \$29,350 in fees for the services of an educational consultant, who assisted respondents throughout the IDEA proceedings” (*Arlington Central School District Board of Education v. Murphy*, 2006). This legislation addressed the fact IDEA provides that a court “may award reasonable attorneys’ fees as part of the costs” to parents who prevail in an action brought under the Act. The United States Supreme Court asserted that if the parents prevail, they may not recover the fees for services rendered by experts (*Arlington Central School District v. Murphy*, 2006). In summary, the decision was in regard to the awarding of monetary fees. Fees can be collected from the party other than the parents for lawyer fees and not the fees from experts and the services that were provided.

The field of special education is structured by legal statutes that knowledge of the IDEAIA and accompanying case law is appropriate and necessary (Zirkel, 2005). The previous review of cases and legal statutes shows that one builds upon another in order to develop guidance for practitioners and parents. Special education law is an exception to educational law due to the fact that statutes and Congressional acts are derived from case law.

Formal Complaints, Mediation, and Due Process

The negative or unaccepted outcome of an IEP or an eligibility meeting warrants the need for conflict resolution procedures. Parents want what is best for their child in regard to services and the education providers want to provide services to the student within their limitations while balancing LRE. This disagreement can “degenerate into protracted, acrimonious, expensive legal conflicts, which exact a terrible emotional toll on parents, children, and school personnel” (Margolis, 1998, p.1). Differing opinions often arise between parents and school officials when designing and implementing special education services for students (Lake & Billingsley, 2000).

Formal complaints.

Open communication can prevent most problems from escalating into difficulties; situations are complicated and sometimes never healed due to misunderstandings and mistrust (Horrocks, 2000; Horrocks, 2001; Moore, 1994). IDEA-Part B requires procedural safeguards to ensure the rights of students with disabilities by the state and local agencies and to ensure that parents are involved in decision-making for their child (Suchey & Snow-Huefner, 1998). The survey administered from Suchey and Snow-Huefner (1998) resulted in the comment: “the complaint procedure does not necessarily resolve the issue nor allow the involved parties to ‘move forward in a constructive manner’” (p. 8). Another participant asserted “the complaint procedure is basically a compliance procedure rather than a dispute resolution mechanism” (Suchey & Snow-Huefner, 1998, p. 8).

However, the IDEA Regulations (1999) do not contain specific requirements for evaluating all programs, that is, for evaluating dispute resolution.

Mediation, due process hearings, and other forms of dispute resolution

clearly affect the education of the children with disabilities. One way that dispute resolutions systems are evaluated is through the federal Office of Special Education (OSEP) located in Washington, D.C. OSEP monitors state compliance with the federal laws and regulations (Caretti, 2005, p.13).

National data on disputes, according to the General Accounting Office (GAO), are limited and inexact, the available information showed that formal dispute resolution activity, as measured by the number of due process hearings, state complaints, and mediations, was generally low (GAO, 2003). The GAO reported requests for hearings increased from 7,532 to 11,068 over a 5-year period, then the number of due process hearings had decreased from 3,555 to 3,020. “Special Education Expenditure Project (SEEP) is a national study conducted by the American Institutes for Research (AIR) for the U.S. Department of Education, Office of Special Education Programs” (Chambers, et al., 2003, p. 4). Additionally, SEEP estimated 6,763 due process cases were initiated in 1998-99 (Chambers, Harr & Dhanani, 2003). Other data collected through a survey by Project FORUM (of the National Association of State Directors of Special Education), showed 3,315 and 3,126 due process hearings were held in 1998 and 1999. However, the Project FORUM data figures are for hearings held (Chambers, et al., 2003).

Suchey and Snow-Huefner (1998) cited the U.S. Department of Education in regards to formal complaint statute of limitations in that:

Formal complaints must allege a violation that occurred no more than 1 year prior to the date the complaint is received, unless the violation is a continuing one or the complainant is requesting compensatory service for a violation that occurred not more than 3 years prior to the date the complaint was received (p. 3).

Apling and Jones (2005) stated:

complaints may only be presented concerning violations that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action. There are several exceptions to this statute of limitations. First, if state law has an explicit time limitation for presenting a complaint, that provision shall control. In addition, the time requirement does not apply to a parent if the parent was prevented from presenting the complaint due to specific misrepresentations by the LEA that it had resolved the problem or the local educational agency withheld information from the parent (pp. 24-25).

Financial burden is put upon the state agency and not the local district or parent in cases of formal complaints (Office of Special Education Programs, 1994).

Mueller and Carranza (2011) stated when Congress reviewed the IDEA amendments in 1997 and 2004 they discovered due process hearings had become overly used, adversarial, and highly excessive in cost. A note of further study from Suchey and Snow-Huefner (1998) noted it is not easy to determine whether procedural

complaints are raised more often than substantive complaints and to what extent systemic complaints are being brought. In 1998-99, Chambers, et al. (2003) stated 98 percent of due process hearings were resolved, while almost half of the litigation cases were not resolved during the year. Over half (55.7 percent) of the due process cases were resolved in favor of the district; over one-third (34.4 percent) were resolved in favor of the family; and 8 percent resulted in a split decision. Others observed and stated that there had been an increase in special education hearings and that certain trends were identified across the United States (Ahern 2002; Mueller and Carranza 2011; and Zirkel & D'Angelo 2002). Zirkel and Gischlar (2008) found New York (n=16064), New Jersey (n=4687), Pennsylvania (n=2563), California (n=1678) and Maryland (n=1303) had the most due process hearings. Idaho reported 34 in the 15 year time span researched by Zirkel and Gischlar (2008). In addition, the General Accounting Office (2003) reported that 80% of all hearings were held in California, Maryland, New Jersey, New York, Pennsylvania, and the District of Columbia.

Mediation.

Mediation is included as an option whenever a due process hearing has been requested (Bar-Lev, Neustadi & Peter, 2002; IDEA, 1997). Bar-Lev et al. (2002) stated the State Education Agency (SEA) is responsible for providing mediation services, but is dependent upon participation of administrators and parents. Mediation is led by a mediator. "This mediator facilitates discussions, encourages the participants to identify and clarify areas of agreement and disagreement, and helps them to generate and evaluate options for resolution that will be mutually agreeable and that will incorporate their interests" (Bar-Lev,

et al., 2002, p. 2). When mediation is successful, it can assist in the avoidance of a due process hearing or even litigation. Mediation and other settlement strategies are preferred over due process hearings (Mayes & Zirkel, 2001).

Due process hearings.

Due process hearings are the principle vehicle for resolving disagreements between schools and parents concerning identification, evaluation, placement, or provision of a free appropriate public education (Getty & Summy, 2004). Lake and Billingsley (2000) reported eight issues that escalated disputes: (1) educational service delivery; (2) district officials portraying discrepant views of a student's needs; (3) a discrepancy of knowledge between the two parties; (4) communication; (5) trust; (6) power imbalance; (7) resource constraints, and (8) a lack of mutual valuation between parents and district members. Zirkel (1994) pointed out decisions made during due process hearings are often not generalizable because each decision is based on the individual needs of a given student and applies to a given set of facts. Nowell and Salem (2007) referenced (Goldberg & Kuriloff, 1991; Schrag, 1996) in the fact due process mechanisms create or intensify contentious relationships, making future problem solving between schools and parents difficult. Mueller, Singer, and Draper (2008) examined school systems and identified three themes within the systems' problems category: (1) lack of leadership, (2) not keeping up with the law, and (3) parents' exclusion from the system.

Tiered Systems

States are divided on two different types of tiered systems for due process hearings. The majority of states are a one-tier structure. There are 34 states in the one-tier structure. Idaho is one of these states (Ahearn, 2002). A one-tier system consists of having the hearing

being initiated at the state level with no formal hearing procedure at lower levels (Ahearn 2002; Newcomer, Zirkel, & Taroloa, 1998). This is compared the two tiered system in which a hearing takes place at a lower level, such as a school or district, and then there is a right to appeal to a hearing officer or panel at the state level. There are two types of due process (1) procedural due process and (2) substantive due process (Vontz, 2003).

Substantive due process prohibits the government from infringing on fundamental constitutional liberties. Procedural due process means it must follow fair and previously established legal procedures in criminal and civil cases. Public school students have an interest in attending school and must be given some procedural protections if they are to be expelled from school (West & Schamel, 1991). Newcomer and Zirkel (1999) reported students with learning disabilities represented the highest disability category in due process hearings, and placement was the primary issue of dispute.

The steps below outline how an IEP disagreement becomes a due process hearing as indicated in the manual for special education in the state of Idaho.

1. IEP Facilitation: This is where a facilitator is appointed by the state department. The role of the facilitator is to help team members communicate effectively. IEP facilitation supports early dispute resolution with the hope of resolving the situation before the conflict develops into a more serious dispute and moves to mediation, formal complaints or a due process hearing.
2. Mediation: If the IEP facilitation is not successful, either one of the parties may file a request for mediation. Mediation is required before a formal complaint or a request for due process hearing can be filed. Mediators are contracted through the state department of education and are assigned randomly to mediation cases.

Agreement reached through mediation is in writing and is enforceable in state and federal courts.

3. Formal complaint: This is when any individual or organization from Idaho or another state believes the district or other educational agency has violated a requirement of Part B of IDEA 2004 or has alleged failure to comply with a due process hearing decision rendered.
4. Due process hearing: There are two types of due process hearings, regular and expedited. Regular due process hearings are for matters related to the identification, evaluation, educational placement, and the provision of FAPE. Expedited due process hearings are used to resolve disputes concerning discipline occurring within 20 school days (State of Idaho, 2007).

Burden of Persuasion

The IDEA legislation does not assign the burden of persuasion at such a due process hearing to any particular party. The Supreme Court assigned this burden of persuasion in the case of *Schaffer v. Weast* (Conroy, Yell & Katsiyannis, 2008); Conroy, et al. (2008) stated the rule that is followed is the “normal rule”. According to this rule, when a statute, such as the IDEA, is silent as to the burden of persuasion, the burden is normally placed on the party initiating the proceeding and seeking relief. Hearing officers must examine the results of a student’s special education program, rather than merely ruling on the basis of procedural matters (20 U.S.C. 1412 (f)(3)(E)(I)). Due process hearings are the last resort for schools or parents.

The Fifth and Fourteenth Amendments of the United States Constitution form the basis of the procedural protections offered to students. Both Amendments contained

language referring to property and due process. The Fourteenth Amendment, section one, contains the provision for equal protection (U.S. Const. amend. XIV, § 1). Since the courts have interpreted property to include education, students cannot be denied an education without due process (*Goss v. Lopez*, 1975). In special education, the intent of due process was to ensure, through the procedural due process safeguards, that parents would be informed of their child's IEP and be able to question the appropriateness of the IEP (Budoff, Mitchell & Kotin, 1976). Reasons for due process hearings given by Getty and Summy (2004) included: denial of FAPE, reimbursement for outside services, placement or program issues, and recovering attorney fees.

The aim of mediation in special education is to assist parents of children with disabilities, schools and agencies in resolving disagreements in relation to the special education program of a student with disabilities (Horrocks, 2001). Under the statute, states must also provide a mediation process for willing parties, and mediation is increasingly being used in the hope of averting the need for hearings and lawsuits (Suchey & Snow-Huefner, 1998). Because of cost of hearings and court cases in time, energy, and dollars, many states introduced mediation as an option to the hearing route (Suchey & Snow-Huefner, 1998).

Although mediation cannot be required prior to a hearing, it can be encouraged, and many parents and schools have attempted to mediate their disputes. Mediation, like a hearing, involved the use of an impartial third party, but, unlike the hearing, the mediator has no authority to impose a solution but only to recommend one, subject to rejection by either or both parties. Mediation can be an informal means of fact-finding and a way to help the parties in special education disputes understand each other's concerns better (Goldberg

& Huefner, 1995). Nowell and Salem (2007) dovetailed this thought when they stated special education mediation has been promoted as a valuable process because it prevents the escalation of adversarial relationships and fosters collaboration among parents and schools.

Summary

Before 1968, people with physical and mental disabilities were placed in institutions or remained at home. In 1968, children with disabilities were placed in educational systems and into classes considered “mainstream” classes. In 1975, the Education for All Handicapped Children Act (PL 94-142), was enacted by congress and mandated FAPE for all children with disabilities included they be educated with non-disabled peers. Cases of requests for hearings have increased over the past five years while, in contrast, the due process hearings have decreased over the past five years, at a slower rate than expected by experts. Trends suggest mixed results on whether parents or school districts prevail and are dependent upon the facts and evidence surrounding each case. Congress had endorsed mediation as an alternative to formal complaints or due process hearings in the hope of fostering the relationship between the school and the parents or students.

Based on the literature review, questions for research were:

1. *What types of special education related issues are being brought before the state hearing officer(s) as due process complaints in Idaho? and*
2. *What are common themes in the findings/outcomes of the due process decisions, and what implications do these have for the future of special education services in Idaho?*

These questions were examined and researched to see if the literature and trends found in the literature fit the state of Idaho.

Chapter Three

Methods and Procedures

The purpose of this study was to analyze Idaho due process outcomes to find common themes and trends that can inform future practice. The following research questions served as a guide for this study:

1. *What types of special education related issues are being brought before the state hearing officer(s) as due process complaints in Idaho? and*
2. *What are common themes in the findings/outcomes of the due process decisions, and what implications do these have for the future of special education services in Idaho?*

A common purpose for studying education litigation is to allow parents, school district officials, and educational policy makers to make educated decisions as to whether or not they should pursue litigation (Newcomer & Zirkel, 1999). This study used an explanatory mixed methods design to examine special education due process outcomes in Idaho for the time period of January 1, 2004 to June 30, 2012.

Study Design

This mixed methods study adhered to an explanatory mixed methods design. An explanatory mixed-methods design consists of first collecting quantitative data and then collecting qualitative data to help explain the quantitative results (Clark & Creswell, 2010). Researchers use this design when there is a research problem that needs more explanation when quantitative data is not adequate. Phase one of this mixed methods study included document analysis of published due process complaints and decisions in Idaho. Phase two consisted of interviews with the attorneys identified in the hearing decisions. Explanatory

mixed methods works well when quantitative data is used to identify participants to include for the qualitative data collection (Clark & Creswell, 2010). In this study the qualitative phase one information identified the lawyers to be contacted for interviews, disability criteria areas, and outcomes from the DSF.

Hearing decisions are published through the State of Idaho Department of Education website and LRP (formerly known as Labor Relations Press) Publications. Each legal decision is part of the public record and available for public access. The publishing agency is responsible for the redaction of the names of minors and other details such as disability or any other identifiable information. Idaho due process decisions are accessible on the State Department of Education-Special Education Division under the link “Conflict Resolution”. These legal decisions can be difficult to read for two reasons. First, the findings are written in legal language so it may be difficult for the lay person to read the decisions. Secondly, the decisions involve minors and for confidentiality reasons the initials and/or their disability are redacted. Idaho is a rural state and many times knowing the school district and one of those components, a student and/or their family could be identified.

Phase two of this study was completed through a set of interviews with attorneys who practice special education law within Idaho since the implementation of IDEIA. Following the document review, the researcher contacted the attorneys who had actively represented either the school district or families in due process decisions in Idaho over the past five years. These attorneys were invited to participate in a short interview about their experience with due process complaints in Idaho and their perspective on the outcomes and trends in special education law in Idaho since 2004 to 2012.

Phase one of this study was primarily document analysis with the intent to analyze the legal outcome of due process decisions in Idaho identifying areas of concern within the field of special education with the goal of the study being to identify common themes and outcomes along identifying implications for the future. “Document analysis is a systematic procedure for reviewing or evaluating documents—both printed and electronic (computer-based and Internet-transmitted) material” (Bowen, 2009, p.1). The analysis of published due process decisions in Idaho and interviews with attorneys representing both sides of the litigation informed this study.

