Important Factors for Consideration When Litigating Special Education Due Process Hearings

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IMPORTANT FACTORS FOR CONSIDERATION WHEN LITIGATING SPECIAL EDUCATION DUE PROCESS HEARINGS

BY

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ABSTRACT

Important Factors for Consideration When Litigating Special Education Due Process Hearings

The purpose of this study was to ascertain important factors that New Jersey Administrative Law Judges consider when they hear special education due process hearings. The researcher examined 21 cases involving parents who sought to place their multiply disabled or emotionally disturbed children in more restrictive environments than proposed by the school district. A content analysis of these cases initially focused on the judge’s analysis of the student’s Individualized Education Plan (IEP) and student placement in the least restrictive environment (LRE). Additional factors evolved over the course of the researcher’s analysis. Findings indicate that school districts that developed IEP’s that complied with the New Jersey Administrative Code frequently prevailed. Furthermore, school districts that sought to place students in the LRE as specified in the New Jersey Administrative Code and existing case law also frequently prevailed. Additional important factors described in this study included witness credibility, attorney representation, and ability to demonstrate student progress.
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Chapter I: INTRODUCTION

Statement of the Problem

Deliberations regarding the design and delivery of special education programs for learning disabled children can be fraught with tension (Feinberg, Beyer, & Moses, 2002). Participants in the educational planning process for these children, who include school staff and the parents of children living with disabilities, often have strong feelings about what services the child needs, the ideas that are proposed, as well as the methods and location for implementing the student’s educational program. Participant beliefs are addressed and educational services for learning disabled students are finalized at meetings to develop an Individualized Education Plan (IEP). The IEP memorializes the educational decisions made as well as the student’s educational program and services. Although the IEP meeting can be an arena for addressing and reaching consensus on these important student issues, IEP meetings can also highlight tensions between participant viewpoints, causing disputes between school staff and parents to arise.

When differing viewpoints and conflict cannot be reconciled at IEP meetings, dispute resolution mechanisms are available to parents and school staff through the Federal Individuals with Disabilities Educational Improvement Act (IDEIA) of 2004. Dispute resolution techniques, such as mediation and due process hearings, are an important part of the procedural safeguards designed to ensure that parental rights are protected (Chambers, Harr, & Dhihani, 2003). Engiles (2000) stated that, between mediation and due process hearings, mediation is a more flexible and cost-effective technique to address disputes between school districts and parents of children living with disabilities. However, the incidence of due process hearings has risen steadily over the
past three decades despite the option of mediation (Ahearn, 1997; Mayes & Zirkel, 2001; Newcomer & Zirkel, 1999). One reason for the increase in due process hearings is that parents and school district staff have insufficient knowledge of special education law (Katsiyannis & Herbst, 2004). Conflicts resulting in due process hearings can also result from a lack of problem solving and communication skill by parents and school staff, as well as poor delivery of educational services (Lake & Billingsley, 2000). Chambers et al. also wrote that a critical change that shaped the current due process environment was the 1985 amendment to the IDEA stating that parents who prevail in due process hearings may be entitled to any and all expenses, including attorney’s fees, from the losing district. This amendment made parent filings for due process hearings more common while making losing due process hearings very expensive for public school districts.

Due process hearings where administrative law judges rule that individual students must be placed into out-of-district or residential schools, with all costs borne by the public school district, are especially expensive. Due process hearings alone can easily cost a school district $40,000.00 per pupil to fund (Feinberg, Beyer, & Moses, 2002). Nationally, the average expenditure on tuition, fees, and other special services for students placed in out-of-district schools is $25,580.00 per pupil (Chambers, Harr & Dhanani, 2003). Russell (as cited in Mayes & Zirkel, 2001) indicated that residential program tuition is approximately five times the cost of an in-district special education program. These types of due process hearings and subsequent out-of-district placements result in the direction of school funding away from public school education programs and towards either non-educational services (i.e. lawyer fees, residential fees) or spending a large amount of money for a single student to be educated in a non-public school that
may or may not be state accredited. With the incidence of due process hearings increasing, parents and district staff are placed in more stressful situations that damage working relationships (Lake & Billingsley, 2000). Additionally, public school districts are facing a source of escalating financial drain to school budgets and their educational programs.

Purpose of the Study

The purpose of the present study was to identify and explore important factors that New Jersey administrative law judges (ALJ’s) consider when making their rulings for special education due process hearings and how they render decisions based on their analysis of these important factors. Previous research indicates that a large percentage of due process hearings result from disagreements between parents and school districts over IEP’s and educational placement (Feinberg, Byer, and Moses, 2002; Newcomer & Zirkel, 1999; Schrag & Schrag, 2004). Consequently, this study initially focused on the ALJ’s analysis of IEP’s and educational placement in the least restrictive environment (LRE). The ALJ’s analysis of LRE was important because the Federal IDEIA mandates that students must be educated within this educational environment. IEP development and LRE were considered as defined by the New Jersey Administrative Code 6A:14 (N.J.A.C. 6A:14) because only New Jersey due process hearings were studied and N.J.A.C.6A:14 implements IDEIA regulations. Additionally, only cases involving students classified multiply disabled and emotionally disturbed were examined since research indicates these students are frequently involved in special education litigation (Newcomer & Zirkel, 1999; Schrag & Schrag, 2004). It was anticipated that additional factors would be
identified during this qualitative study. These factors were explored as they evolved from the researcher’s analysis.

The researcher believed that once important factors that ALJ’s consider were identified and explored, recommendations could be made to public school district administrators. With these recommendations, school district administrators may make educated decisions on a case-by-case basis about the advisability of engaging in litigation. Furthermore, such recommendations can help school districts develop effective educational and procedural policies that will allow their districts to prevail should they decide to litigate with parents who are seeking reimbursement for unilateral placements. The development of such recommendations to help school districts and policy makers develop this knowledge is a common purpose of education litigation research (Newcomer & Zirkel, 1999).

Research Questions

Do school districts that the ALJ decides developed IEP’s that comply with the N.J.A.C. 6A:14 frequently win in court?

What are the IEP components that ALJ’s find are frequently noncompliant?