Sample

This study consisted of all 27 published State of Idaho due process decisions from January 1, 2004 to June 30, 2012. January 2004 was selected based on the writing and ratification of IDEIA (PL 108-446) which went into effect on July 1, 2005. For the State of Idaho, due process decisions are published in two different venues, the State of Idaho Department of Education website and LRP (formerly known as Labor Relations Press). Each legal decision is part of the public record and is accessible to the public. The publishing agency is responsible for the redaction of the names of minors and other details such as disability or any other identifiable information. In a personal communication on April 1, 2013, Dr. Melanie Reese, Idaho Dispute Resolution Coordinator, indicated “redactions varied based on the person who did the redaction and what their supervisor told them to redact.” Table 1 illustrates the number and location of due process decisions that occurred during the time period defined for this study.

Table 1

Due Process Decisions from January 2004 to June 2012 by School District

School District	Number of Decisions	%
Coeur d'Alene School District #271	1	3.7%
Independent School District of Boise #1	13	48.1%
Lakeland School District #272	2	7.4%
Meridian Joint School District #2	3	11.1%
Moscow School District #281	1	3.7%
Mountain Home School District #193	1	3.7%
Orofino School District #171	3	11.1%
Twin Falls School District #411	1	3.7%
Unknown or not specified School District	2	7.4%
Total	27	

All school districts in the State of Idaho were included. The district with the highest incidence of due process decisions was Independent School District of Boise City #1 with 10 (48.1%) decisions. All decisions associated with Independent School District of Boise City # 1 and Boise School District No. 1 were combined due to the restructure of the district and the new name to Independent School District of Boise #1. The group with the second highest number was Meridian Joint School District #2 and Orofino School District #171 both had three (11.1%) decisions. Figure 1 highlighted the number of due process decisions by year.

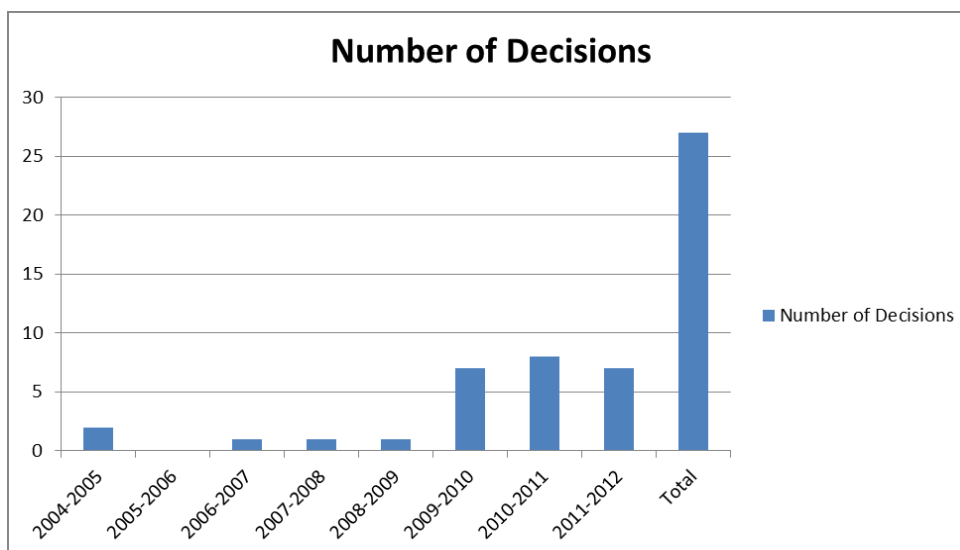


Figure 1. Number of due process decisions per school year.

Each column in Figure 1 represents the number of due process decisions per year and the last column portrays all due process decisions. Of particular interest was there were very few hearings/litigations from 2005-2008 after which the number of cases increased from 1 to 7. The highest incidence of decisions occurred during the school year of 2010-2011 with eight due process decisions. The second highest occurred in 2009-2010 and in the 2011-2012 school years with seven decisions.

Participants

Upon review of the 27 due process decisions in the specified time frame, only four attorneys were identified as practicing special education law within Idaho. Of the four attorneys identified, two represented school districts and the other two represented parents/students in formal due process complaints. Three of the four attorneys live and practice law in Idaho, with the fourth living in California. In the end, only two lawyers agreed to participate in the interview portion of this study. Both of the attorneys were female, located in the southwest portion of the state, with 28 years of law experience between the two, ranging from 9-19 years of legal experience.

Instrumentation

Litigation documentation form.

Previously there was no systematic method to analyze judicial outcomes. Therefore, Newcomer (1995) and Tarola (1991) developed The Litigation Documentation Form (LDF) as a means to analyze judicial outcomes. This form was developed to have a systematic way to code factors in special education cases pertaining to a study. The LDF was a systematic coding system (Imber & Thompson, 1991; Newcomer & Zirkel, 1999; Zirkel & Richardson, 1989). Imber and Thompson (1991, p. 230) developed to analyze “typology of lawsuits against school districts.” This framework sought to classify cases according to the variety of activities that educators perform. The form was then modified by Lupini and Zirkel and still referred to as the LDF. Lupini and Zirkel (2003) changed the form from a 5 point Likert Scale to a 7 point Likert Scale. Newcomer and Zirkel (1999) along with Maass (2005) used the LDF and modified the form for their specific studies and called it the Litigation Documentation Sheet (LDS).

Validity and reliability.

Previous researchers who have utilized the Litigation Documentation Sheet (LDS) (Maass, 2005; Lupini & Zirkel, 2003; Lupini, 2001; Newcomer & Zirkel, 1999; Newcomer, 1995; Tarola, 1991) conducted a pilot phase in their studies to ensure reliability of the instrument. In Lupini & Zirkel (2003) had interrater reliability of 80% in their study. Newcomer and Zirkel (1999) had interrater reliability of 92.7% in their study. In Lupini’s (2001) study he set the interrater reliability to be 80% on his pilot study. Maass conducted a pilot study with interrater reliability set at 80% for each variable. The level of agreement

ranged from 80 percent to 100 percent. Copies of original LDS and LDF are included in Appendix G.

Decision summary form (DSF).

The LDS was modified for this study to include variables related to this study and renamed the Decision Summary Form (DSF). The DSF is a system of coding consisting of systematically recorded factors in each decision. Variables modified from Maass' and Newcomer's original LDS include: (a) the demographics at the top were modified for due process decisions, (b) a line to specify the attorney for each party was added to track legal representation; (c) the primary complaint topics were added based on the literature review; and (d) outcome in favor of which party was added as a check line. The pieces on Maass' LDS that were removed for the DSF were the verbiage regarding LRE. This was removed due to the focus of Maass' study regarded LRE and the focus of this study was more global and directed towards due process decisions. See Appendix D for the complete DSF.

Variables of the decision summary form.

Decision Name and Decision Number. This provides the name of the decision and identifies the decision number.

Plaintiffs and Defendants. This item names each party. "Plaintiff" is the party who initiated the due process hearing.

Lawyer For. This was to obtain from the decisions the name/firm of the lawyers for each party.

Disability Classification. Refers to the disability categories specified in IDEIA (2004), which assist eligibility teams in determining eligibility for special education. If more

than one disability was contained in the due process hearing, the recorded response was the one which had been most frequently stated by the hearing officer.

Primary Complaint. This provides different areas of where the concern or complaint was raised by the plaintiff. It is coded for all issues that were brought before the hearing officer.

Outcome of the Hearing. This item lists the decision of the hearing.

Procedures

During phase one, a quantitative document analysis of due process decisions in Idaho between January 1, 2004 to June 30, 2012 was conducted. Phase two, included interviews with lawyers involved with special education due process decisions in Idaho between 2004-2012.

Phase one.

The first step was to locate due process decisions in Idaho seeking data over the course of the nine years to include 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012. Gathering data for this period of time provided information about the different types of due process cases that came under the jurisdiction of the new IDEIA reauthorized in 2004.

Then each reported decision was independently analyzed by the researcher and the chair of the researcher's doctoral committee, who has experience in teaching special education law, as well as political and social studies research. This dual review process helped to establish inter-rater reliability in the use of the DSF form and in the interpretation of the due process decisions. Inter-rater reliability after an initial blind review by the researcher and the chair of her doctoral committee was 84.6%.

After the blind review, the researcher and the chair of her doctoral committee reviewed each due process decision and DSF rating form individually to validate the findings and to clarify areas where each individual's ratings diverged. Following this decision-by-decision review, areas of divergence were clarified and the researcher and the chair of her doctoral committee were able to reach 100% agreement on the DSF ratings. Each area of coding met the a priori level set at 80 percent per item on the DSF. After each area that was coded on the DSF was then input on to an Excel spreadsheet in order to derive frequencies, and percentages and to help identify potential patterns and themes.

Phase two.

After the decision analysis using the DSF, the attorneys who represented school districts or the parents/students were contacted to be interviewed. The following steps were taken regarding the interview process.

First the attorney questions were developed by the researcher based on the pilot study. The questions were developed based on the concerns and areas of interest identified during the review of due process decisions. Next, the interview participants were initially contacted via email and invited to participate in a short telephone interview. Once the interview times were scheduled with participants who responded to the initial email invitation phone interviews occurred. The phone interviews took approximately 30 minutes and attorneys were asked the following questions (Appendix E):

1. How long have you been practicing educational law?
2. Did you go to law school with the intent of practicing educational law?
3. Do you represent school districts or individual people? What made you determine this?

4. Is there a particular disability classification under IDEIA that you tend to see represented more in due process decisions? Please explain why you think your identified category has more formal complaints than others.
5. Do you see any current or future trends in complaints/due process decisions originating from specific disability classification/groups as defined by IDEIA?
6. In your experience, what has been the most frequent due process violation over the past 5 years? Do you think this will be the same in the future?
7. Why do you think there was a surge in numbers of decisions being mediated from 2008-2009 school year to 2009-2010 school year?
8. How many decisions do you think have gone to litigation after a due process hearing?
9. What is the main advice you give or would give school districts in the area of special education law/compliance?

Responses provided by the participants during the phone interviews were typed out by the principal investigator as the interview occurred. The responses for each question were sent to the lawyer for verification and a chance for further clarification or correction of what was stated. This correspondence was done through email. Lastly, interview participants were assigned pseudonyms in the interview transcript and within the final report of the data to help enhance confidentiality.

Ethical Considerations

The research project was reviewed and approved by the University of Idaho Review Board (IRB). Every possibility to protect participants' confidentiality was paramount and

confidential information obtained during the qualitative portion of the study was discussed only with the participant. Every effort was used to protect the identities of the participants and they were given every reasonable measure to maintain confidentiality. These ethical considerations enhance the validity of the study. The reader should note that the documents used in the document analysis are part of the public domain on the Internet.

Data Analysis

Phase one.

Analysis of the collected data was ongoing throughout the data collection process. Data analysis enables one to derive meaning and identify themes (Patton, 1990). Data were compiled from the interview responses and then coded. The qualitative data were analyzed according to a five-step case study analysis: development, description of the case study, categorization of data, interpretations, and identification of patterns and synthesis of findings (Yin, 2003).

Phase two.

Qualitative data for the phase two of the study included interviews with the attorneys. Interviews provide verbal interactions, discover thoughts of others on certain topics, observe and obtain information in a regular, normal location, and allow for further probing on responses. During the interviews with the lawyers, the interviewer recorded the responses by taking notes simultaneously. The notes were shared and reviewed by the interviewee for accuracy. Then the notes were copied and transcribed into Microsoft Word documents and were analyzed for themes. Qualitative data analysis requires “working with data, organizing it, breaking it into manageable units, synthesizing it, searching for patterns, discovering what is important and what is to be learned, and deciding what you will tell

others” (Bogdan & Biklen, 1982, p. 145). Conclusions were drawn based upon the frequency of the themes which emerged and amount of emphasis the participants placed on specific events during interviews. Themes and the results of the analysis are presented in Chapter Four and were validated through multiple documents, including follow up emails, DSF, and transcribed text. In addition to triangulation, Yin (2003) suggested researchers have the draft report reviewed by participants in the study. The report which included communication between the interviewer and interviewee was reviewed by the attorneys for clarification. Consensus was arrived through the email process for what was reported in the research. "The informants and participants may still disagree with an investigator's conclusions and interpretations, but these reviewers should not disagree over the actual facts in the case" (Yin, 2003, p. 159).

Validity and Threats to Validity

Validity is defined as how accurately the account represents participants’ realities of the social phenomena and is credible to them (Creswell & Miller, 2000, p. 124-125; Schwandt, 1997). “Validity has long been a key issue in debates over the legitimacy of qualitative research; if qualitative studies cannot consistently produce valid results, then policies, programs, or predictions based on these studies cannot be relied on” (Maxwell, 1992, p. 279). Qualitative research needs to be credible. Validity in qualitative research is challenging on many levels with different researchers such as Lincoln and Guba (1985), Yin (2003), along with Maxwell and Lather (1992) recommending different procedures and terminology (Creswell & Miller, 2000). The way qualitative researchers make a research study credible is through member checking, triangulation, thick description, peer reviews

and external audits (Creswell & Miller, 2000). In addition, this study was conducted through the lens of the practitioner (Creswell & Miller, 2000).

Lincoln and Guba's (1985) four point criterion list for validity was applied to this study. The first of the four points is to truth value. This is achieved through prolonged engagement in the field, persistent observation and triangulation exercises as well as exposure to of the research to criticism. This is the most crucial technique for establishing credibility (p. 314) is through member checks, showing materials to the people on whom the research has been done to indicate agreement or disagreement.

Secondly, transferability or external validity is not achieved through random sampling and probabilistic reasoning (as done in quantitative studies), but by providing a detailed, rich description of the setting studies, so that readers are given sufficient information to be able to judge the applicability of findings to other settings that they know.

Thirdly, Lincoln and Guba (1985) identified auditing as a way to increase validity of qualitative studies. This is the examination of the documentation of data, methods, and decisions. Auditing is used to establish confirmability.

Lastly, the fourth criterion is objectivity. The last criterion points out that trustworthiness is always negotiable and open ended, not being a matter of final proof whereby readers are compelled to accept an account.

In this study triangulation and member checking were used to decrease bias and increase validity of the study. Triangulation was used through the interviews of the attorneys, along with research of special education law and cross referencing with the decision. Other means of truth checking was done through member checking and data analysis of the due process decisions by checking for consistency in the findings (Patton,

2002). Member checking was used when the attorneys were interviewed and their responses were transcribed and sent to back to them through email for them to clarify and to verify the accuracy of the transcription. This was done during the study, after the transcription of data and again after the formal analysis and writing was completed.

Predefined codes of suggested areas from the literature review done in Chapter Two were used on the DSF. After all decisions were collected, the DSF was coded for each decision. When all decisions were coded, the researcher then created an Excel spreadsheet to compile the recorded responses. Frequencies and percentages were then generated.

Limitations and Delimitations

The purpose of this study was to examine decisions in the State of Idaho and may vary from state to state. In phase one, the first limitation is that it is limited to the State of Idaho and not representative of all fifty states. If the reader is not familiar with the composition of the state of Idaho; Idaho is a small, rural state not generalizable to urban areas and therefore the number of cases is small. The third limitation in phase one regards the researcher; an educator and does not have a legal education.

In phase two the limitation of only two of the four identified attorneys were interviewed. Inquiries were made to all parties mentioned but only two attorneys responded.

Delimitations for both phases of the study are the same. The first delimitation to note is the decisions of record are from the State Board of Education for the State of Idaho. Another is the redaction of names and the different disability criteria are redacted in some decision without consistency. Lastly, the final delimitation was the period of examination of the 2004 to 2012 school years.

Summary

This study utilized an explanatory mixed methods design to analyze due process cases in Idaho during the time frame of 2004 to 2012. The quantitative component derived frequencies and percentages from the due process hearings. The qualitative component identified and assessed the commonalities in the outcomes of due process decisions and the perspective of education attorneys. The preliminary component of the research question was framed within the descriptive research design and examined disability classification as well as primary complaints for due process decisions in Idaho.

Chapter Four

Results

Chapter Four presents the findings of the study. The purpose of this study was to analyze due process outcomes to find common themes and trends that can inform future practice in the State of Idaho for the following time period, January 1, 2004 to June 30, 2012. Within the design of the research, the purpose was to examine the causation of the formal complaint evolving to a due process hearing. Phase one of the study explored what types of special education related issues are being brought before the state hearing officer(s) as due process complaints in Idaho (as measured by the DSF). The independent variable is the special education related issue. The dependent variable is engaging in the conflict resolution process. Phase two of this study explored common themes in the findings/outcomes of the due process decisions between lawyers perspective and the DSF, and the lawyers perspective what implications do these have for the future of special education services in Idaho. The guiding hypothesis is that there is a correlation between the DSF themes and lawyers perceptions.

Through data analysis, this chapter presents the findings which emerged after data collection. The process outlined in Chapter Three was utilized to perform a document analysis of the due process decisions, along with a qualitative analysis of interviews with some of the attorneys involved in the decisions to verify the document analysis and to help identify any additional patterns that may be relevant to special education due process in Idaho. The results of the analyses were completed using the Decision Summary Form (DSF) and interviews were compiled and patterns identified and validated using the interview data. The results in the following tables are reported in the same order as found on the DSF

document. Attorney interview responses are then summarized and analyzed. Actual names of the attorneys have been changed and pseudonyms have been used.

Sample Selection

Phase one.

Under the Individuals with Disabilities Education Improvement Act (IDEIA) a process for appeal is established if one party doesn't agree with the other party in a dispute over the delivery of special education services to qualified students. Therefore, the population and sample for the first phase of this study comprised of all published due process decisions in the State of Idaho for the time period of January 1, 2004 to June 30, 2012. These dates were selected based on the last major reauthorization of IDEA, which is now called IDEIA, to the end of the last school year date considered by the state in 2012. This study identified 27 due process decisions that occurred within the identified time period.

Phase two.

All attorneys identified from the DSF analysis were contacted to participate in an interview to gain additional insight into the decisions they represented and their perspective regarding due process trends in Idaho. From the 27 decisions, 13 (48%) identified the attorney representing the parties; in total, four attorneys were identified for interviews since all were involved in multiple decisions. Those four attorneys were contacted. Three attorneys originally agreed to participate in this study; however, in the end, only two participated in the interviews.

The due process decisions (see Appendix A) were reviewed and the information in the following tables was derived from those hearing decisions. Frequencies were tabulated using the DSF (see Appendix D).

DSF Results

Special education policy is unique because the policies and statutes used in special education are based on litigation. Hearing officers base their findings on Idaho Code, federal legislation and litigation. In 74% of the decisions the reasoning was based on Idaho Code and different federal and state laws. Even though the percentage of decisions that were dismissed was high, the dismissals were based on these codes, litigation and legislation. Initials that appear in the following tables are Code of Federal Regulations (CFR), Idaho Administrative Procedure Act (IDAPA), and United States Code (USC). Table 2 illustrates the hearing and frequency that a particular Idaho Code or federal legislation was referenced in the finding.

Table 2

Legislation and Policy Referenced in Findings

Legislation	Number of References	Topic of Area
34 CFR 300.304	13	Evaluation Procedures
IDAPA 04.011.01	10	States that IDEA supersedes IDAPA and IDAPA supersedes the manual
State of Idaho Special Education Manual	7	
34 CFR 300.502	6	Independent Education Evaluation
20 USC 1414	5	Student initial evaluation
20 USC 1412	4	State application to the federal government for special education services for students ages 3-21
34 CFR 300.303	4	Reevaluations
20 USC 1400	3	Overreaching and definition of Individuals with Disabilities Act (IDEA)
20 USC 1401	3	Definitions of terms in IDEA
34 CFR 300.305	3	Additional Requirements for Evaluations and Reevaluations
34 CFR 300.320	3	Definition of Individualized Education Program
Idaho Rules of Civil Procedure (IRCP) 56	3	Request for Summary Judgment
20 USC 1415	2	Procedural Safeguards
34 CFR 300	2	
34 CFR 300.116	2	Placements
34 CFR 300.148	2	Placement of students by parents when FAPE is an issue
34 CFR 300.322	2	Parent Participation
34 CFR 300.42	2	Supplementary aids and materials
34 CFR 300.501 (b)(2)	2	Parent opportunity to participate in meetings
34 CFR 300.518	2	Child's status during proceedings
34 CFR 300.523	2	Discipline

Note. Any of the legislation, Idaho Codes referenced only once was removed.

The highest number of references was in regards to evaluation. This was in 13 of the 27 (48%) cases. In their findings hearing officers reference the CFR and then IDAPA as a reference to the law in which they based their findings. The reference of 34 CFR 300 is the official prefix reference for IDEA and the reference for education in The United States Code is 20 USC 14. The number of frequencies illustrates the hierarchical order that hearing officers use when they write up the findings in the decisions. The IDAPA reference sets forth that the hierarchy of federal laws are superior to state and local laws. Further research to be done in for the state of Idaho based off of the numbers in the legislation would be to analyze the different types of litigation and how that litigation impacts education, examine the correlation between the disability and the reason for due process and the development of professional development for practitioners. Further examination of implications and recommendations for further research are presented in Chapter Five.

Table 3 examined the court cases used as the basis of the finding of the due process decision and how many times the particular court cases were referenced in the different decision findings.

Table 3

Previous Court Cases with Frequency in Findings

Case	Times Referenced in Findings
<i>Schaefer v. Weast</i>	7
<i>Hendrick Hudson v. Rowley</i>	6
<i>Astoria Federal Savings and Loan Association v. Solimino</i>	3
<i>Hindmarsh v. Mock</i>	2
<i>Lago Vista Independent SD v. SF</i>	2
<i>North Plainfield Board of Ed 42 IDELR 217</i>	2
<i>Rodriguez v. Department of Corrections</i>	2
<i>Saki v. State of Hawaii, Dept of Education</i>	2
<i>School Commission of Town of Burlington Mass. v. Department of Education of Mass.</i>	2
<i>Thompson R2-J School District v. Luke P</i>	2

Note. Litigation that was referenced once was not included on the table.

Schaffer v. Weast is significant in that the topic of burden of proof and reimbursement or payment of court costs now is put into writing with the new authorization of IDEA in 2007. Burden of proof is now on the party bringing the due process case to a hearing officer and not for the defending party to have the burden of proof to prove their actions.

Implications for Idaho from *Schaffer v. Weast* are that the person bringing the due process complaint forward needs to have the amount of information to prove their side. Another implication (not Idaho specific) that applies to all 50 states is the possibility that if the school district is found having to owe for reimbursements and payments, school funds

will be used towards these payments as opposed to having the money come from the general state or district funds to be spent on education. In turn it may cause schools' insurance premiums to increase.

Hendrick Hudson v. Rowley was referenced the second most as justification for the outcome. *Rowley* is known for Free and Appropriate Public Education (FAPE). The significance of *Rowley* is that it seeks to balance the tension between parents, who want what is best for their child (maximization of education), and the school that needs to meet the needs of the child (appropriate). In practice this is often referred to as the Cadillac vs. Chevy comparison. In layman's terms the Cadillac is the best of the best in education and service and the Chevy is when the basic service or technology is adequate to meet the needs of the student. The researcher has observed teams struggle many times in this area to find a middle ground for services for the student. This is a constant struggle for practitioners and parents. Parents want what is best for their child and come to the table with this perspective. School districts want to do what is appropriate for the student and be able to provide what is necessary and not what is above and beyond.

Astoria Federal Savings and Loan Association v. Solimino was a case in the 11th Circuit Court. This case was referenced three times in the hearings. The case is significant in special education and in this study in regards to the application of res judicata and collateral estoppel in the administrative setting. Res judicata is the legal term for prevention of a party in a law suit to litigate the issue for a second time (Black & Garner, 1999). Specifically res judicata precludes the re-litigation of a claim, demand, or cause of action once it has been officially ruled upon. Collateral estoppel is similar to res judicata in that it is a doctrine

stating an earlier decision by a court in a lawsuit is conclusive to the issues or points so they cannot be relitigated in proceedings involving the same parties (Black & Garner, 1999).

Hindmarsh v. Mock is a case that was brought before the Idaho Supreme Court in 2002. The decisions used the reasoning of “while collateral estoppel applies to the issues, res judicata applies to bar the claims made in a subsequent action between the parties on the same claims where a final order has been entered” (*Hindmarsh v. Mock*, 2002). The previous two decisions state the same issues may not be used multiple times in the same hearing.

The decisions analyzed for this study are publicly available, and published in the LRP (formerly known as Labor Relations Press) database and the State of Idaho Department of Education website. Frequencies and percentages and thematic coding were derived from the analysis utilizing the DSF (Appendix D). The specific break-down of decisions by hearing number is shown in Table 4. The decision number is the date that the request was filed; the first two digits are the year; the second two are the month and the last two are the date.

Table 4

Due Process Decisions by District and Year Due Process was Requested

School District	Decision Number	Year	Petitioner	Respondent
Independent School District of Boise #1	09-11-06	2009	Parent	School District
	09-12-01	2009	School District	Parent
	10-04-29	2010	Parent	School District
	10-05-03	2010	Parent	School District
	10-11-19	2010	Parent	School District
	10-05-19	2010	Parent	School District
	11-01-12	2011	Parent	School District
	11-09-30	2011	Parent	School District
	11-11-29	2011	Parent	School District
	11-12-16	2011	Parent	School District
	12-01-12	2012	Parent	School District
	12-02-21	2012	Parent	School District
	12-02-22	2012	Parent	School District
	Lakeland School District #272	10-05-24	2010	Parent
10-08-09		2010	Parent	School District
Meridian Joint School District #2	11-01-20	2011	Parent	School District
	11-02-02	2011	School District	Parent
	11-03-18	2011	School District	Parent
Moscow School District #281	11-09-01	2011	Parent	School District
Mountain Home School District #193	10-08-17	2010	Parent	School District
	10-09-07	2010	Parent	School District
Orofino School District #171	04-03-16	2004	Parent	School District
	05-01-11	2005	School District	Parent
	10-03-29	2010	Parent	School District
Twin Falls School District #411	07-05-03	2007	Parent	School District
Coeur d'Alene School District #271	07-10-05	2007	Parent	School District
Unspecified	09-06-19	2009	School District	Parent

Table 4 illustrates that 21 of the 27 (78%) decisions have the student (parent) as bringing the due process complaints to the State Department of Education. The majority of the decisions are in the southwestern part of the state, 18 of the 27 (67%) decisions, near the

state capital and where there is the largest concentration of population for the State of Idaho.

Table 5 provides an overview of the number of hearings in which the Petitioner or the Respondent or both parties were represented by legal counsel.

Table 5

Number of Decisions with Legal Representation

Decision Number	Parent/Student Representation	School District Representation	Both Parties Represented	Prevailing Party
07-10-05	Not documented	1 (Respondent)		Dismissed
10-05-19	Not documented	1 (Respondent)		Dismissed
10-04-29	Not documented	1 (Respondent)		Dismissed
11-11-29	Not documented	1 (Respondent)		Parents
12-02-22	Not documented	1 (Respondent)		Dismissed
10-03-29	Petitioner	Respondent	1	Dismissed--Settled
10-09-07	Petitioner	Respondent	1	Dismissed—Settled
10-08-17	Petitioner	Respondent	1	Respondent
11-01-20	Not documented	1 (Respondent)		Respondent
10-05-03	Not documented	1 (Petitioner)		Petitioner
11-02-01	Petitioner	Respondent	1	Dismissed—Settled
11-01-12	Not documented	1 (Respondent)		Respondent
12-02-21	Petitioner	Respondent	1	Respondent
Total		8	5	

Table 5 is broken down by Parent/Students and school districts with legal representation and outcome of the decision. It should be noted that in all decisions when the student/parent had legal representation, they were the petitioner in the decision. In six (22%) of the decisions where the family had no known representation, the school district did have legal representation. Out of 27 decisions, 13 (48%) decisions specified that they used legal counsel. The decisions in which there was legal representation for both sides were five of

the 27 (18.5%). Table 6 provides an overview of the disability categories of the students involved in the due process decisions 2004-2012:

Table 6

Number of Decisions by IDEIA Disability Category

Disability Category	Number of Due Process Decisions	%
Autism	2	7.4%
Emotional Disturbance	1	3.7%
Other Health Impairment	2	7.4%
Specific Learning Disability	2	7.4%
Severe Multiple Disability	2	7.4%
Speech Language Impairment	1	3.7%
Not Specified in the Decision	17	63%
Total	27	

Note. Disability categories of Visual Impairment, Traumatic Brain Injury, Orthopedic Impairment, Hearing Impairment, Developmental Delay, Deafness, Deaf-Blind, and Cognitive Impairment were not included on the table as no coding was done in those areas.

Disability categories in Table 6 are derived from IDEIA. The highest frequency was “Not Specified in the Decision” with 17 of 27 (63%). Autism, other health impairment, specific learning disability and severe multiple disability of identified disability categories each with 2 of 27 (7.4%) decisions. The number of “Not Specified in the Decision” is due to the redaction of names and diagnoses in the published decisions to ensure the anonymity of the students involved. Figure 2 illustrates the number of disabilities identified in the hearings by year.

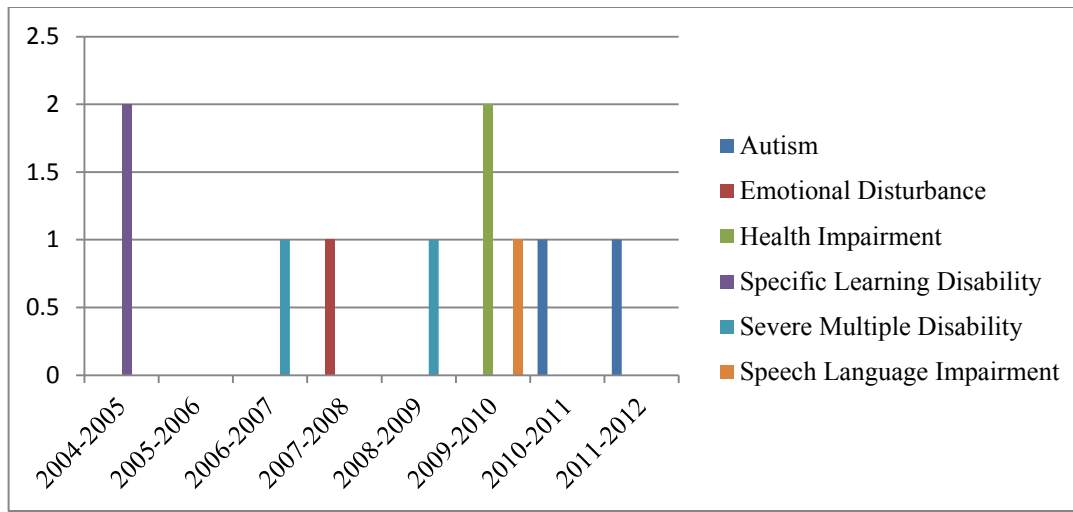


Figure 2. Breakdown of Disability Category by Year.

In Figure 2 it is important to note that autism was the only identified disability brought before hearing officers in the last two years of the study. Table 7 illustrates the number of decisions by complaint. Complaint areas in the table are derived from conflict resolution areas specified in IDEIA, which formed the basis for the thematic coding categories used in the data analysis.

Table 7

Number of Decisions by Complaint

Primary Complaint	Frequency	%
Evaluation/Eligibility	6	22.2%
Free and Appropriate Public Education (FAPE)	3	11.1%
Implementation of Individualized Education Plan (IEP)	3	11.1%
Other: IEP Development	1	3.7%
Placement	3	11.1%
Unknown or Redacted	8	29.6%
Extended School Year	1	3.7%
Procedural Safeguards	2	7.4%
Total	27	

Note. Only areas of complaint heard by the hearing officer were included in the table.

Table 7 represents the number of complaints in each area brought to the State Department of Education where a hearing officer was assigned. The most common identified concern for hearings was Evaluation/Eligibility with 6 of 27 (22.2%) decisions. The next complaint areas were FAPE, IEP development and placement with 3 of 27 (11.1%) decisions. Outcomes of the hearing decision were examined. Table 8 shows the party that prevailed in the decision process.