When school districts place a child in the LRE as defined by the N.J.A.C. 6A:14, do they win more often than lose?

When school districts place a child in the LRE but lose, what reasons do the ALJ’s often provide for ruling in favor of the parent?

How frequently do school districts that exhibit procedural deficiencies in developing IEP’s, yet place the child in the LRE, win in court?
What are the factors that ALJ’s cite most often when ruling in favor of the parent?

What other factors besides IEP development and LRE do ALJ’s consider when hearing unilateral placement cases?

How frequently do ALJ’s consider these other additional factors when hearing unilateral placement cases?

How do the outcomes of the cases involved in this study compare with the outcomes described in the national data?

Significance of the Study

Research in the area of dispute resolution techniques in special education indicates that the incidence of due process hearings has increased over the past three decades (Ahearn, 1997; Mayes & Zirkel, 2001; Newcomer & Zirkel, 1999). Due process hearings are costly to public school districts. Feinberg, Beyer and Moses (2002) stated that a single due process hearing could cost a school district in excess of $40,000.00. Due process hearings place an additional monetary burden on special education, which is an area of public school education that is already expensive to fund. LaMorte (2005) noted that some school districts spend up to 20% of their budgets on special education. Research indicates that per pupil education expenditures for students who receive special education and related services are 1.91 times greater than expenditures for students who receive no special education services (Chambers, Harr, & Dhanani, 2003). Chambers et al. (2003) also stated that expenditures are highest for students with disabilities placed in non-public schools with an average cost of $25,580 per student. This is twice the expenditure for the average special education student and 3.9 times the expenditure for regular education students.
According to the Education Law Center, funding has a direct impact on the quality of public school education, and funding affects student academic success and educational outcomes. With regards to educational funding, C.M. Achilles (personal communication, October 14, 2006) said that re-distributive practices exist in public schools; that is, funds are often shifted from one area to another, which results in a loss of funding from one area to satisfy the needs of another. In terms of special education litigation, district financial resources spent on litigation are unavailable for educational programs (Newcomer & Zirkel, 1999). Money to fund board attorney fees, parent lawyer fees (should the parent prevail in court) and tuition for out-of-district or residential schools must be taken from funding allocated for public school educational programs. Consequently, educational programs for students within public schools are negatively impacted by special education litigation.

The researcher believed that insight could be gained as to how ALJ's assess cases in terms of IEP development and placement in the LRE, which research indicates are two frequently litigated areas in special education, as well as describe additional factors that ALJ's consider important, then these factors and accompanying recommendations could be shared with public school districts. With knowledge gained from these recommendations, school districts can analyze potential cases and gauge their probability of success in court. If the probability of success is low, school districts can settle out of court rather than litigate, lose, and pay the costs of litigation (i.e., parent attorney fees, compensatory education claims) that would be added to the cost of paying for the unilateral placement. Additionally, this knowledge can help school districts develop effective procedural policies. Development of such policies will increase the likelihood
that district personnel will educate special education students appropriately and interact in ways that reduce the likelihood of conflict with parents. This improved functioning will also result in positive outcomes for school districts should they litigate. Improved staff knowledge and functioning will maximize the potential that the parent’s claim will be dismissed in court, thereby minimizing district funding of parent attorney fees, compensatory education, and tuition for unilateral placements. Overall, the knowledge gleaned from this research will help public school districts direct less funding towards litigation and its associated costs and direct more money towards educational programs.

Delimitations

The researcher did not attempt to establish a causal relationship between IEP and LRE compliance and favorable school district outcomes.

The researcher did not analyze administrative law judge rulings from any other state besides New Jersey.

The researcher did not analyze cases from the Federal Court system, nor did the researcher analyze cases from the New Jersey Supreme Court, the New Jersey Superior Court, Appellate Division, or the New Jersey Superior Court.

This study did not examine any cases involving any disability categories other than emotionally disturbed or multiply disabled.

This study did not examine special education due process hearings involving removal of students from public schools due to disciplinary actions.

This study did not examine special education due process hearings involving disputes over related services.
Limitations

Because only New Jersey administrative law cases will be examined in this study, findings may not generalize to other state administrative law rulings.

Since only hearings that deal with unilateral placements for emotionally disturbed and multiply disabled are analyzed, findings may not be applicable to due process hearings dealing with other dispute issues or other disability categories.

The researcher is a child study team member with 8 years of professional experience, and has also participated in several due process hearings. The researcher’s experiences may have affected his perceptions of the factors explored in this study.

As a small number of cases will be analyzed, the findings may not be representative of the entire sample of administrative law cases.

The decisions written by the administrative law judges may have left out important details, which may have affected the researcher’s interpretation of the rulings.

Definitions

Due process hearing: An administrative hearing conducted by an administrative law judge (N.J.A.C. 6A:14).

Emotionally disturbed: According to N.J.A.C. 6A:14-3.5, emotionally disturbed means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student’s educational performance due to an inability to learn that cannot be explained by intellectual, sensory, or health factors: an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behaviors or feelings under normal
circumstances; a general pervasive mood of unhappiness or depression; or, a tendency to develop physical symptoms or fears associated with personal or school problems.

**Favorable ruling for parent:** For the purposes of the present study, favorable rulings for the parent will be defined as the administrative law judge's order that the student either remain or be placed in the unilateral placement and that the school district must pay for the placement.

**Favorable rulings for school district:** For the purposes of the present study, favorable rulings for the school district will be defined as the administrative law judge's order that the parent's petition was denied and dismissed.

**Procedural Violation:** A school district's failure to comply with rules and regulations delineated in the IDEIA. Procedural violations include school district failure to secure parent participation in the IEP process, inadequate evaluations, the development of inadequate IEP's, and placement of the child prior to the development of an IEP document.

**Split decisions:** For the purposes of the present study, split decisions will be defined as rulings where each side partially won the case, but did not win the case outright.

**Substantive Violation:** A school district's failure to provide services delineated in the child's IEP and failure to ensure that the student made progress in the educational program.

**Free Appropriate Public Education (FAPE):** The United States Supreme Court has construed FAPE as the provision of personalized instruction with sufficient support services to permit the child to benefit from that instruction (LaMorte, 2005).
**Individually with Disabilities Education Improvement Act (IDEIA):**

Federal legislation designed to ensure the provision of a free, appropriate public education for learning disabled students. It emphasizes special education and related services designed to meet the learning disabled student’s needs and to prepare them for employment and independent living. This Federal law is also intended to ensure that the rights of children living with disabilities are protected and to assist states in providing appropriate services (LaMorte, 2005).

**Individualized Education Plan (IEP):** A written plan which sets forth present levels of academic achievement and functional performance, measurable annual goals and short-term objectives or benchmarks and describes integrated, sequential programs of individually designed instructional activities and related services necessary to achieve the stated goals and objectives. This plan shall establish the rationale for the student’s educational placement, serve as the basis for program implementation and comply with the mandates set forth in N.J.A.C. 6A:14. (N.J.A.C. 6A:14-3.3).

**Least Restrictive Environment (LRE):** As per N.J.A.C. 6A:14-4.2, to the maximum extent appropriate, a student with a disability is educated with students who are not disabled. Special classes, separate schooling or other removal of a student with a disability from the student’s general education class occurs only when the nature or severity of the educational disability is such that education in the student’s general education class, with the use of appropriate supplementary aids and services, cannot be achieved satisfactorily. The Code lists a continuum of placement options with regular education classes in the public school being the least restrictive and alternative education schools outside of the public school being most restrictive.
Multiply disabled: According to N.J.A.C. 6A:14-3.5, multiply disabled means the presence of two or more disabling conditions, the combination of which causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. Multiple disabilities include cognitively impaired-blindness, cognitively impaired-orthopedic impairment, and so forth.

New Jersey Administrative Code Title 6A: Chapter 14 (N.J.A.C. 6A:14): The purpose of this chapter is to “Ensure that all students with disabilities as defined in this chapter, including students with disabilities who have been suspended or expelled from school, have available to them a free, appropriate public education as that standard is set under the Individuals with Disabilities Education Improvement Act)” N.J.A.C. 6A:14-1.1.

Unilateral Placement: For the purposes of the present study, unilateral placements will be defined as the parent independently seeking the removal of, or actually removing, their child from the district’s proposed program. All of the cases analyzed in the present study deal with the parent seeking placement in a more restrictive environment than proposed by the school district according to the LRE continuum.
Chapter II:
REVIEW OF THE RELATED LITERATURE

Introduction

This chapter provides an overview of the literature related to IEP development and placement in the least restrictive environment, as well as how these constructs relate to special education litigation. Following a review of the genesis and evolution of Federal special education legislation, N.J.A.C. 6A:14, which reflects the Federal requirements is reviewed. More specifically, definitions of emotionally disturbed and multiply disabled, the required components of an individualized education plan, as well as the statutory requirements of the least restrictive environment, are explained in light of their legal definitions and research related to these concepts. Common causes of conflict between parents and school district officials are also explored. The two main procedural safeguards available to parents and school districts, mediation and due process, are also described and linked to the relevant literature. This chapter also illustrates the monetary and emotional costs of such conflict and procedural safeguards. Finally, this chapter ends with a review of the pertinent case law.

Historical Background on Special Education Legislation and Evolution

With the development of special education schools that were separate from public schools between the years of 1820-1870, public schools in the United States increasingly used these special schools as a way to deny educational opportunities to students with disabilities (Turnbull & Turnbull, 1978). As specified in Sec. 602 (b) of P.L. 94-142 (as cited in Turnbull & Turnbull, 1978), by the mid-1970's one-half of the nation's eight million students living with disabilities were not receiving an appropriate education and
one million students received no education at all. Turnbull and Turnbull wrote that public schools violated the educational rights of students living with disabilities either by placing them in special schools or tracking them into inappropriate educational programs (special classes) within their public schools.

An evolving federal role was important in helping children with disabilities receive the right to an education (Turnbull & Turnbull, 1978). According to the U.S. Department of Education (USDOE), an important federal initiative designed to protect the rights of the disabled was developed in 1973 when Congress passed Section 504 of the Federal Rehabilitation Act. Section 504 protects the rights of individuals with disabilities in programs that receive federal funding. Educational recipients of such funding include public schools, colleges, and universities. To be protected under Section 504, an individual must have documentation of a physical or mental impairment that limits one or more major life activity, such as seeing, walking, hearing, working, and learning. When a student provides documentation of the impairment within a school setting, appropriate staff members develop a 504 Accommodation plan. This plan contains accommodations and modifications to provide the student with access to the educational environment.

Kelman and Lester (1997) indicated that Congress passed the most significant piece of federal legislation protecting students with disabilities in 1975 when it passed P.L. 94-142, or the Education of All Handicapped Children Act (EAHCA). Kelman and Lester also explained that P.L. 94-142 contained requirements structuring the implementation of special education and related services for students with disabilities living in the United States. P.L. 94-142 was amended and renamed the Individuals with
Disabilities Education Act (IDEA) in 1990. The IDEA was amended in 1997 (Feinberg, Beyer & Moses, 2002) and again reauthorized into its present form as the Individuals with Disabilities Educational Improvement Act (IDEIA) of 2004 (ed. gov. 2007). Similar to P.L. 94-142, the IDEIA is a federal law governing the provision of special education and related services to students living in the United States. The Act stipulates how states must provide early intervention, special education, and related services to more than 6.5 million children in the United States living with educational disabilities. IDEIA laws are contained in Title 20 of the United States Code (20 U.S.C.) and ensure that “all children with disabilities have available to them a free, appropriate, public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living” (20 U.S.C. 1401). This statute is further intended “to ensure that the rights of children with disabilities and parents of such children are protected” (20 U.S.C. 1400).