Table 8

Number of Decisions by Prevailing Party

Prevailing Party	Number	%
Petitioner	6	22.2%
Respondent	4	14.8%
Dismissed	17	63%

Table 8 delineates the outcome of each decision. Decisions that were dismissed with a settlement agreement or dismissed with prejudice totaled 17 of 27 (63%) of the decisions. It must be noted that even though one side prevailed, it doesn't mean that the issue was settled or the dispute was resolved. One of the decisions resulted in the parties seeking remedy in District/Federal Court. Table 9 displays the decisions that were dismissed and the reason for dismissal.

Table 9

Decisions that Were Dismissed and Reasoning

Decision	Dismissal Type	Reason
09-11-06	Dismissed with prejudice	No Factual Disputes
10-03-29	Dismissed	Mutual Agreement
10-04-29	Dismissed with Prejudice	No Factual Disputes
10-05-03	Dismissed	
10-05-19	Dismissed on <i>collateral estoppel</i>	Lack of jurisdiction
10-05-24	Dismissed	Mutual Agreement
10-08-09	Dismissed	Mutual Agreement
10-08-17	Dismissed	Mutual Agreement
10-09-07	Dismissed	Mutual Agreement
11-01-12	Dismissed	No factual disputes
11-01-20	Dismissed with prejudice	
11-09-01	Dismissed	Mutual Agreement
11-09-30	Dismissed	Mutual Agreement
11-11-29	Dismissed	Mutual Agreement
11-12-16	Dismissed	Lack of Jurisdiction
12-01-12	Dismissed	Challenge for sufficiency
12-02-22	Dismissed	Relitigation of similar issues

In Tables 8 and 9 the number of decisions that were dismissed in total was 17 (63%).

Out of the 17 dismissals, eight of the 17 (47%) were dismissed due to a mutual agreement

was obtained. In three of the 17 (17.6%), dismissals were due to no factual disputes or there wasn't enough evidence.

Table 10 illustrates the decisions that are related and/or went to litigation or an additional due process hearing.

Table 10

Decisions That Are Related

District	Decisions that are Related	Outcome
Twin Falls	06-11-06	Consolidated to 07-05-03
Meridian	09-12-01	Court Litigation
Boise	10-05-19	Dismissed
Meridian	11-03-18	Resolved
Boise	11-09-30	Resolved
	11-12-16	Dismissed
	12-01-12	Dismissed
	12-02-22	Dismissed

As illustrated in Table 10, there were two instances where the petitioner and respondent have been involved in due process decisions that have been filed with the same parties and/or same issue in different locations. It should be noted that only one decision (H-10-05-19) resulted in further litigation as noted in the decision. That decision went to the District Court, and was later dismissed at the Federal Court level. Through the interview process, the two attorneys commented that four decisions had proceeded to further litigation. The attorneys did not state specifically what decisions had moved on for further litigation.

Discussion of Decisions to Note the Outcome

Three hearings (09-12-01, 10-11-19, 11-3-18), were based on evaluation/eligibility and IEP development. Hearing 09-12-01 (case name was redacted), was focused on a

request for due process and a request for an outside evaluation to be done at the public's expense. In hearing 10-11-19 (*Student v. Boise School District No. 1*), the evaluation was a portion of the complaint along with the right to due process, having a hearing with or without oral comment, summary judgment as an outcome, evidentiary fact, material facts and that parents are only one part of the team and have the same amount of rights and votes as other members of the team. 11-03-18, (*Meridian Joint School District No. 2 v. Student*) referenced evaluation and if the proper tests were selected and not discriminatory and to make sure the evaluation was in the area of concern and need. Other aspects of this hearing were in regards to the need for special education due to health issues and the overall progress in general education.

Another hearing, (10-04-29, *Student v. Independent School District of Boise, No.1*), was brought forth with the concern of no evidence of regression in order to qualify for Extended School Year services. Hearing 07-05-03 (*Twin Falls School District*) was also in regards to placement in general education classroom, compensatory education, appropriate assessment, the 4 prong approach as a result of the Holland case, benefit of full day of school, private placement, how the design and implementation of the IEP was done, reimbursement of evaluation and a unilateral placement.

In *Student v. Independent School District of Boise City No. 1* (11-12-16), the primary concern in the complaint was generalization across settings between home and school. School based special education services are to benefit the student in the school setting and not purposefully in the home.

The reason for the hearing 04-03-16 (case name was redacted) was in regards to behavior and if the behavior was a manifestation of the disability or not. Along with

behavior in hearing 05-01-11 (case name was redacted) the issue of mainstreaming, drugs/discipline and individual alternate educational setting were discussed in the hearing. Individual alternate educational setting and FAPE when suspended and expelled was a key focus of hearing 12-02-21 (*Student v. Independent School District of Boise City No. 1*). Other components of this case were parent participation and the definition of home bound services.

In decision 09-06-19, FAPE was discussed along with transition and post-secondary placement. Other miscellaneous decisions discussed to be noted by practitioners are 10-05-03 (case name was redacted too much to be specific) in which the parent wanted Microsoft Word Format and the District used Adobe—this is a non-issue due to the fact that Adobe is a free program and it is required for all state electronic filings. The hearing number 12-02-22 (*Student v. Independent School District of Boise City #1*) should be noted due to the reference that the statute of limitation is 2 years in regards to a special education hearing.

The major take away pieces for the reader and in particular for practitioners from these decisions are: statute of limitations is 2 years. This means that a family or student or school district has 2 years in order to pursue due process or litigation. The next take away from the previous hearings is to review behavior during referral and evaluation process and the IEP meeting and if the behavior is part of the disability, perform a complete evaluation.

Discussion of Documentary Data

The DSF was examined and data compiled in the tables above. Due to the population concentration 78% of the decisions in the last seven years were in the Boise metropolitan area. The reader would expect this in a higher metropolitan area since there is more access to resources compared to a rural area where there are less resources and supports. Legal

counsel was identified representing the petitioner and/or respondent in 48% of the decisions (n = 13). The school district was represented in each of the 13 decisions.

The disability category that had the most occurrences was Not Specified in the Decision (63%), due to confidentiality and redaction. An accurate number in each category is hard to determine due to the preponderance of redactions. However, when a disability was specified other health impaired, autism spectrum disorder, specific learning disability, and severe multiple disability were all represented in equally with 7.4% of the decisions (n = 2). The area of issue most commonly identified was eligibility/evaluation (33%) decisions (n = 9). Included in eligibility/evaluation are the areas of child find and independent educational evaluation.

With respect to the hearing outcomes, 63% of the decisions were dismissed (n = 17). In the cases that had representation, 48% of the cases were dismissed based on mutually agreed upon resolution. This number illustrates the trend with the new conflict resolution process of having facilitated IEPs as a precursor to eliminate due process hearings.

Phase Two: Analysis of Attorney Interviews

Although the documentary data from published due process decisions provides some insight into the problems and trends in Idaho schools regarding students with disabilities; it was clear that there could be value in interviewing the attorneys involved in the decisions reviewed for this study. The attorney interviews provide a practitioner perspective. This frame of reference was brought in to correlate the DSF documented data as well as gain their perspective on the decisions in which they have been involved. In order to validate and further clarify the findings from the DSF analysis, the identified lawyers were contacted for interviews. See Table 11 for detailed information regarding the attorneys identified.

Table 11

Attorney Name and Number of Decisions and Representation

Attorney	Representation	Number of Decisions	% of Hearings Represented
Amelia	Student/Parent	4	14.8%
Rosemary	School District	11	40.7%
Steve	School Districts	2	7.4%
Janice	Student/Parent	1	3.7%

The four attorneys identified from the cases in this study form the sample. All four attorneys were invited to be interviewed for this study. Initially, three attorneys agreed to participate in this study; however, one failed to respond after several follow ups on the part of the researcher; thus the response rate was 50%. The interview process was conducted in three steps: (1) the interview questions were emailed to each participant prior the telephone interview; (2) an interview was conducted via telephone between the researcher and the participant; and (3) the responses to the questions by each attorney were typed by the interviewer during the phone call and then sent to the attorney for confirmation. Once this was completed, the transcripts were sent to each participant for member checking. Participants did not have access to the researcher's findings based on the DSF when they were questioned. The interview questions can be found in Chapter Three as well as in Appendix E. The first three questions consisted of demographic and background information.

- a. How long have you been practicing educational law?
- b. Did you go to law school with the intent of practicing educational law?

- c. Do you represent school districts or individual people? What made you determine this?

The last six questions pertain specifically to the different questions derived from the DSF.

- d. Is there a particular disability classification under IDEIA that you tend to see represented more in due process decisions? Please explain why you think your identified category has more formal complaints than others.
- e. Do you see any current or future trends in complaints/due process decisions originating from specific disability classification/groups as defined by IDEIA?
- f. In your experience, what has been the most frequent due process violation over the past 5 years? Do you think this will be the same in the future?
- g. Why do you think there was a surge in numbers of decisions being mediated from 2008-2009 school year to 2009-2010 school year?
- h. How many decisions do you think have gone to litigation after a due process hearing?
- i. What is the main advice you give or would give school districts in the area of special education law/compliance?

Background of attorneys interviewed.

Amelia.

Amelia has been practicing educational law for nine years with the majority of her experience in Idaho. When she went to law school she did so with the intent of studying educational law. Amelia had worked with persons with disabilities and designed appropriate programs and services to meet their needs as a resident counselor and supervisor at a state hospital. Amelia went on and stated “I am a parent of a person who benefitted from

appropriate and adequate individualized educational programming provided with fidelity, as a fully included student” (Amelia, personal communication, November 12, 2012).

Amelia represents students with disabilities, as children or adults, under Section 504 and IDEA. Her practice is narrowed to advocate for students with disabilities. According to Amelia “there remains a need to assist parents in achieving a balance in of ‘power’ during process of identification, eligibility, and establishment of plans and programs as outlined under IDEA” (Amelia, personal communication, November 12, 2012). In the decisions that were reviewed Amelia was involved in 14.8% of the hearings.

Rosemary.

Rosemary has been practicing law since 1984. She did not go to law school with the intent of practicing educational law. Rosemary worked for two years with a private insurance defense law firm, and then worked for a state Attorney General’s office. Part of her work responsibilities included Medicaid appeals. She later became the deputy attorney general for the State Department of Education and other related education agencies for six years. Rosemary stated “I only represent school districts with the belief and knowledge that the state is too small to be on both sides of a legal case dependent upon the situation” (Rosemary, personal communication, January 28, 2013). In the decisions that were reviewed, Rosemary was involved in 40.7% of all hearings.

Disability criteria areas.

Each attorney was asked about which disability categories tended to be more prevalent in past due process decisions and which disability categories they expect will be represented in future due process decisions.

Amelia stated “there have been cases which challenged a district’s refusal to conduct discrete trial training, and similar services for students on the autism spectrum who present with challenging behaviors” (Amelia, personal communication, November 12, 2012).

Rosemary stated “globally autism is being seen more and specifically in Idaho that the cases have been in autism and serious emotional disturbance” (Rosemary, personal communication, January 28, 2013). When further questioned about what disability category or categories the lawyers expect in future due process decisions Amelia responded with Asperger’s/high functioning autism. She stated:

although not a classification, I expect a rise in complaints and challenges to non-therapeutic intervention and mistreatment of students by teachers, paraprofessionals, and professionals. For example, non-therapeutic holds which injure and bruise a student, or locking a student in a ‘quiet room’ or ‘secluding’ the student as a form of control or punishment (Amelia, personal communication, November 12, 2012).

When questioned about what classification they foresee increasing in the future, Rosemary reflected that autism will be more frequently seen in due process decisions with the new Diagnostic and Statistical Manual of Mental Disorders-5 (DSM-5) criteria and how the changes will lead to more due process hearings. Another area that may increase is Specific Learning Disability (SLD). In regards to further follow up as to what specifically regarding SLD, she replied, “confusion among school personnel regarding the SLD criteria, Response to Intervention, and the evaluation process for SLD” (Rosemary, personal communication, January 28, 2013). Another concern Rosemary conveyed more due process cases will emerge from is educating personnel and parents on process. “Often times the parents have

more knowledge on how to work with their student than the paraprofessional that has been assigned to the student” (Rosemary, personal communication, January 28, 2013). Rosemary continued, “often times the state of Idaho can predict their trends in due process and litigation by the cases coming from Washington and Oregon” (Rosemary, personal communication, January 28, 2013).

Frequency of due process violation and impact for the future.

Each attorney was asked about the most frequent due process violations and if they expect them to be the same in future due process hearings. Each lawyer identified the same violations independent of each other and without prompting by the interviewer. The reader should note that both attorneys listed each item identically. It should also be noted that each attorney was interviewed independently and were not aware of the other’s response. Amelia felt that the most frequent due process violation(s) were:

- Early childhood and child find to find students that qualify for services in special education and for the school district to provide the assessment of suspected disability
 - Failure in child find, appropriate evaluation of all areas of suspected disability that the team felt in the referral process;
- Failure to provide resources and supports, develop goals and objectives to ensure adequate progress in the general education curriculum, including extra-curricular activities; Choir, intramural sports, competitive sports, clubs, etc. For example social skill training, problem solving skills, and mental health related counseling.
- Transition Programming for students aged 14-21—presently, too many students with ASD are being graduated out and do not have the functional skills necessary to

function. This stands in violation of Congressional intent and the purpose for transition planning (Amelia, personal communication, November 12, 2012).

Rosemary stated she felt the most frequent due process complaints were:

- Failure to evaluate in all areas of suspected disability from the team referral process;
- IEPs are poorly written and present levels of performance aren't accurately described and goals aren't measureable;
- Lack of a positive behavior supports plan or failure of a positive behavior supports plan being implemented;
- The same IEP year after year and team isn't analyzing data and goals to develop new goals;
- Child find in which schools are not going and finding students with suspected disabilities and evaluating those concerns (Rosemary, personal communication, January 28, 2013).

After examining the DSF results, the rank order from the documentary analysis parallels the attorneys identified areas of concern. As illustrated in Table 6, the trend from 2004-2012 is as follows: (1) evaluation/eligibility; (2) IEP components of FAPE, and (3) Implementation and IEP development.

One of the key themes focused on issues related to the child find program and evaluations for special education eligibility. Child find is a mandatory program responsible for identifying students with disabilities within each school district. Child find requires districts to perform an evaluation if a child is suspected of having a disability that would affect his/her ability to make adequate educational progress with his/her peers. The attorneys

identified this as an area of concern and the DSF ranked this as an area where more hearings are being brought forth.

Another key finding is related to the implementation of the IEP and the delivery of a “free and appropriate public education” (FAPE). Amelia noted there was a common failure to provide supports and resources needed for students to achieve their IEP goals. Parts of the IEP that were marked as well by Rosemary were the same IEP being used year after year with no change to the present level of performance. Amelia also noted that transition services for students age 14 and older are not being addressed. These are all pieces that make up the whole of the IEP document and are important elements in determining FAPE.

Due process decisions that have gone on to further litigation.

Both attorneys were asked “How many of your decisions went forward to further litigation?” Both agreed that there have been a total of four decisions that have gone on to further litigation. One decision has gone to district court and the other three have gone to federal court. These responses do not correlate with the results from the DSF. One belief of why there is such a discrepancy is that when the decision is written it is not known if either party has decided to proceed with further litigation by appealing the decision of the hearing officer. In the decision where it was noted if the case was moving to further litigation, the family stated it during the hearing process.

Surge in decisions.

Both lawyers were asked about their perspectives on why there was a surge of due process decisions from the 2008-2009 school year to the 2009-2010 school year. Amelia stated:

I believe it went up with the changes which occurred at the State Department of Education, and within Luna's own department. For example, when parents contact the State Department of Education, the State Department lays out the various steps to resolve conflicts. In my opinion, the parents are at a grave disadvantage in mediation. Again, they are not educated on their rights, the responsibility of the school district, the legal implications of a mediation process, and are easily 'sold a bill of goods' by SDE, the mediator, and or meeting facilitator (Amelia, personal communication, November 12, 2012).

Amelia went on, "I also suspect that some of the policy changes are driven by the Governor's views on education, which we understand are held by persons such as Jeb Bush, and the former President" (Amelia, personal communication, November 12, 2012). Lastly, Amelia stated:

In addition to changes at the SDE, I understand that Disability Rights of Idaho, advocates at the least adversarial level, and may advise a family to seek mediation. However, I do not recommend mediation to parents unless they are allowed to have legal representation through the process. Again, it is a grossly imbalanced process when a special education director is fully versed in the law, how to creatively craft a settlement, and the parent does not hold the same level of knowledge of the process and their child's rights (Amelia, personal communication, November 12, 2012).

Rosemary stated that she felt that both parties should have mediation in good faith, to provide a chance for issues to be resolved before going to due process or mediation.

Further advice.

Both attorneys were asked “what further advice they would give school districts in the area of special education.” Amelia responded:

that this is a difficult question. Some districts are doing it right. Some districts do not. Often it is an attitude, on the part of the administration, that does trickle down and across program delivery points within special education. *IF* the district wishes to comply with the minimum standard set by law, I encourage them to adopt a ‘can do’ attitude and ensure it is shared and embraced by all personnel in the district (Amelia, personal interview, November 12, 2012).

Rosemary responded to the question in that schools need to be better at “documentation, documentation and more documentation.” She also stated “now people need to watch emails as they are now considered public record and admissible in court. This is now being done with more frequency.” Rosemary stated “often times that the knowledge of staff has less knowledge than parents and that districts need to be aware of this and provide training” (Rosemary, personal communication, January 28, 2013).

Discussion of Attorney Interview Data

The attorney interviews add the perspective of the practitioner. These interviews were able to advance and expand the results from the DSF with more details and insight into what is currently happening as to the state of special education in Idaho. The attorneys were even able to foreshadow what possible trends might occur in special education in the state of Idaho. They also identified the use of mediation before going to a due process hearing as a future trend. This foreshadowing as well as a review of the DSF could help school districts

provide and budget for professional development for employees. The two perceptions of the attorneys, one from the student side and the other that represents school districts, enhances the study by providing alternative and additional perspectives on legal issues in special education in Idaho. The perspective of the two attorneys that are on opposite sides of the table would make one think that they would differ significantly, but in the majority of the responses there were similarities.

Summative Findings: Research Question One

The first research question investigated what types of special education related issues are being brought before the state hearing officer(s) as due process complaints in Idaho. This was explored with respect to special education issues (e.g., IEP procedures and safeguards, eligibility, placement, etc.) along with the type of disability involved. In addition the hearing outcomes were analyzed in respects to special education issue, type of disability, and who initiated due process proceedings.

In order to statistically analyze the results the issues were merged into categories with placement consisting of Least Restrictive Environment (LRE), extended school year (ESY) and Free and Appropriate Education (FAPE) and procedures including IEP development and implementation errors along with adhering to specified timelines and safeguard procedures. While the most common issue before hearing officers were procedural IEP errors and development and procedural safeguards (25.9%) decisions, a chi square goodness of fit test revealed no significant difference between issues resulting in due process, $\chi^2(3, N = 27) = .407, p = .939, w = .0075$ (very small). Guidelines for interpreting Cohen's w (1988) are: .10 for small, .30 for medium and .50 for a large effect size. See Table 12 for complete statistical analysis.

Table 12

Research Question One Results

Issues	Observed	%	Expected	Residual	Standardized Residual	Significance
Eligibility Evaluation	6	22.2	6.8	-.8	-0.307	n.s.
Placement, FAPE, LRE, ESY	6	22.2	6.8	-.8	-0.307	n.s.
Procedural IEP errors, safeguards	7	25.9	6.8	.3	0.115	n.s.
Redacted	8	29.6	6.8	1.3	0.498	n.s.

Due to the redaction of disability information from legal documents the identification of disability (n = 17, 63%) it was not possible to identify if there was a particular type of disability that result in participation in the conflict resolution process.

The issues resulting in due process were also analyzed in respects to hearing outcomes by presenting issue, type of disability, and initiating party. A chi square test of independence revealed no significant difference in the outcome depending on what the issue was, $X^2(6, N = 27) = 11.527, p = .073, \phi = .462$, (medium-large). Cohen's conventions for effects sizes with Cramer's V coefficients (1988) are as follows: .10 as small, .30 as medium and .50 as a large effect size. Table 13 reflects the outcome in respect to the issue that was brought before the hearing officer.

Table 13

Outcome Compared to Issue

Issue	Defendant	Plaintiff	Dismissed	Total %
Eligibility	2	2	2	22.2
Placement, FAPE, LRE, ESY	0	3	3	22.2
Procedural, IEP errors, Safeguards	2	1	4	25.9
Redacted/unknown	0	0	8	29.3
Total %	14.8	22.2	63	100

However, a chi square test of independence revealed a significant difference in the outcome depending on what the disability was, $X^2(12, N = 27) = 27.841, p = .006, \phi = .718$ (large). Standardized residuals indicate that the plaintiff won the case significantly more than one would expect by chance when it involved a student with a specific learning disability (Standardized residual = 2.3, significant at the .05 level). In addition, the defendant won significantly more than one would expect by chance when the issue involved a student with autism spectrum disorder (Standardized residual = 3.1, significant at the .01 level). See Table 14 for complete details.

Table 14

Disability criteria compared to outcome.

Disability Criteria	Defendant	Plaintiff	Dismissed	Total %
Other Health Impairment	0	1	1	7.4
Specific Learning Disability	0	2*	0	7.4
Autism Spectrum Disorder	2**	0	0	7.4
Severe Multiple Disability	0	1	1	7.4
Speech Language Impairment	0	0	1	3.7
Emotional Disturbance	0	1	0	3.7
Redacted/unknown	2	1	14	63
Total %	14.8	22.2	63	100

*significant at the .05 level

** significant at the .01 level

The data also needs to be evaluated in respects to outcomes. A chi square goodness of fit test revealed significantly more cases were dismissed than one might expect by chance, $X^2(2, N = 27) = 10.889, p = .004, w = .20$ (medium-small).

Table 15

Outcomes

Outcome	Observed	%	Expected	Residual	Standardized Residual	Significance
Defendant	4	14.8	9	-5.0	1.67	n.s.
Plaintiff	6	22.2	9	-3.0	1.0	n.s.
Dismissed	17	62.96	9	8.0	2.67	.01

With respect to initiation of the legal proceedings, a chi square goodness of fit test revealed that parents initiate legal proceedings (85.19%) significantly more than the school district, $X^2(1, N = 27) = 13.37, p < .001, w = .495$ (large).

Table 16

Initiation of Due Process Proceedings

Party Initiating	Observed	%	Expected	Residual	Standardized Residual	Significance
Parent/Student	23	85.19	13.5	9.5	2.586	.01
School District	4	14.81	13.5	-9.5	-2.586	.01

However, this is due to the fact that significantly more parents initiate conflict resolution proceedings than school districts in cases that are dismissed (94.1%), $X^2(1, N = 17) = 13.235, p < .001, w = .779$ (large).

Table 17

Initiation of Cases Dismissed

Party Initiating	Observed	%	Expected	Residual	Standardized Residual	Significance
Parent/Student	16	94.1	13.5	9.5	2.586	.01
School District	1	5.9	13.5	-9.5	-2.586	.01

In the cases that proceeded to litigation there was no significant difference in who initiated the legal action, $X^2(1, N = 10) = 1.6, p = .206, w = .16$ (small).

Table 18

Initiation of Cases Litigated

Party Initiating	Observed	%	Expected	Residual	Standardized Residual	Significance
Parent/Student	7	70	5.0	2.0	.894	n.s.
School District	3	30	5.0	-2.0	-.894	n.s.

Moreover, in the cases that proceeded to litigation, a chi square test of independence revealed no significant difference in the ruling either for or against the family of school district, $\chi^2(1, N = 10) = 0.079, p = .778, \phi = .089$ (very small). A McNemar Change test confirmed these results, $p = .375$.

Table 19

Outcome of Litigated Cases by Plaintiff

	Litigation Outcome		Total
	Defendant	Plaintiff	
Parent/Student	3	4	70%
School District	1	2	30%
Total	40%	60%	100%

Summative Findings: Research Question Two

The second research question investigated common themes in the results of the due process decisions, and the implications for the future of special education services in Idaho.

Table 20 shows the comparison of the attorney interviews and the DSF.

Table 20

Interviews and DSF Comparison

Area of Correlation	Amelia	Rosemary	DSF
Disability			
Autism	X	X	X
Specific Learning Disability		X	X
Other Health Impaired			X
Emotional Disturbance		X	
Severe Multiple Disabilities			X
Issue			
Child Find	X	X	X
IEP Development and Components		X	X
Transition	X		
Failure to Evaluate	X	X	X
Behavior Support		X	
FAPE			X
Procedural Safeguards			X

There were three areas in which there was 100% agreement. Those three areas were the disability category of autism, the areas of child find, and the failure to evaluate.

Table 21

Triangulation Table: Interviews and DSF

	Most frequent due process				Trend
	<i>Poor evaluation</i>	<i>IEP issues</i>	<i>Poor behavior plan</i>	<i>Find students in need</i>	
Rosemary	Failure to evaluate in all areas,	poorly written IEPs, same IEP year after year,	lack of PBS implementation	child find in schools	ASD
Amelia	Failure to evaluation in all areas	IEPs don't have goals & transition planning	serious ED, failure for resources and supports	Failure of child find in the school, early childhood child find	ASD
DSF	Evaluation, Procedure	IEP implementation	Procedure/IEP implementation	Eligibility	ASD

Triangulation between the DSF analysis and the attorney interviews reveal four themes in respect to the issues that most frequently initiate due process:

- 1) issues with finding children in need in a timely manner
- 2) issues with the evaluation
- 3) issues with the IEP
- 4) poor behavior planning and/or implementation

With respect to finding and evaluating children in need, the law requires that communities actively seek out and evaluate children in need. The issues with the evaluations were that they did not evaluate in all areas that could be affected by the presenting problem. The problems with the IEPs were that they often used the same IEP year after year, the goals need to be more specific and include transition planning. The IEPs also needed to be implemented according to what was documented. Poor behavior plans and lack of implementation of behavior plans were a common theme. The anticipated trend is an increase in ASD student issues due to the new DSM-5 classification system (Amelia, Rosemary) along with SLD due to the new SLD criteria (Rosemary).

As a result of the second research question implications for the future of special education services in Idaho can be explored. The DSF results revealed a surge in cases beginning in the 2009-2010 school year. The attorneys hypothesize that this could be due to changes within the Department of Education (Amelia), the government's view of education (Amelia) and promotion of mediation (Amelia, Rosemary). It is strongly encouraged that faculty and administrators to incorporate a 'can do' attitude (Amelia) and that this will help mitigate many of the issues that lead to due process hearings. In addition, the attorneys strongly encourage teachers, administrators, and staff to be very attentive to document

everything, remembering that emails are classified as public record, and to make sure to provide training to all persons working with students with disabilities, including part time employees and paraprofessionals (Rosemary).

Summary

Chapter Four provided the results to the following research questions: *1. What types of special education related issues are being brought before the state hearing officer(s) as due process complaints in Idaho?* and *2. What are common themes in the findings/outcomes of the due process decisions, and what implications do these have for the future of special education services in Idaho?* The results were derived from a total of 27 due process decisions from the years January 1, 2004 to June 30, 2012. When examining the DSF it can be found that the majority of the decisions were brought by the parent to the state department (85.2%) and are from the southwestern part of the state near the capital. Of the 27 cases that went to due process, 63% were dismissed (n = 17) and 37% went on to litigation (n = 10).

The majority of decisions (63%) did not have a specified disability mentioned due to confidentiality for the student. When specified, the most noted disability was autism (7.4%), specific learning disability (7.4%), severe multiple disability (7.4%), and other health impairment (7.4%) on the cases that were not redacted. The attorneys identified a trend towards specific learning disability due to the rewrite of the state manual and the new criteria for identification of students with a specific learning disability and autism spectrum disorder due to the new DSM-5 criteria (Amelia, Rosemary).

The predominant complaint areas identified on the DSF were eligibility (22.2%), placement (LRE, FAPE, ESY, 22.2%) and IEP development and implementation (25.9%).

Therefore it is not surprising that the second most referenced case was *Hendrick Hudson v. Rowley* which outlines FAPE. *Schaffer v. Weast* was the most referenced case has the implication for Idaho in that the person bringing the due process forward needs to have the majority amount of information to prove their side.

Decisions that were dismissed with a settlement agreement or dismissed with prejudice were in the majority (63%). The main reason for hearings being dismissed was due to mutual agreement. The attorney interviews also reflected this same trend indicating a preference toward mediation which has resulted in a lower amount of decisions move towards further litigation.

It should be noted that in all decisions when the parent had identified legal representation, they were the petitioner in the decision. In a majority of decisions there was legal counsel. Statistical analysis revealed no significant difference in the outcome between if the parent or school district initiated the legal proceedings ($p = .219$, $\phi = .335$, medium).

While parents initiate due process (conflict resolution) proceedings (85.19%) significantly more than the school district, this is predominantly due to the fact that significantly more parents initiate conflict resolution proceedings than school districts in cases that are dismissed (94.2%). In the cases that proceeded to litigation there was no significant difference in the ruling either for or against the family or school district.

However, litigation outcomes were found to be related to the type of disability. The plaintiff won the case significantly more than one would expect by chance when it involved a student with a specific learning disability (significant at the .05 level), while the defendant won significantly more than one would expect by chance when the issue involved a student with autism spectrum disorder (significant at the .01 level). It must be noted that in the last

two years the only identified disability was ASD and both attorneys interviewed indicated they see this as a trend in the future.

Chapter Five

Themes, Conclusions, Discussion and Recommendations

This chapter begins with a chapter by chapter overview of the study. It will summarize the findings of the study, ascertain conclusions from the data and conclude with further recommendations for research.

In Chapter One, a rationale for this study was presented by examining past research on conflict resolution in special education and the implications conflict resolution process and procedures had on adversarial parties as examined by Zirkel, Newcomer and Maass. The chapter further delineated the conflict resolution process defined by IDEIA. This study aimed to examine the conflict resolution process used in the state of Idaho. It took into consideration the perspective of special education practitioners in the field and strives to develop better programs and trainings for stakeholders in Idaho. This chapter addresses a major rewrite of IDEIA to include Specific Learning Disability, the introduction and use of RtI and the decision from *Schaffer v. Weast* which now places the burden of proof on the party bringing forward the complaint and not the defending school district.

Chapter Two presented the literature surrounding special education law. The review of related literature explored relevant information in the following areas: (a) sources of law; (b) the history of special education practices; (c) the history of special education law; (d) formal complaints, due process and mediation. These topics assisted in establishing groundwork and litigation outcomes in which due process hearings are brought before a hearing officer in Idaho. The literature review illustrated how special education law and process is based on a combined method of litigation and federal regulations and placed the review in a chronological timeline.

Chapter Three outlined the methods and conceptual framework for this explanatory mixed methods study. This study utilized the conceptual framework of Rock and Batemen (2009). This chapter outlined the two phases of the study. Phase one consisted of a document analysis of due process decisions compiled by the DSF. Phase two was an inquiry of identified legal representatives in the due process hearings from January 2004 to June 2012.

In Chapter Four, the data was reported in the format of tables from the DSF and interview summaries. The subsequent findings were derived from the data. The outcomes data reports the number of decisions, decisions and types of representation, disability criteria frequency as well as the attorney interpretation and correlation to the research questions and findings.

The remaining part of this chapter will relay the themes that emerged from the study, discussion and conclusions of the results of the study and further recommendations for further study.

Themes

Research Question One: What types of special education related issues are being brought before the state hearing officer(s) as due process complaints in Idaho?