Special education legislation is enforced by executive agencies whose personnel develop regulations (Turnbull & Turnbull, 1978). Executive agencies exist at both the federal level (Office of Education) and state level (individual State Departments of Education). The New Jersey Department of Education (NJDOE) is charged with developing and implementing a statewide plan to ensure compliance with federal special education regulations (Celso, 2002). The New Jersey Administrative Code 6A:14 (N.J.A.C. 6A:14) fulfills this requirement. N.J.A.C. 6A:14 ensures that “all students with disabilities have available to them a free appropriate public education as that standard is set under the Individuals with Disabilities Education Act” (N.J.A.C. 6A:14-1.1).
Reflecting the requirements stated in 20 U.S.C., N.J.A.C 6A:14 provides specific disability categories, states the requirement that students living with disabilities have individualized education plans (IEP’s), and requires that children living with disabilities are educated within the least restrictive environment (LRE). The Code also delineates procedural safeguards for students with disabilities in order to protect their right to an education.

Disability Categories

When parents or school staff have concerns that a student may have a learning disability, the district Child Study Team conducts a multi-disciplinary evaluation to determine eligibility for special education and related services. To be eligible for special education and related services, New Jersey students must meet the eligibility requirements established within N.J.A.C. 6A:14-3.5. N.J.A.C. 6A:14 delineates 14 eligibility categories. These 14 categories are auditorily impaired, autistic, cognitively impaired, communication impaired, emotionally disturbed, multiply disabled, deaf/blindness, orthopedically impaired, other health impaired, preschool child with a disability, social maladjustment, specific learning disability, traumatic brain injury, and visually impaired. In addition to these eligibility categories, special education case law indicates that there is a two part test to determine eligibility for special education and related services: the child must qualify under one of the given disability categories and must have special education and related services to access the educational environment (La Morte, 2005).

Research indicates that a large percentage of disputes in special education deal with children classified emotionally disturbed and multiply disabled (Newcomer & Zirkel,
1999; Schrag & Schrag, 2004). Consequently, the present study will focus on these two eligibility categories

According to N.J.A.C. 6A:14-3.5, emotionally disturbed means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student’s educational performance due to: (a) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (b) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (c) inappropriate types of behaviors or feelings under normal circumstances; (d) a general pervasive mood of unhappiness or depression; or (e) a tendency to develop physical symptoms or fears associated with personal or school problems.

As per N.J.A.C. 6A:14-3.5, multiply disabled corresponds to “multiply handicapped” and “multiple disabilities” and means the presence of two or more disabling conditions, the combination of which causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. Multiple disabilities includes cognitively impaired-blindness, cognitively impaired-orthopedic impairments, and so forth.

The NJDOE website provides statewide trends of classified students by eligibility category. In 2006, New Jersey educated 215,539 students living with disabilities. Of this number 5.4% were classified emotionally disturbed while 13.2% were classified multiply disabled.

Individualized Education Plan (IEP)

Once the district Child Study Team determines that a student meets the criteria for one of the 14 eligibility categories delineated in N.J.A.C. 6A:14, parents and school
district personnel work together to develop an IEP for that student. The IEP delineates a special education student’s educational needs, their educational goals and objectives, and their special education program (Drasgow, Yell, & Robinson, 2001). According to Smith (2000) “The IEP is a quasi-contractual agreement to guide, orchestrate, and document specially designed instruction for each student with a disability based on his or her unique academic, social, and behavioral needs” (p. 1). Its legal importance was emphasized by Wright and Wright (2004) who stated that the IEP is “the centerpiece of special education law” (p. 7).

N.J.A.C. 6A:14-3.7 stipulates that an IEP shall be in effect before special education and related services are provided. N.J.A.C. 6A:14 requires that the IEP include the following specific components:

1. A statement of the student’s present levels of academic achievement and functional performance, including, but not limited to:
   i. How the student’s disability affects the student’s involvement and progress in the general curriculum; or
   ii. For preschool students, as appropriate, how the disability affects the student’s participation in appropriate activities.

2. Where appropriate, a statement of detailed measurable annual academic and functional goals that shall, as appropriate, be related to the core curriculum content standards through the general education curriculum unless otherwise required according to the student’s educational needs. For all students, the annual academic and functional goals
shall be measurable and apprise parents and educational personnel of the expected level of achievement attendant to each goal.

3. Such measurable annual goals shall include benchmarks or short-term objectives related to:
   i. Meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and
   ii. Meeting each of the student's other educational needs that result from the student's disability;

4. A statement of the special education and related services and supplementary aids and services that shall be provided for the student. These services should be provided to help the student advance appropriately toward attaining the measurable annual academic and functional goals, to be involved and progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other student with disabilities, as well as, non-disabled students.

5. A statement of any integrated therapy services that may be required.

6. An explanation of the extent, if any, to which the student shall not participate with non-disabled students in the general education class or extracurricular/non-academic activities.
7. A statement of any modifications in the administration of Statewide or district
standardized assessment.

8. A statement specifying the projected date for the beginning of services as well as the
anticipated frequency, location, and duration of those services.

9. At age 14, a statement of the State and local graduation requirements the student will
be expected to meet.

10. A statement of a student’s transition from an elementary program to the secondary
program.

11. Beginning at age 16, a statement of appropriate, measurable post-secondary transition
goals related to instruction, related services, community experiences, developing
employment and other post-school adult living objectives, and daily living skills. In
addition, the student’s strengths, interests, and preferences must be considered, a course
of study to achieve postsecondary transition goals must be documented, as well as a
description of the need for consultation with outside agencies to help the student
transition from secondary to post-secondary outcomes.

12. A statement of the person responsible to serve as the transition liaison to
postsecondary resources and make referrals to the resources as appropriate.
13. Three years before a student turns 18, a statement informing the parent and student that all rights under this chapter will transfer to the student.

14. A statement of how the student’s progress toward the annual goals will be measured.

15. A statement of how the student’s parents will be regularly informed of the student’s progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year.

16. For students in out-of-district placements, the IEP shall set forth how the student will participate with non-disabled peers in extracurricular and non-academic activities, and delineate the means to achieve such participation including, if necessary, returning the student to the district in order to effectuate such participation.

   Drasgow, Yell and Robinson (2001) stated that, of all the required IEP components, the three most important components are the present levels of academic achievement and functional performance, measurable goals and objectives, and the statement of special education services. The present levels of academic achievement and functional performance section of the IEP is important because it describes the student’s disability and their accompanying needs. The student’s needs drive the development of the program and its accompanying goals and objectives. “This basic link between the student’s needs and his or her program represents the very essence of special education and specially designed instruction”(Smith, 2000, p. 2). The IEP goals and objectives should be specific, measurable, focused on the child’s educational problems, and work
towards reducing or eliminating them (Wright & Wright, 2004). Most importantly, goals and objectives must be individualized and reflect that student’s specific needs (Lynch & Adams, 2008).