Theme One: Due to the redaction of disability information from legal documents (n = 17, 63%) it was not possible to identify if there was a particular type of disability that results in participation in the conflict resolution process more than another. In cases, where the disability was not redacted specific learning disability, autism, severe multiple disability and other health impairment were indicated as areas of conflict with the highest frequency reported 2 of the 27 (11.1%) each. A chi square test of independence revealed a significant

difference in the outcome depending on what the disability was, $X^2(12, N = 27) = 27.841, p = .006, \phi = .718$ (large). Standardized residuals indicate that the plaintiff won the case significantly more than one would expect by chance when it involved a student with a specific learning disability (Standardized residual = 2.3, significant at the .05 level). In addition, the defendant won significantly more than one would expect by chance when the issue involved a student with autism spectrum disorder (Standardized residual = 3.1, significant at the .01 level). The attorneys' responses paralleled this thought process with the first answer being autism and second, specific learning disability.

Theme Two: The largest number of complaints were related to the evaluation and eligibility of students. Included within evaluation and eligibility was independent educational evaluations as well as child find (the process for which students with disabilities are targeted for intervention and referred for a comprehensive assessment), with 9 of 27 decisions or 33%. The next areas of frequency were placement, IEP implementation, LRE and IEP development. This also mirrors the responses of the lawyers. The lawyers noted that Child Find and areas of eligibility were the most problematic in their experience.

In order to statistically analyze the results the issues were merged into categories with placement consisting of least restricted environment (LRE), extended school year (ESY) and Free and Appropriate Education (FAPE) and procedures including IEP development and implementation errors along with adhering to specified timelines and safeguard procedures. While the most common issue before hearing officers was Procedural-IEP errors and development and procedural safeguards (25.9%) decisions, a chi square goodness of fit test revealed no significant difference between issues resulting in due process, $X^2(3, N = 27) = .407, p = .939, w = .0075$ (very small). Guidelines for interpreting

Cohen's w (1988) are: .10 for small, .30 for medium and .50 for a large effect size. See Table 12 in Chapter Four for complete statistical analysis.

Theme Three: The predominant outcome of the decisions was dismissal of the case. Decisions that were dismissed with a settlement agreement or dismissed with prejudice totaled 16 of the 27 or 59% of the decisions. Upon review of the 17 decisions that were dismissed, eight (47%) were dismissed due to mutually agreed upon resolution before going to a full due process decision presided by a hearing officer. However, this is due to the fact that significantly more parents initiate conflict resolution proceedings than school districts in cases that are dismissed (94.1%), $X^2(1, N = 17) = 13.235, p < .001, w = .779$ (large). Mueller (2009) stated that some alternate forms of resolution are "(a) parent-to-parent assistance; (b) case management; (c) facilitated IEP meetings; (d) an ombudsperson; and (e) alternative mediation" (p. 7). "The number of hearings nationwide dropped 31% to 4,170 in 2005-06 from 6,038 the year before" (Golden, 2007, p. 3).

Research Question Two: *What are common themes in the findings/outcomes of the due process decisions, and what implications do these have for the future of special education services in Idaho?*

Theme Four: There was an increase of due process decisions after the State of Idaho revised and released their new manual in 2007. This rise could be attributed to the expansion of the chapter on conflict resolution. This expansion was a result of IDEA "requiring schools to tell parents how to initiate impartial due process hearings and of their right to recover attorneys' fees if they prevail" (Lanigan, Audett, Dreier & Kobersy, 2001, p. 216). One of the lawyers restated this theory and the other one alluded to it through the acknowledgement of a new mediation process. The different types of state dispute resolution

options are: (1) IEP facilitation; (2) informal conflict resolution; (3) mediation; (4) state administrative complaint (early complaint resolution); (5) due process hearing (*State of Idaho, 2007*).

Theme Five: The majority of the decisions were brought by the student and/or their families. In the decisions that were noted, 21 out of the 27 or 78% were brought forth to the state department by the student/parent. In respects to initiation of the legal proceedings, a chi square goodness of fit test revealed that parents initiate legal proceedings (85.19%) significantly more than the school district, $X^2(1, N = 27) = 13.37, p < .001, w = .495$ (large).

When a side utilized legal representation, the representation in the majority was the school district and the parent utilizing themselves and/or the use of an advocate. Out of 27 decisions, 13 decisions or 48% had specified legal counsel. In five of the 27 (19%) decisions, both parties were represented by legal counsel. Moreover, in the cases that proceeded to litigation, a chi square test of independence revealed no significant difference in the ruling either for or against the family or school district, $X^2(1, N = 10) = 0.079, p = .778, \phi = .089$ (very small). A McNemar Change test confirmed these results, $p = .375$.

“School districts have consistently outpaced parents as winners in first-tier due process hearings” (Newcomer, Zirkel, & Tarola, 1998, p. 1). Burke cited the Consortium for Appropriate Dispute Resolution in Special Education (2004), “Even with the expense and time, parents prevail in only 28.6% of due process hearings” (Burke, 2013, p. 227). There was an even smaller margin of outcomes going to further litigation in Idaho. Only one decision (H-10-05-19) resulted in further litigation as noted in the hearing. The interviewees also noted that four of their decisions have gone on to the district and federal court. The discrepancy between the two outcomes on decisions going to further litigation is what was

written at the time of the report and not pending further review or notation by the state department.

Summary of Themes

From the two research questions there were five themes that emerged. In question one three themes emerged. The three themes were (1) the disability areas brought before hearing officers are specific learning disability, severe multiple disability, other health impairment and autism; (2) highest area of complaint was evaluation and eligibility; and (3) outcome of decisions was predominantly dismissal. In question two, two themes emerged. The two themes were (1) there was an increase of due process decisions after the newest release of the State of Idaho Special Education Manual in 2007; and (2) majority of decision were brought by the student and/or their families.

Conclusions and Interpretations

The results of this study indicate that there is a low incidence rate of due process decisions being appealed and going to further litigation in Idaho. In theme two regarding child find and identification, as shown by the DSF as well as in the attorney interviews, is an area where schools could provide more professional development for their general education and special education staff. Autism and specific learning disability are the eligibility criteria areas showing an increasing trend for potential conflict. “According to the latest reported data, in fall 2007 students with SLD amounted to 43.3% of all students with disabilities ages 6 to 21 under IDEA” (Zirkel, 2010, p.62). Scull and Winkler (2011) stated: “Autism and ‘other health impairment’ (OHI) populations increased dramatically. The number of autistic students quadrupled from 93,000 to 378,000” (p. 1). “Texas, Idaho (ranked 49th), and Colorado reported the lowest rates of disability identification in 2009-10” (Scull & Winkler,

2011, pp. 1-2). They went on stating nationally there has been a drop in the identification of SLD. Some of this drop was likely due to an increasing national awareness of autism and a subsequent shift from incorrect SLD identification to autism identification” (p. 8). Future trends are also related to the state completing any further manual revisions or rewrites and how that impacts practitioners and parents.

Seminal cases in special education case law such as *PARC v. Commonwealth*, *Mills v. Board of Education* and *Board of Education Hedrick Hudson v. Rowley*, have directed the basic policy, while also raising new issues that have been further defined through later litigation as evidenced in *Honig v. Doe*, *Daniel R. R. v. State Board of Education* and *Timothy W. v. Rochester*. These cases as well as others are considerations for hearing officers to use as precedent when they deliver their decision on a particular issue.

Additionally, special education manuals, and court interpretations are written on these cases that have set precedent in the field. The literature provides a basis for the findings in the study while informing future trends in education and in particular special education. In a previous study the overall hearing was examined and the process and individual items were not further researched to specific issues. Zirkel and Scala (2010) have examined all 50 states as a global study and identified hearings in regards to the tier system, the hearing officers and their backgrounds. They didn't go into depth with regards to the trends in this study examined. Special education litigation is constantly changing so, in turn, the structure of the study will remain constant but the specific outcomes will change. In regards to replication of this study the format of this study can be done with full knowledge that the outcomes could be different.

An increase in more due process hearings is apparent due to an amendment to the state manual of the new determination process for identifying students with specific learning disabilities. Students are now subject to interventions sooner under the newly adopted Response to Intervention (RtI) protocol than in the past discrepancy based model of SLD identification. Now students are monitored from very early in their academic careers and there is a blur of services and/or interventions that are implemented before they are formally identified as needing special educational services. Response to Intervention (RtI), as a new process, predicated upon the assumption that:

Effective intervention leads to more meaningful identification by accelerating the progress of many low achievers, thereby eliminating them from consideration as disabled. Students unresponsive to generally effective intervention are in need of more intensive instruction, including, perhaps, special education (Fuchs et al., 2010).

The RtI process is now helping teams see who truly has a learning disability and helps avoid misidentification of students. However, RtI is a new process and is still being developed and defined even as it is implemented in the schools. Therefore, it is inevitable that conflicts would arise about the many vagaries in the process.

One concern that the attorneys in the study brought up is school teams are to evaluate all suspected areas of concern. This is another area where schools need to concentrate. Identification and evaluation are going to be a continued area of concern as in the case of *Forest Grove School District v. T.A.* In this case the Supreme Court ruled that the parents of a student with a disability were entitled to private school tuition reimbursement even though T.A. had not been identified with a disability or previously provided with special education

services. The school team did a limited evaluation of the areas of concern and the parents sought an Independent Educational Evaluation. Along with this evaluation a cognitive assessment is conducted to determine a pattern of strengths and weaknesses for the student. Five issue categories make up 70% of due process cases nationally. These issues are: (1) IEP; (2) Placement; (3) FAPE; (4) Identification and Evaluation; and (5) Multiple Issues (Schrag & Schrag, 2004). In the same study by Schrag & Schrag it was ascertained 55% of all due process hearings centered on Identification and Evaluation, IEP, and Placement. Idaho mirrors this trend.

Discussion

The overall significance of this study shows that Idaho mirrors national trends with regards to special education due process complaints and decisions. During the time period covered by the study there was a low incidence of due process decisions. This trend is continuing even with the increased focus on dispute resolution in IDEIA and attempts by districts and departments of education to avoid possible litigation. In hearings brought before the state and hearing officers, 59% are being dismissed due to mutual agreement before the due process hearing or early intervention in the dispute resolution process. For the state of Idaho this means continuing the early intervention option in the mediation process to help with conflict resolution to maintain the current low incidence rate.

According to this study, Idaho is a state in which there is a low percentage of due process cases brought before the state. Idaho was ranked 46th out of 50 in the United States in the number of due process decisions. The ranking of neighboring states of Montana (rank of 47), Oregon (37), Washington (10), Utah (50) needs to be considered (Zirkel & Gischlar, 2008). Due process hearings are on the rise nationally (Getty & Summy, 2004). Over an

eight year period, there were 27 decisions that were heard before a hearing officer. The majority of decisions (59.2%) were in the locale of the highest percentage of population in the state. During the years covered in this study, the number of due process hearings spiked. Consequently, the spike occurred after the 2007 reauthorization of IDEA. In a personal communication on April 1, 2013 with Melanie Reese, Dispute Resolution Coordinator for the State of Idaho, the number of due process hearings is decreasing. She contributes the decrease to early intervention in the conflict resolution process. She has worked with the Idaho Department of Education, Special Education Division, to establish early intervention conflict resolution options to decelerate conflict prior to a due process or mediation hearing. Additionally, special education professionals are taught in their higher education coursework that due process is one of the key events to avoid in your career. Dr. Reese also stated the highest IEP facilitation requests have been in Region III (Southwest Area) with 44 out of 76 (58%) requests for the school year 2012-2013. This shows that the trend of facilitated IEPs before going to mediation and/or due process is still taking place where the highest population is located in the state. This is ironic as one would determine that with the higher population there would be more resources available compared to rural parts of the state and as a result one would expect less conflict.

The area of evaluation and eligibility was the greatest area of infractions that parents brought before hearing officers. Students identified as having a specific learning disability and Autism are on the rise and the trend of those students being brought before the hearing officers is also on the rise in Idaho and neighboring states. For Idaho this, means professionals doing evaluations need to make sure that they look at the evaluation and follow proper timelines. Evaluations need to occur in all areas where data suggest

intervention is needed. The two disabilities, Specific Learning Disability and Autism are areas where there are sub disabilities that need greater consideration. Many diagnoses in Autism from medical professionals coming to schools is Pervasive Developmental Disorder-Not Otherwise Specified (PDD-NOS). Parents are also looking towards processing disorders such as visual processing and auditory processing as learning disorders. As a school team more direction is needed for that specific student so that it can help facilitate the parent school relationship that is needed for a good IEP experience for all parties. In order for the student to succeed, the student needs to be the focus at the meeting. Constraints on the special education program such as time, money and resource can increase tension, but with cooperative brainstorming, solutions to situations can be found while in the meetings, educators need to make sure to maintain the balance of the goals they want for the student and what the parent and/or student wants as a goal (Lake & Billingsley, 2004).

As a proactive measure, educational providers need to be clear in their communications. Parents new to special education need to understand the process and the process needs to be transparent. It should be noted that this will take more time on the front end of the process but the end result will be a working relationship where everyone can work together. Once this relationship is established disagreements can be resolved more efficiently. “Relationships between parents and districts that are fractured by the adversarial system bode ill for a successful team approach, over a period of years, to educate a student with disabilities” (Newcomer & Zirkel, 1999, p.479).

Recommendations for Further Study

This study sought to use documents to analyze trends in special education for the state of Idaho related to conflict resolution and due process hearings. Below are two

different types of recommendations for further study. The first is for further research and the other is for practitioner implementation.

Recommendations for further research.

1. Perform this analysis for each state in the United States to see if the trends are the same or if there are indicators of future areas that Idaho could be addressing in regards to due process decisions.

2. Perform this study and analyze mediation outcomes which move forward to due process decisions.

3. Continue the current study and add the perspective of present and past hearing officers.

4. Continue the current study and add the perspective of parents.

5. Analyze what different types of decisions go on to further litigation and how the outcome of litigation impacts education.

6. Examine the correlation between disability and the reason for due process as noted on the DSF for hearings for the state of Idaho.

7. Examine the outcomes of Office of Civil Rights school aged students hearings for Idaho during the same time frame to ascertain if there are any parallel trends.

8. A study is needed to determine the most effective delivery method of updating stakeholders on a regular basis of current trends in special education.

Recommendations for practitioners.

1. Establish professional development either locally or at the state department in the disability areas in conjunction with the areas of conflict resolution.

2. Develop professional development either locally or at the state department in the areas of complaints filed with the state department for school districts, parent advocate groups and legal representation in the state.

3. Develop a common form for results from hearings to be written. Along with this, a set guide for redaction.

4. Examine alternate forms of conflict resolution within the realm of special education. Special Education practitioners can look to other industries that involve a third party that removes the emotion of the situation.

Summary

There is a national trend of increased litigation as well as due process hearings in the area of special education. Idaho is ranked 46 out of 50 for due process hearings in the United States. There was an increase in the number of due process hearings after the release of the *2007 State of Idaho Special Education Manual*. This increase can be linked to the new process established for conflict resolution. Upon conversation with the state dispute resolution officer as well as a document review, there is an increase in the number of facilitated IEPs compared to requests for due process hearings.

This study researched the questions of: *1. What types of special education related issues are being brought before the state hearing officer(s) as due process complaints in Idaho? and 2. What are common themes in the findings/outcomes of the due process decisions, and what implications do these have for the future of special education services in Idaho?* The findings for the study were based on 27 due process decisions from January 2004 to June 2012. Documents were analyzed using the DSF and attorneys were interviewed in order to determine commonalities in the decisions. Findings of the study, not in a rank

order were: (1) Idaho has a low rank of due process hearings; (2) disability categories with the highest frequency were specific learning disability and autism; (3) the outcome that had the highest frequency was dismissal due to mutual agreement; (4) the issue that has the highest concern is evaluation/eligibility; (5) majority of the hearings are parent/student as the petitioner and the school district the respondent; and (6) increase in the number of hearings requested was due to the revision of the state manual of special education in the area of conflict resolution.