N.J.A.C. 6A:14-2.3 stipulates that the IEP team shall develop the IEP. The IEP team shall consist of the parent, a general education teacher of the student, a special education teacher of the student, the student’s case manager, other district representatives when appropriate, other individuals who have knowledge or special expertise regarding the student, and the student when appropriate. The IEP team must follow three steps when placing a student into a special education program: evaluate the child to establish eligibility, develop the IEP document, and determine placement based upon the IEP document (Yell & Katsiyannis, 2004). Yell and Katsiyannis also reported that the IEP is both a process that develops the student’s program and a document that is the “blueprint” of the student’s program (p. 29).

While it is important to ensure that all required members of the IEP team attend a student’s IEP meeting, research indicates that it is especially important to secure parent and regular education teacher participation in the IEP process (Katsiyannis & Herbst, 2004; Yell & Drasgow, 2000). It is important that the regular education teacher participate to become knowledgeable about the student’s needs and to make important suggestions regarding instructional modifications and behavioral strategies (Weishaar, 2001). With all required participants present, the IEP meeting can become a dynamic process where a variety of professionals, parents, and students can create an educational outline that will plan for the student’s instructional future and will be tailored to the student’s individual needs (Smith, 2000). Smith also wrote that a variety of participants at the IEP meeting
can focus on developing an accurate and relevant description of the child’s strengths and weaknesses across both the home and school setting. This collaborative perspective allows for shared responsibility among all stakeholders involved in the student’s education and increases the number of professionals available to provide support and guidance.

Despite the collaborative nature of developing a child’s IEP, difficulties may arise when developing and implementing them. Regular education content teachers may feel untrained to handle the academic and behavioral needs of students living with disabilities. McCabe (2004) stated that, while 74% of general education teachers teach learning disabled students, only 45% reported that they felt prepared to teach them. Smith (2000) also mentioned several impediments to IEP implementation. Regular education teachers may also put the responsibility for educating special education students on special education teachers. The IEP itself may be perceived as a document prepared by individuals (i.e. Child study team members) who are not involved in the child’s daily activities and do not have adequate knowledge of the child, thereby limiting the perceived credibility of the document. IEP development may also be perceived as cumbersome, time-consuming, and viewed as unnecessary paperwork that must simply be completed.

Problems developing and implementing IEP’s can result in litigation (Katsiyannis, & Herbst, 2004). The author’s wrote that a school district’s failure to secure parent and teacher participation in the development of a student’s IEP is a procedural violation of the IDEIA that denies the student a free, appropriate, public education and can lead to due process hearings. Weishaar (2001) wrote that school district failure in implementing
IEP’s can result in litigation, individual lawsuits filed against specific teachers who fail to implement a child’s IEP, and preventing the student from receiving a proper education.

Research indicates that there are several ways to ensure the correct development and implementation of student IEP’s. Weishaar (2001) recommends that regular education teachers attend and actively participate in IEP meetings. This allows regular education teachers to provide helpful suggestions about instructional modifications, to learn more about their instructional responsibilities, and to learn more about the child. All professionals working with students living with disabilities should read the child’s IEP to become knowledgeable about the student’s program and required modifications. Drasgow, Yell, and Robinson (2001) wrote that an effective way to promote IEP implementation is to make sure a copy of the IEP is provided to all staff members who work with the student. Drasgow et al. (2001) also suggested that school districts designate a staff member to ensure that parents receive progress reports concerning the IEP goals and objectives. Staff members must also understand that the IEP is a legal document that must be carried out as specified and not at their discretion. Lee-Tarver (2006) indicated that more professional development opportunities must be provided by school districts. Provision of professional development can help regular education teachers understand the purpose of the IEP and teach them instructional techniques that are effective in educating disabled students.

The USDOE developed *A Guide to the Individualized Education Program* (2000). In this document, the USDOE provided several suggestions to successfully implement IEP’s:

Every individual involved in providing services to the student should know and understand their responsibilities. This will help ensure that the student receives the
services contained within the IEP document, including the specific modifications and accommodations the IEP team has identified.

Teamwork plays an important part in implementing the IEP. Sharing expertise and insights can help make everyone’s job easier and can improve student outcomes. Schools can encourage teamwork by giving teachers and support staff time to plan or work together on such matters as adapting the curriculum to meet the student’s needs. Providing teachers and support staff with training and professional development opportunities can further improve the likelihood of IEP implementation.

Communication between home and school is also important. Parents can share information about what is happening at home and build on what the child is learning at school. If the child is having difficulty at school, parents can offer insight or act to improve these difficulties at home.

It is helpful to have someone in charge of coordinating and monitoring the services that the student receives. In addition to special education, the student may be receiving a number of related services. Many people may be involved in the delivery of these services, so having a person oversee the IEP can ensure its implementation.

The regular progress reports that the law requires will help parents and schools monitor the child’s progress toward his or her annual goals. It is important to know if the child is not making the expected progress, or if the child has progressed faster than expected. Together, parents and school personnel can then address the child’s needs as those needs become evident and review or revise the IEP.
Least Restrictive Environment (LRE)

Once eligibility for special education and related services is determined and the IEP team meets to develop the IEP, the team must abide by federal and judicial mandates to determine the child’s educational placement. The IDEIA’s requirement that learning disabled students be educated in the LRE is a legal principle requiring students with disabilities to be educated with non-disabled students to the greatest extent possible. Yell (1998) wrote that the general education classroom is considered the least restrictive environment. Yell and Katsiyannis (2004) wrote that LRE is also the placement issue that has proven to be the most controversial and litigated of all special education issues. The LRE mandate requires that students living with disabilities “receive their education in the general education classroom to the maximum extent appropriate, or when the general education setting is not appropriate, in a setting with the least amount of segregation from a student’s peers” (Yell & Kastiyannis, p. 30).