Significant findings were that 78% of the hearings were brought by parent/students. In the 27 decisions, 48% or 13 out of the 27 cases had legal representation. In those 13 decisions, the school district was represented 100% of the time. When the school district was represented by the attorneys, 12 out of the 13 or 92% of the cases were dismissed and in five of the 13 decisions or 38% the school district prevailed in the outcome. Standardized residuals indicate that the plaintiff won the case significantly more than one would expect by chance when it involved a student with a specific learning disability (Standardized residual = 2.3, significant at the .05 level). In addition, the defendant won significantly more than one would expect by chance when the issue involved a student with Autism Spectrum Disorder (Standardized residual = 3.1, significant at the .01 level). The attorneys' responses paralleled this thought process with the first answer being Autism and second, Specific Learning Disability. Overall, 19 of the 27 decisions that were brought before hearing officers or 59% were dismissed before the decisions were even heard due to the parties having a mutual settlement before the scheduled hearing date.

References

- Ahearn, E. (2002). *Due process hearings: 2011 Update. Quick Turn Around (QTA)*. Washington D.C.: Special Education Programs (ED/OSERS).
- Alexander, K., & Alexander, M. D. (2009). *American public school law*. New York: West/Wadsworth.
- Americans with Disabilities Act (PL 101-407).
- Apling, R. N. & Jones, N. L. (2005). *Individuals with Disabilities Act (IDEA): Analysis of changes made by P.L. 108-446*. Washington D.C.: Congressional Research Service.
- Arlington Central School District v. Murphy*, U.S., 2006, 126 S. Ct. 2455, (2006).
- Bar-Lev, N., Neustadt, S., Peter, M. (September, 2002). *Considering mediation for special education disputes: A school administrator's perspective*. Eugene, Oregon: CADRE.
- Bateman, B. D. & Linden, M. A. (2006). *Better IEPs: How to develop legally correct and educational useful programs* (4th ed.). Verona, WI: Attainment.
- Billingsley, B. S. (2004). Special education teacher retention and attrition a critical analysis of the research literature. *The Journal of Special Education*, 38(1), 39-55.
- Black, H. C., & Garner, B. A. (1999). *Black's law dictionary* (Vol. 196, No. 3). West Publishing Company.
- Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982).

- Boe, E. E., Bobbitt, S. A., Cook, L. H., Whitener, S. D., & Weber, A. L. (1997). Why didst thou go? Predictors of retention, transfer, and attrition of special and general education teachers from a national perspective. *The Journal of Special Education, 30*(4), 390-411.
- Bogdan, R. & Biklen, S. (1982). *Qualitative research for education: An introduction to theory and methods*. Boston: Allyn and Bacon.
- Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal*. Volume 9, no. 2, pp. 27-40.
- Brian Schaffer, a minor, by his parents and next friends, Jocelyn and Martin Schaffer, et al. v. Jerry Weast Superintendent, Montgomery County Public Schools, et al.*, 546 U.S. 49 (2005)
- Brown v. Board of Education* 347 U.S. 483 (1954)
- Budoff, M., Mitchell, S., & Kotin, L. (1976, August). *Procedural due process: Its application to special education and its implications for teacher training* (pp. 1-55). (ED131626). Cambridge, MA: Research Institute for Educational Problems.
- Burke, M. (2013). Improving parental involvement: Training special education advocates. *Journal of Disability Policy Studies. 23*(4) 225-234.
- Caretti, A. (2005). *Special education administrators' perceptions of dispute resolution*. (Doctoral Dissertation, Capella University, 2005). UMI Number 3168178.
- Caruso, D. (2005). Bargaining and distribution in special education. *Cornell Journal of Law and Public Policy, 14*, 17 1.

- Chambers, J., Harr, J., Dhanani, A. (2003). *What are we spending on procedural safeguards in special education, 1999-2000? Special education expenditure project (SEEP)*. Washington D.C.: ED/OSERS
- Champagne, J. (1997). Congress and 1997 IDEA amendments: What was and what was not done. *Pacific Northwest Institute on Special Education and the Law*. School Law Division, University of Washington, 37-52.
- Clark, V. L. P. & Creswell, J. W., (2010). *Understanding research a consumer's guide*. Upper Saddle River, NJ: Pearson Education, Inc.
- Conroy, T., Yell, M., and Katsiyannis, A. (2008). Schaffer v. Weast: The Supreme Court on the Burden of Persuasion When Challenging IEPs. *Remedial and Special Education*, 29, 108-117.
- Creswell, J. W., & Miller, D. L. (2000). Determining validity in qualitative inquiry. *Theory into practice*, 39(3), 124-130.
- Daniel R. R. v. State Board of Education* 874 F.2d 1036 (1989).
- deBettencourt, L. U. (2002). Understanding the differences between IDEA and Section 504. *Teaching Exceptional Children*, 34(3), 16-23.
- Dagley, D. (1995). Enforcing compliance with IDEA: Dispute resolution and appropriate relief. *Preventing School Failure*, 39, 27-32
- Dragow, E., Yell, M.L., & Robinson, T. R. (2001). Developing legally correct and educationally appropriate IEPs. *Remedial and Special Education*, 22, 359-373.
- Education for All Handicapped Children Act, 34 CFR Section 300.552 (1975).

- Feinberg, E., Beyer, J., & Moses, P. (2002). *Beyond mediation: Strategies for appropriate early dispute resolution in special education*: Briefing paper from the Consortium for Appropriate Dispute Resolution in Special Education (CADRE).
- Forest Grove School District v. T. A.*, 129 S.Ct. 2484 (2009).
- Fuchs, D., Fuchs, L. S., & Stecker, P. M. (2010). The "blurring" of special education in a new continuum of general education placements and services. *Exceptional Children*, 76(3), 301-323.
- Gartin, B., Murdick, N., Thompson, J., & Dyches, T. (2002). Issues and challenges facing educators who advocate for students with disabilities. *Education and Training in Mental Retardation and Developmental Disabilities*, 37, 3-13.
- Getty, L. A., & Summy, S. E. (2004). The course of due process. *Teaching Exceptional Children*, 36(3), 40-44.
- Golden, G. (2007). Schools beat back demands for special-ed services. *Wall Street Journal*, A1.
- Goldberg S. S. & Huefner D. S. (1995). *Dispute resolution in special education: An introduction to litigation alternatives*. West's Education Law Reporter, 99, 703-711.
- Goldberg. S. & Kuriloff, P. (1991). Evaluating the fairness of special education hearings. *Exceptional Children*, 57, 546-555.
- Goss v. Lopez*, 419 U.S. 565 (1975). Retrieved December 9, 2007 from <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=419&invol=565>
- Hindmarsh v. Mock*, 138 Idaho 92 at 93, P. 3d 803 at 805 (2002).
- Honig v. Doe*, U.S. 305 (1988)

- Horrocks, L. (2001). Grievance resolution in special education: A descriptive evaluation of the issues relating to mediation. *International Journal of Practical Approaches to Disability*, 25 (1), 15-28.
- Hurwitz, K.A. (2008). A review of special education law. *Pediatric Neurology*. 39: 147-154.
- Imber, M., & Thompson, G. (1991). Developing a typology of litigation in education and determining the frequency of each category. *Educational Administration Quarterly*, 27(2), 225-244.
- Individuals with Disabilities Education Act (IDEA) of 1990, PL 101-476, 20 U.S.C. § 1400 *et seq.*
- Individuals with Disabilities Education Act (IDEA) of 1997, PL 101-476, 20 U.S.C. § 1400 *et seq.*
- Individuals with Disabilities Education Improvement Act (IDEIA) of 2004, 20 U.S.C. § 1400 *et seq.* (2004) (reauthorization of the Individuals with Disabilities Education Act of 1990).
- Lake, J. F., & Billingsley, B. S. (2000). An analysis of factors that contribute to parent-school conflict in special education. *Remedial and Special Education*, 21, 240-256.
- Lanigan, K. J., Audette, R. M. L., Dreier, A. E., & Kobersy, M. R. (2001). Nasty, brutish... and often not very short: The attorney perspective on due process. *Rethinking special education for a new century*, 213-232.
- Lincoln, Y. S., & Guba, E. G. (1985). *Naturalistic inquiry*. Beverly Hills, CA: Sage.
- Lombardi, T. P., & Ludlow, B. L. (2004). A short guide to special education due process. Phi Delta Kappa Fastbacks, 523, 7-48.

- Lupini, W. (2001). *An outcomes analysis of education litigation*. (Doctoral Dissertation, Lehigh University, 2000). *Dissertation Abstracts International*, (No. AAT 9995555).
- Lupini, W. H., & Zirkel, P. A. (2003). An outcomes analysis of education litigation. *Educational Policy*, 17(2), 257-279.
- Maass, L. (2005). *Special education and the least restrictive environment: U.S. federal appeals court outcomes and expert testimony* (Doctoral Dissertation, The University of Montana, 2005). *Dissertation Abstracts International*, 66/05 (No. AAT3175780)
- Margolis, H. (1998). Avoiding special education due process hearings; Lessons from the field. *Journal of Educational and Psychological Consultation*, 9, 21-30.
- Maxwell, J. A. (1992). Understanding and validity in qualitative research. *Harvard educational review*, 62(3), 279-301.
- Mayes, T. A. & Zirkel, P. A. (November/December 2001). Special education tuition reimbursement claims: An empirical analysis. *Remedial and Special Education* 22(6), 350-357.
- Meinhold, P. M., Mulick, J. A., & Teodoro, J. M. (1994). Risks and costs of a treatment litigation: Focus on the Family. *Journal of Child and Family Studies*, 3(4), 389-401.
- Miller, K. J., & Connolly, M. J. (2003). Educators of the deaf and hard –of-hearing involved in due process hearings: Lessons learned. *Communication Disorders Quarterly*, 24, 205-210.
- Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (1972).
- Moore, C. (1994). *Partners or pest? Experiences of grievance and redress procedures in education*. The Scottish council for Research in education. SCRE Research Report No 60, 15, St John Street, Edinburgh EH8 8JR.

- Mueller, T. G. (2009). Alternative Dispute Resolution A New Agenda for Special Education Policy. *Journal of Disability Policy Studies*, 20(1), 4-13.
- Mueller, T. G., & Carranza, F. (2011). An examination of special education due process hearings. *Journal of Disability Policy Studies*, 22(3), 131-139.
- Mueller, T. G., Singer, G. H. S., & Draper, L. (2008). Reducing parental dissatisfaction with special education in two school districts: Implementing conflict prevention and alternative dispute resolution. *Journal of Educational and Psychological Consultation*, 18, 191-233.
- Newcomer, J.A. (1995). *Judicial deference to due process hearing and review officers in special education* (Doctoral dissertation, Lehigh University, 1995). *Dissertation Abstract International*, (No. AAT 9604567).
- Newcomer, J.A. & Zirkel, P.A. (1999). An analysis of judicial outcomes of special education cases. *Exceptional Children*, 65 (4), 469-480.
- Newcomer, J., Zirkel, P. A., & Tarola, R. (1998). Characteristics and outcomes of special education hearing and review officer cases. *West's Education Law Reporter*, 123, 449-457.
- No Child Left Behind (NCLB) Act of 2001, Pub. L. No. 107-110, § 115, Stat. 1425 (2002).
- Nowell, B. & Salem, D. (2007). The Impact of Special education mediation on parent-school relationships: Parents' perspective. *Remedial and Special Education*. 28 (5) 304-316.
- Office of Special Education Programs, U.S. Department of Education. (1994). Memorandum 94-16, 21 IELR 85.

- O'Shea, D.J., Bateman, D., Algozzine, B., & O'Shea L.L. (2004). *The special education due process handbook*. Longmont, CO: Sopris West Educational Services.
- Pennsylvania Association of Retard Children et al. v. Commonwealth of Pennsylvania et al.*, 343 F. Supp. 279 (D.C.Pa. 1972).
- Patton, M. Q. (1990). *Qualitative evaluation and research methods* (2nd ed.). Newbury Park, CA: Sage.
- Patton, M. Q. (2002). *Qualitative Research and Evaluation Methods*. Thousand Oaks, CA: Sage.
- Podeskemi, R., Marsh II, G., Smith, T., Price, B. (1995). *Comprehensive Administration of Special Education*. New Jersey: Prentice Hall.
- Rickey, K. (2003). Special education due process hearings: Student characteristics, issues, and decisions. *Journal of Disability Policy Studies*, 134, 46-53.
- Rock, M. L., & Bateman, D. (2009). Using due process opinions as an opportunity to improve educational practice. *Intervention in School and Clinic*, 45(1), 52-62.
- Schaffer v. Weast*, 546 U.S. 49, 126, S. Ct. 528 (2005).
- Scheffel, D. L., Rude, H. A., & Bole, P. T. (2005). Avoiding special education litigation in rural school districts.
- Schrag, J. A. (1996). *Mediation and Other Alternative Dispute Resolution Procedures in Special Education*. Final Report.
- Schrag, J.A., & Schrag, H. L. (2004). *National dispute resolution use and effectiveness study*. Developed for the National Association of State Directors of Special Education (NASDSE) through a subcontract with the Consortium for Appropriate Dispute Resolution in Special Education (CADRE). Eugene, OR.

Schwandt, T.A. (1997). *Qualitative inquiry: A dictionary of terms*. Thousand Oaks, CA: Sage.

Scull, J., & Winkler, A. M. (2011). Shifting trends in special education. *Washington: Thomas B. Fordham Institute*.

Section 504 of the Rehabilitation Act (PL 93-112).

Smith, T. E. C. (2005). IDEA 2004: Another round in the reauthorization process. *Remedial and Special Education, 26*, 314-319.

State of Idaho. (2007). *Special Education Manual*. Boise, Idaho: Author.

Suchey, N. and Snow-Huefner, D. (1998). The state complaint procedure under the individuals with disabilities education act. *Exceptional Children, 64* (4), 529-543.

Tarola, R. (1991). *The relationship between selected characteristics of special education due process hearings, their outcomes, and the outcomes of subsequent appeals*. (Doctoral dissertation, Lehigh University, 1991). *Dissertation Abstracts International*. (No. AAT 9130013)

Timothy W. v. Rochester School District, 875 F. 2nd, 954 (1989).

U.S. Const. art. V.

U.S. Const. amend. XIV, § 1.

United States General Accounting Office (GAO). (2003). Special education. Numbers of formal disputes are generally low and states are using mediation other strategies to resolve conflicts. Washington D.C.

Wakeman, S., Browder, D., Flowers, C., & Alhlgrim-Delzell, L. (2006). Principals' knowledge of fundamental and current issues in special education. *NASSP Bulletin, 90*, 153-174.

- Weisharr, M. (1997). Legal principals important in the preparation of teachers: Making inclusion work. *Clearing House*, 70, 261-264.
- West, J. & Schamel, W. (1991). Due process and student rights: Syllabus of the Goss v. Lopez decision. *Social Education*. 55, 161-163. EJ 430 533
- Vontz, T. (2003). Teaching about due process of law. *Eric Digest*. ED 482212.
- Yell, M. L., Rogers, D., & Rogers, E. L. (1998). The Legal History of Special Education What a Long, Strange Trip It's Been!. *Remedial and Special Education*, 19(4), 219-228.
- Yin, R. (2003). *Casestudy research: Design and methods*. Thousand Oaks, CA: Sage.
- Zennick, S. (1999). *The evolution of case law that led to the least restrictive environment provision in the Individuals with Disabilities Act*. (Doctoral Dissertation, Tennessee State University, 1999). *Dissertation Abstracts International*. (No. AAT 9943853).
- Zirkel, P. A. (1994). Over-due process revisions for the Individuals with Disabilities Education Act. *Montana Law Review*, 55 (2), 403-414.
- Zirkel, P. A. (2005, September/October). A primer of special education law. *Teaching Exceptional Children*, 38 (1), 62-63.
- Zirkel, P. A. (2010). The legal meaning of specific learning disability for special education eligibility. *TEACHING Exceptional Children*, 42 (5), 62-67.
- Zirkel, P. A. (2012). Special Education Hearing Officers: Balance and Bias. *Journal of Disability Policy Studies*.
- Zirkel, P. A., & D'Angelo, A. (2002). Special education case law: An empirical trends analysis. *West's Education Law Reporter*, 161, 731-753.