N.J.A.C. 6A:14-4.2 specifies the following LRE continuum:

To the maximum extent appropriate, a student is to be educated with students who are not disabled:

1. Special classes, separate schooling or other removal of a student with a disability from the student’s class occurs only when the nature or severity of the educational disability is such that education in the student’s general education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;
2. A full continuum of alternative placements according to N.J.A.C. 6A:14-4.3 is available to meet the needs of students with disabilities for special education and related services;

3. Placement of a student with a disability is determined at least annually and, for a student in a separate setting, activities necessary to transition the student to a less restrictive placement are considered at least annually;

4. Placement is based on his or her individualized education program;

5. Placement is provided in appropriate educational settings as close to home as possible;

6. When the IEP does not describe specific restrictions, the student is educated in the school he or she would attend if not a student with a disability;

7. Consideration is given to:
   i. Whether the student can be educated satisfactorily in a regular classroom with supplementary aids and services;
   ii. Comparison of the benefits provided in a regular class and the benefits provided in a special education class; and
   iii. The potentially beneficial or harmful effects which a placement may have on the student with disabilities or other students in the class

8. A student with a disability is not removed from the age-appropriate general education classroom solely based on needed modifications to the general education curriculum;

9. Placement in a program option is based on the individual needs of the student and;
10. When determining the restrictiveness of a particular program option, such determinations are based solely on the amount of time a student with a disabilities is educated outside the general education setting.

N.J.A.C. 6A:14-4.3 lists the program options for special education students.

(a) All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:
1. Curricular or instructional modifications or specialized instructional strategies;
2. Assistive technology devices and services as defined in J.J.A.C. 6A:14-1.3;
3. Teacher aides
4. Related services
5. Integrated therapies
6. Consultation services
7. In-class resource programs.

(b) If it is determined that a student with a disability cannot remain in the general education setting with supplementary aids for all or a portion of the school day, a full continuum of alternative placements as set forth below shall be available to meet the needs of the student. Alternative educational program options include placement in the following:
1. Single subject resource programs outside the general education class;
2. A special class program in the student’s local school district;
3. A special education program in another local school district;
4. A special education program in a vocational or technical school;
5. A special education program in the following settings:
   i. A county special services school district
   ii. An educational services commission
   iii. A jointure commission
   iv. A New Jersey approved private school for students with disabilities or an out-of-State school for students with disabilities in the continental United States approved by the department of education in the state where the school is located;
6. A program operated by a department of the New Jersey state government.
7. A community rehabilitation program;
8. A program in a hospital, convalescent center or other medical institution;
9. Individual instruction at home or in other appropriate facilities, with the prior written notice to the Department of Education through its county office;
10. An accredited nonpublic school which is not specifically approved for the education of students with disabilities according to N.J.A.C. 6A:14-6.5;
11. Instruction in other appropriate settings according to N.J.A.C. 6A:14-1.1(d); and
12. An early intervention program (which is under contract with the Department of Health and Senior Services) in which the child has been
enrolled for the balance of the school year in which the child turns age three.

Yell and Katsiyannis (2004) provided several recommendations to help school districts meet the placement requirements of the IDEIA in a manner that ensures legal compliance and educational benefit. The author's suggest that school district Child Study Teams conduct appropriate evaluations to clearly delineate the child's needs. This is important because placements must be based on student needs. School districts must place children in appropriate educational settings. Placement in the general education class is the clear legal preference that school districts should strive for. However, because not all learning disabled students can be educated within a completely general education environment, Yell and Katsiyannis recommend that school districts be able to provide a continuum of educational options that begins with consideration of the general education classroom, then progress in degree of restrictiveness to special classes, special schools, home instruction, and finally placement in a hospital or institution. School district personnel should also consider providing supplementary aids and services (i.e. instructional modifications, related services, in-class support) in the general class prior to removing a child from it. Finally, school districts should consider problem behavior when determining placement. IDEIA states that, if a student's behavior interferes with their learning or the learning of the other students, then that placement may not be appropriate for that child.

Efforts to educate disabled students within their neighborhood schools and regular classes has been defined as inclusion. The National Center on Educational Restructuring and Inclusion (1994) defined inclusion as the provision to all students, including disabled
students, equal opportunity to receive effective educational services in age-appropriate classes within their local schools. Supplementary aids and services, such as consultation among professional staff, behavior management plans, assistive technology, and in-class support services may be used effectively within the regular class to help educate disabled students within the general education classroom (Yell & Katsiyannis, 2004).

Lee-Tarver (2006) reported that extensive data supports the educational benefits of inclusion on disabled students. According to the Principal’s Partnership (n.d.) research brief, students who have been placed in inclusion programs achieve better academically and socially than students who have been placed in special classes. Students with mild disabilities did better in reading achievement in an inclusive setting than students placed in resource room programs. Research has shown student gains in the areas of self-confidence, social interaction, teacher support, and teacher expectations (Ritter, Michel, & Irby, 1999; Zigmond, Jenkins, Furchs, Deno, Fuchs, Baker, Jenkins & Couthino, 1995).

Rea, McLaughlin and Walther-Thomas (2002) found that learning disabled students in inclusive classrooms exhibited significant gains on standardized achievement tests as well as lower incidences of suspensions when compared to classmates placed in out of class replacement courses. Similarly, Weiner (1985) reviewed 50 studies assessing the academic performance of disabled students placed in regular classrooms as compared to disabled students placed in special classes. The author reported that that the mean academic performance of the mainstreamed group was in the 80th percentile rank on achievement tests while students placed in special classes scored within the 59th percentile rank.
New Jersey's Compliance with LRE

Despite federal and legal mandates that a child be educated in the LRE, and despite the research suggesting the beneficial placement in the LRE, New Jersey has a history of excluding special needs students from its public schools (Jaffe, 2005). Jaffe wrote that, as recently as 2003, nearly three times as many students with disabilities were placed in separate facilities when compared to the national average. More specifically, more than 19,500 of the 240,000 New Jersey special education students were educated in separate facilities for their entire school day. Jaffe also stated that, although New Jersey accounts for less than 3 percent of the U.S. population, more than 11 percent of segregated placements nationally are students who reside in New Jersey.