- Zirkel, P. A., & Karanxha, Z. (2007). Creeping Judicialization in Special Education Hearings?: An Exploratory Study. *Journal of the National Association of Administrative Law Judiciary*, 27(1), 27-51.
- Zirkel, P. A., & Gischlar, K. (2008). Due process hearings under the IDEA: A longitudinal frequency analysis. *Journal of Special Education Leadership*, 21, 22-31.
- Zirkel, P. A., & Richardson, S. N. (1989). The "Explosion" in Education Litigation. *West's Education Law Reporter*, 53(3), 767-91.
- Zirkel, P. A., & Scala, G. (2010). Due process hearings under the IDEA: A state-by-state survey. *Journal of Disability Policy Studies*, 21(3), 3-8.

APPENDIX A

TABLE OF DUE PROCESS DECISIONS BY SCHOOL DISTRICT

Boise School District

Independent School District of Boise City No. 1. H-09-11-06 (2010).

Independent School District of Boise No. 1. H-10-24-09 (2010).

Independent School District of Boise City No. 1. H-10-05-19 (2010).

Boise School District No. 1. H-10-11-19 (2010).

Independent School District of Boise No. 1. H-11-01-12 (2011).

Boise School District No. 1. H-11-09-03 (2011).

Independent School District of Boise City No. 1. H-11-12-16 (2012).

Independent School District of Boise City No. 1. H-12-01-12 (2012).

Independent School District of Boise City No. 1. H-12-02-21 (2012).

Independent School District of Boise City No. 1. H-12-02-22 (2012).

Coeur d'Alene School District

Coeur d'Alene School District #271. H-07-10-05 (2008).

Lakeland School District

Lakeland School District No. 272. H-10-05-24 (2010).

Lakeland School District No. 272. H-10-08-09 (2010).

Meridian School District

Meridian Joint School District No. 2. H-11-02-02 (2011).

_____ School and Meridian Joint School District No. 2. H-11-03-18 (2011).

North Star Charter and Meridian Joint School District No. 2. H-11-01-20 (2011).

Moscow School District

Moscow School District #281. H-11-09-01 (2011).

Orofino School District

Orofino School District #171. EH-04-03-16 (2004).

Orofino School District #171. EH-05-01-11 (2005).

Orofino School District #171. H-10-03-29 (2010).

Twin Falls School District

Twin Falls School District No. 411. H-07-05-03 (2006).

Unknown

Unknown School District. H-09-06-19 (2009).

Unknown School District. H-10-05-03 (2010).

Unknown School District. H-09-12-01. (2009).

Unknown School District. H-10-09-07 (2010).

Unknown School District. H-11-11-29 (2011).

APPENDIX B

HEARING NUMBER AND THE CODE OR LAW REFERENCED

Hearing Number	Codes and Laws used in Findings
04-03-16	34 CFR 300.523
05-01-11	State of Idaho Special Education Manual
07-05-03	Section 504 ADA Human Rights of Idaho Idaho Education Exceptional Children Act FERPA 34 CFR 300.511 34 CFR 300.502 20 USC #1401 20 USC §1414 34 CFR 300.116 (c) 34 CFR 300.114 (a)(2) 34 CFR 300.501 (b)(4) Idaho Code 33-201 34 CFR §300.148 c 20 USC §1412 (a)(10)(C)(iii)
07-10-05	34 CFR 300.42 Idaho Code 33-512 (11) 34 CFR §300.518
10-05-03	34 CFR §300.55 34 CFR §300.512 IDAPA 04.11.565
10-5-19	20 USC §1415(j) 34 CFR §300.518 (a)
11-01-12	IDAPA 04.011.01
11-01-20	IRCPS 56, 12b (1) (2)(6), 12 (b), 12 (c) IDAPA 04.011.01.565
11-12-16	State of Idaho Special Education Manual IRCP 56
12-02-22	IDAPA 4.11.01 136 Idaho 90 @ 93 29 P. 3d 401@ 404 138 Idaho 92 @ 93 57 P. 3d 803 @ 805 11 S. Ct. 2166, 2169
12-11-12	34 CFR §300.111 34 CFR §300.508

APPENDIX C

HEARING NUMBER AND CASE REFERENCED IN THE FINDINGS

Hearing Number	Litigation Referenced
07-05-03	<i>Schaefer v. Weast</i> <i>Sacramento City S.D. v. Rachael H.</i> <i>Hendrick Hudson v. Rowely</i> <i>Roxanne J. V. Nevada County</i> <i>North Planfield Board of Ed</i> <i>Oberti v. Board of Ed of Borough of Clementon School District</i> <i>Gregory K. v. Longview SD</i> <i>San Ramon Valley Unified SD</i> <i>School Commission of Town of Burlington</i> <i>Parents of Student W. v. Puyallup SD</i> <i>W.D. v. Board of Trustees of Target Lane SD</i> <i>P.S. v. Brookfield Board of Education</i>
09-06-19	<i>Hedrick Hudson v. Rowley</i> <i>County School Board of Henrico County VA</i> <i>School Bd. v. Malone</i>
09-11-06	<i>Schaffer v. Weast</i> <i>Hendrick Hudson v. Rowley</i> <i>JL v. Mercer Island School District</i> <i>Thompson R2-J School District v. Luke P.</i>
09-12-01	<i>Saki v. State of Hawaii, Dept of Education</i> <i>Lago Vista Independent SD</i> <i>Letter to Zirkel</i> <i>Hendrick Hudson v. Rowley</i> <i>Concnado v. Board of Ed</i>
10-5-19	<i>Johnson ex rel Johnson</i> <i>Honing v. Doe</i> <i>School Commission of Town of Burlington Mass. v. Department of Education of Mass.</i> <i>ND ex reel parents acting as guardians ad litem vs. State of Hawaii Dept. of Education</i> <i>A.W. ex rel Wilson vs. Fairfax County School Board</i> <i>Thompson vs. Pike</i> <i>Ticor Title vs. Stanion</i>
10-11-19	<i>Read v. Harvey</i> <i>Barlow's Inc. V. Bannock Cleaning Corp</i> <i>Buser v. Corpus Christi Independent SD</i>
11-01-12	<i>Rodriguez v. Depart of Correction</i> <i>Hindmarsh v. Mock</i> <i>Astoria Federal Savings and Loan Association v. Solimino</i>
11-1-20	<i>Astoria Federal Savings and Loan Association v. Solimino</i> <i>Wayne vs. Amalgamated Sugar Company</i> <i>NBC Leasing Company vs. R & T Farms Inc.</i>
11-02-02	<i>Schaffer v. Weast</i>

11-03-18	<i>Lago Vista Independent SD v SF</i> <i>Schaffer v. Weast</i> <i>Hendrick Hudson v. Rowley</i> <i>Hood v. Enchihitas Union School District</i> <i>Marshall Joint SD No. 2 v. CD</i> <i>RB, ex rel F.B. v. Napa Valley Unified SD</i>
11-12-16	<i>Saki v. State of Hawaii, Dept of Education</i> <i>Thompson v. City of Idaho Falls</i> <i>Yoakam v. Hatford Fire Ins. Co.</i> <i>Schaffer vs. Weast</i> <i>Gonzalez v. Puerto Rico Dept. of Education</i> <i>Thompson R2-J School District v. Luke P.</i>
12-02-21	<i>Schaffer v. Weast</i> <i>Hendrick Hudson v. Rowley</i>
12-2-22	<i>Rodriguez v. Department of Corrections</i> <i>Hindmarsh v. Mock</i> <i>Astoria Federal Savings and Loan Association v. Solimino</i>

APPENDIX D
DECISION SUMMARY FORM (DSF)

Decision Summary Form

Study Decision # H- _____ Year _____

Decision Name _____

Plaintiffs: _____ Defendant: _____

Lawyer for: _____

Disability Classification

- | | |
|--|---|
| <input type="checkbox"/> Autism | <input type="checkbox"/> Learning Disability |
| <input type="checkbox"/> Cognitive Impairment | <input type="checkbox"/> Multiple Disabilities |
| <input type="checkbox"/> Deaf-Blindness | <input type="checkbox"/> Orthopedic Impairment |
| <input type="checkbox"/> Deafness | <input type="checkbox"/> Speech Language Impairment |
| <input type="checkbox"/> Developmental Delay | <input type="checkbox"/> Traumatic Brain Injury |
| <input type="checkbox"/> Emotional Disturbance | <input type="checkbox"/> Visual Impairment Including |
| <input type="checkbox"/> Health Impairment | Blindness |
| <input type="checkbox"/> Hearing Impairment | <input type="checkbox"/> Not Specified in the decisions |

Primary Complaint

- | | |
|--|---|
| <input type="checkbox"/> Extended School Year | <input type="checkbox"/> Evaluation/Eligibility |
| <input type="checkbox"/> Procedural Safeguards | <input type="checkbox"/> Child Find |
| <input type="checkbox"/> Placement | <input type="checkbox"/> LRE |
| <input type="checkbox"/> Hours of Service | <input type="checkbox"/> FAPE |
| <input type="checkbox"/> Implementation of IEP | |
| <input type="checkbox"/> Homebound | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Transportation | |

Was formal complaint cited in due process documentation YES NO

Outcome of Hearing

Decision in favor of:

Petitioner Defendant Both Dismissed

APPENDIX E
ATTORNEY INTERVIEW QUESTIONS

1. How long have you been practicing educational law?
2. Did you go to law school with the intent of practicing educational law?
3. Do you represent school districts or individual people? What made you determine this?
4. Is there a particular disability classification under IDEIA that you tend to see represented more in due process decisions? Please explain why you think your identified category has more formal complaints than others.
5. Do you see any current or future trends in complaints/due process decisions originating from specific disability classification/groups as defined by IDEIA?
6. In your experience, what has been the most frequent due process violation over the past 5 years? Do you think this will be the same in the future?
7. Why do you think there was a surge in numbers of decisions being mediated from 2008-2009 school year to 2009-2010 school year?
8. How many decisions do you think have gone to litigation after a due process hearing?
9. What is the main advice you give or would give school districts in the area of special education law/compliance?

APPENDIX F
UNIVERSITY OF IDAHO INSTITUTIONAL REVIEW BOARD APPROVAL
(IRB)

University of Idaho

April 14, 2013

**Office of Research Assurances
Institutional Review Board
PO Box 443010
Moscow ID 83844-3010**Phone: 208-885-6162
Fax: 208-885-6752
irb@uidaho.edu

To: Wappett, Matthew

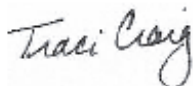
From: Traci Craig, PhD
Chair, University of Idaho Institutional Review Board
University Research Office
Moscow, ID 83844-3010

Title: 'Special Education Due Process Trends in Idaho since 2007'

Project: 13-081
Approved: 04/11/13
Expires: 04/10/14

On behalf of the Institutional Review Board at the University of Idaho, I am pleased to inform you that the protocol for the above-named research project is approved as offering no significant risk to human subjects.

This approval is valid for one year from the date of this memo. Should there be significant changes in the protocol for this project, it will be necessary for you to resubmit the protocol for review by the Committee.



Traci Craig

APPENDIX G

PREVIOUS DOCUMENTATION SHEETS/FORMS

Litigation Documentation Form (LDF)

Study Case # _____ Federal Appeals/Circuit Court: _____

Case Name _____

Federal Citation: _____ IDELR: _____

West's Education Law Reporter: _____

Parent S.D. Plaintiff: _____ Defendant: _____ Parent S.D.

Classification Male _____ Female _____

Disability Classification

- | | |
|--|---|
| <input type="checkbox"/> Autism | <input type="checkbox"/> Hearing Impairment |
| <input type="checkbox"/> Child with Disability | <input type="checkbox"/> Orthopedic Impairment |
| <input type="checkbox"/> Cognitive Delay | <input type="checkbox"/> Other Health Impairment |
| <input type="checkbox"/> Deaf-Blindness | <input type="checkbox"/> Specific Learning Disability |
| <input type="checkbox"/> Deafness | <input type="checkbox"/> Speech Language Impairment |
| <input type="checkbox"/> Emotional Disturbance | <input type="checkbox"/> Traumatic Brain Injury |
| <input type="checkbox"/> Visual Impairment | |

Primary LRE Issue

- Full Inclusion in regular education with special education support
- Regular education with resource room or itinerant support
- Full-time special education class
- Other public school special education program
- Homebound
- Private Day School Sectarian Non-sectarian
- Private Residential School/Mental Health Facility

Is educational methodology an issue in the case? Yes No

Verbatim court language:

APPENDIX H
SUMMARY TABLE OF PHASE ONE

Case	School District	Lawyer	Theme	Disability Category	Outcome (Prevailing party, Dismissed)	Who Brought To Officer	Winner
04-03-16	Orofino		Procedural		Plaintiff	Student	Student
05-01-11	Orofino		Placement	Specific Learning Disability	Plaintiff	Student	School District
07-05-03	Twin Falls		LRE, FAPE, Eligibility	Severe Multiple Disability	Plaintiff	Student	Student
07-10-05	Coeur d'Alene	Steve	Placement	Emotional Disturbance	Plaintiff	Student	Student
09-06-19			Placement	Severe Multiple Disability	Petitioner	School District	School District
09-11-06	Boise		LRE	Speech Language Impairment	Dismissed with Prejudice	Student	
09-12-01	Boise		Evaluation Eligibility	Health Impairment	Plaintiff	School District	School District
10-05-19	Boise	Rosemary	IEP Implementation	Health Impairment	Dismissed	Student	
10-09-07		Janice & Rosemary			Dismissed	Student	
10-08-17	Mountain Home	Amelia & Rosemary			Dismissed	Student	
10-03-29	Orofino	Amelia & Rosemary			Dismissed	Student	
10-04-29	Boise	Rosemary	ESY		Dismissed	Student	
10-05-03		Rosemary	Procedural Safeguards		Dismissed	Student	
10-5-24	Lakeland				Dismissed	Student	
10-08-09	Lakeland				Dismissed	Student	
10-11-19	Boise		IEP Implementation		Defendant	Student	School District
11-3-18	Meridian		Evaluation and Eligibility		Plaintiff	School District	School District
11-2-2	Meridian		Evaluation Eligibility	Autism	Defendant	School District	Student
11-1-12	Boise	Rosemary	FAPE		Dismissed	Student	
11-1-20	North Star Charter/Meridian	Rosemary	Evaluation Eligibility		Dismissed	Student	
11-09-01	Moscow	Amelia & Rosemary			Dismissed	Parent	
11-11-29		Steve			Dismissed	Student	
11-09-30	Boise				Dismissed	Student	
11-12-16	Boise		Evaluation Eligibility		Dismissed	Student	

12-01-12	Boise		Evaluation Eligibility		Dismissed	Student	
12-02-22	Boise	Rosemary	Procedural Safeguards		Dismissed	Student	
12-2-21	Boise	Amelia & Rosemary	IEP Implementation	Autism	Defendant	Student	School District

APPENDIX I
PHASE TWO INTERVIEW SUMMARY

	Rosemary	Amelia
Number of Years practicing law	19	9
Trends in disability	Autism	Autism
Most frequent due process	<ul style="list-style-type: none"> • Failure to evaluate in all areas, poorly written IEPs, • Lack of behavior support plans, same IEP year after year, • child find in schools 	<ul style="list-style-type: none"> • Failure of child find in the school, • failure for resources and supports, • Transition planning, • early childhood child find
Why surge?	Both parties should have mediation in good faith, to provide a chance for issues to be resolved before going to due process or mediation.	Changes at the SDE, I understand that Disability Rights of Idaho, advocates at the least adversarial level, and may advise a family to seek mediation. However, I do not recommend mediation to parents unless they are allowed to have legal representation through the process.
# of lit gone to due process	4	4
Advice to school districts	<ul style="list-style-type: none"> • Documentation, documentation and more documentation. • Now people need to watch emails as they are now considered public record and admissible in court. This is now being done with more frequency. • Often times that the knowledge of staff has less knowledge than parent and that districts need to be aware of this and provide training. 	Often it is an attitude, on the part of the administration, that does trickle down and across program delivery points within special education. <i>IF</i> the district wishes to comply with the minimum standard set by law, I encourage them to adopt a ‘can do’ attitude and ensure it is shared and embraced by all personnel in the district.