According to the NJDOE website (www.nj.gov/education) New Jersey educates 89.3% of learning disabled students within the student’s local public school. According to New Jersey’s Annual Performance Report (APR) and revised State Performance Plan (SPP), which are also posted on the NJDOE website, 42% of special education students were removed from the regular class curriculum less than 21% of the day in 2006. Eighteen percent were removed from the regular class greater than 60% of the day, while 10% were served in separate schools, residential placements, or homebound or hospital placements.

A significant percentage of students classified emotionally disturbed and multiply disabled are placed into private day schools. Data from December 1, 2006 indicates that New Jersey public school districts placed 20.3% of students classified emotionally disturbed into private day schools. New Jersey public schools also placed 20.4% of students classified multiply disabled into private day schools. Of the 13 eligibility
categories, only children who were classified autistic and deaf/blind were placed in separate schools at a higher rate.

Conflict Between Parents and School Districts: Causes and Efforts to Address Them:

Explicit in the requirements of IDEIA, N.J.A.C. 6A:14, and the related literature is the concept that educational programs for disabled children should be developed collaboratively. However, competing educational philosophies (inclusion vs. more intensive and separate services) and their application to the development of student IEP's is a major source of conflict between school district personnel and parents of learning disabled students (Crabtree, 2008). Crabtree noted that personality conflicts also present themselves at IEP meetings, and these conflicts can often take precedence over the child’s needs. Disagreement over the program delineated in the child’s IEP can “degenerate into protracted, acrimonious, expensive legal conflicts, which exact a terrible emotional toll on parents, children, and school personnel” (Margolis, 1998, p. 1).

Feinberg, Beyer, and Moses (2002) also stated that deliberations regarding the design, implementation, and location of special education programs are often filled with tension. Participants in the educational planning process for children living with disabilities often feel strongly about what the student needs in terms of program design, implementation, and location. Differences of opinion often arise between parents and school officials when designing and implementing special education and related services for students (Lake & Billingsley, 2004). The tension that arises from these differences of opinion can lead to conflict and adversarial relationships between parents and school district officials (Katsiyannis & Herbst, 2004).
Lake and Billingsley (2000) identified factors that initiate and escalate parent-school conflict. Discrepant viewpoints as to what the child needs is a core factor in creating conflict. School district emphasis on student deficits and de-emphasis on student strengths can create conflict. Lack of problem-solving knowledge and lack of strategies for communication among school officials and parents can also create and escalate conflict. Constraints (i.e. limitations on time, money, personnel, and materials) and a dearth of program options can also increase tension and foster conflict between parents and school district personnel. Power imbalances, feelings of disrespect, the withholding of information on either side, and feelings of mistrust often instigate and exacerbate conflict.

In order to prevent conflict and reduce it when it occurs during educational discussions between schools and parents, Lake and Billingsley (2000) made several suggestions. Since discrepant views regarding the child’s education is an important factor in creating conflict, the author’s suggest identifying the needs that underlie viewpoints to decrease conflict. Lake and Billingsley also stated that it’s “important for educators to explain the goals they want for children, but to be careful not to overshadow parental or student goals” (p. 249). Rather than view disabled students from the deficit perspective of their disability, school district personnel should consider the student’s strengths, aspirations, and needs. Knowledge of conflict-resolution strategies and communication techniques is also important. The most important suggestion that the authors make with regards to conflict management is for educators to focus on relationships. Focus on the creation and maintenance of positive, trusting relationships can help educators and parents work through disagreements when they arise. Kaplan (1996) supported this
emphasis on positive relationships. The author recommended several strategies to improve school-parent relationships, such as informing parents of school counseling activities, listening carefully to parent feedback, and showing parents an understanding of their viewpoint. Kaplan also advocated implementing school policies to support counselor-parent communication and developing parent advisory committees.

Lack of understanding of the IDEIA is another significant factor that results in adversarial relationships between school district personnel and parents, and these adversarial relationships often lead to litigation (Katsiyannis & Herbst 2004). Katsiyannis and Herbst suggest that school districts have a thorough knowledge of IDEIA and its procedural statutes. The author's also wrote that open communication between schools and parents and the implementation of educational interventions that are grounded in empirical research are important ways to avoid litigation. While research clearly establishes the importance of school district official knowledge of IDEIA, Gryphon (as cited in Kennedy, 2004) conversely stated that IDEIA itself is an important cause of conflict and ensuing litigation. Parents often become confused by the complexity of the IDEIA, so they turn to lawyers to provide them with advice. These attorneys often aggressively pursue beneficial settlements for their client's children. Gryphon stated that reform of the current IDEIA would eliminate two important sources of conflict between parents and schools: the amount of money available to children and the type of services disabled student's need.

Research suggests that school administrators can play an important role in addressing conflicts between school district staff and parents. Patterson, Bowling, and Marshall (2000) stressed the importance that school principals understand the tenets of
IDEIA to reduce conflicts and avoid litigation. Paterson et al. explained that principals must have a basic understanding of special education rules, regulations, and court cases. Principals must also participate in continuing education regarding special education laws and inclusion. Owens (1995) advocated administrative application of the contingency approach to address conflict. Using the contingency approach, the school leader first determines whether or not a conflict truly exists. If a conflict does exist, the school leader should diagnose the severity of the conflict, review their repertoire of management strategies, and then apply the appropriate strategy towards managing the conflict. Green (2005) listed five approaches that school leaders commonly use to manage conflict: avoidance, smoothing, bargaining, power struggle, and problem solving. Luneburg and Ornstein (1996) stated that the problem solving approach was most effective. The problem solving approach involves both parties involved in the conflict collaborating to achieve the best solution. The primary concern of the problem solving approach is accomplishing the task in a way that allows a positive climate between the two parties to be achieved and maintained.

Karrass (1970) stated that knowledge of negotiation concepts and skills is essential to resolve the majority of conflicts that occur within society. Karrass stressed that people address conflict effectively and attain agreements and shared goals through negotiation, regardless of the roles they play in society. The author delineated a four-part program that all organizations can apply to improve negotiation skills. Phase I involves the development of planning skills to improve negotiations. This entails asking probing questions of the other side to ascertain objectives, gathering information, performing high quality worth-analysis, developing basic theory and knowledge of negotiation tactics and
techniques, and organizing members of the negotiation team to develop a unified front at the bargaining table. Phase II entails a broad-based training program that blends a deeper analysis of higher-level theoretical concepts with advanced negotiation techniques. Karrass advocated a roundtable seminar format for this training with a strong leader who can teach the group these higher-level concepts and techniques while coordinating mock negotiation scenarios. The use of these scenarios allows participants to practice the theories and skills taught while the leader critiques the scenarios and provides supportive coaching. Phase III involves improving the process of selecting negotiation team members, and Phase IV delineates how to assemble a team of elite negotiators. This elite team can both negotiate and advise lower ranking negotiating teams to maximize their success.

Procedural Safeguards

When disagreements between parents and school district officials arise and conflicts arise that cannot be resolved at the district level, parents may take action to trigger the procedural safeguards contained in the IDEIA to ensure that their disabled children receive equal treatment (Getty & Summy, 2004). These procedural safeguards include the right for parents to examine their child’s records, the right to be notified about situations involving their child and their child’s education, and the right to be involved in the decision making process concerning the development of an educational program for their child. Furthermore, the procedural safeguards contained in IDEIA establish the right for parents to pursue mediation or due process hearings when they disagree with school districts about their child’s educational program. The next two sections will review the
statutory mandates concerning mediation and due process and describe relevant literature related to these two procedural safeguards.

Mediation

Mediation has been a required component of the dispute resolution process since the 1997 reauthorization of the IDEA, when Congress for the first time identified it as the preferred mechanism for conflict resolution in special education (Feinberg, Beyer, & Moses, 2002). Mediation is a voluntary process that is available to resolve disputes between education agencies and parents (N.J.A.C. 6A:14-2.6). Mediation is available from the State Department of Education through the Office of Special Education Programs and may be conducted at parent or school district request when there is a disagreement regarding identification, evaluation, classification, educational placement, or the provision of a free, appropriate public education. Either party may be accompanied and advised at mediation by legal counsel or other individuals with special knowledge or training. Either the parent or the education agency may initiate mediation through a written request. Upon receipt of the written request, a mediation conference consistent with New Jersey law and rules shall be scheduled within 15 days and completed within 30 days of the date of request. The NJDOE provides a trained mediator to facilitate communication between the two parties and chair the meeting. The mediator shall also assist the parties in reaching an agreement and, should the mediation result in agreement, the mediator shall prepare the agreement document. Both parties shall sign the agreement and the agreements contained within the document shall be legally binding. The mediator may adjourn the mediation to a date certain at the request of the parties to obtain
additional information or explore options, or the mediator may terminate mediation if he/she judges that the parties are not making progress towards resolving the issue. If agreement is not reached and mediation is terminated, the mediator shall transmit an application for a due process hearing to the Office of Special Education Programs. New Jersey's State Performance Plan from 2006 indicates that 38% of all New Jersey mediations resulted in agreements.

Mediation and other settlement strategies are preferred over due process hearings (Mayes & Zirkel, 2001). Engiles (2000) wrote that mediation provides many benefits to parents and school staff. Mediation can help maintain positive relationships with parents, as well as repair relationships that have been damaged by previous disagreements. Conflicts that arise from poor communication can be addressed effectively through mediation. The mediation process can also provide a faster and more cost-effective means for dispute resolution than due process hearings. Parents and school staff involved in mediation agreements tend to follow the terms of the agreement to a greater degree than administrative orders resulting from due process hearings. In states where mediation is being used, the incidence of due process hearings has decreased and parents have been able to resolve differences with school districts while making positive educational decisions for the children involved (Feinberg, Beyer, & Moses, 2002).

Despite research illustrating the beneficial effects of mediation, this dispute resolution technique may not always be effective. Bar-Lev, Neustadt and Peter (2002) wrote that several state agencies they surveyed expressed concerns that mediation often leads to due process hearings, and they also expressed belief that mediation is not a useful tool for dispute resolution. Schrag and Schrag (2004) wrote that mediation often resulted
in ineffective action plans or participants did not follow through on the agreements. 

Goldberg (2001) wrote that, if mediation participants do not perceive that the process was a joint problem-solving venture and that correct outcomes occurred, mediation can be ineffective. Furthermore, emotions can become so galvanized by prior interactions between parents and school district staff that mediation may not effectively resolve disputes. Bar-Lev, Neusdat and Peter (2002) acknowledged this concern: “Mediation is a process that depends in large part on the good will of the parties in order to succeed. If reasonable discussion is not possible, mediation may not be the answer” (p. 4). Most importantly, Goldberg wrote that successful mediation outcomes hinge upon the provision of well-trained mediators who understand the important concepts of the case presented to them and have expertise in special education law and negotiation techniques. Without the provision of a skilled mediator, the success of mediation is limited. Mills and Duff-Mallams (2000) supported this assertion, writing that mediators “should be flexible, believe in consensual problem solving and be available to serve; mediators should establish their credibility by demonstrating that they know the facts and issues involved in the dispute” (p. 73).

Mediation may not be the most effective dispute resolution technique in all instances (Mills & Duff-Mallams, 2000). The authors stated that mediation is best applied to cases where poor communication is the main problem, noncompliance with legal procedures is the most salient issue, and trust between parent and school has been weakened. However, disputes over private school placement may not be effectively settled through mediation.
Due Process Hearings

Despite the presence of mediation as a preferred dispute resolution technique since 1997, the incidence of due process hearings has increased over the past three decades. While education litigation in general declined in the 1980’s and 1990’s, special education litigation has increased dramatically (Newcomer & Zirkel, 1999). Newcomer and Zirkel stated that the 613 published court decisions during the 1990’s represent almost a tenfold increase from the total special education due process hearings published in the 1970’s. Ahern (1997) determined that requests for hearings grew at an average rate of 7.5% per year from 1991 to 1995 with the number of actual hearings held growing at an average rate of 16.5% over the same time period. Mayes and Zirkel (2001) found the number of published administrative and judicial tuition reimbursement decisions has increased significantly from 1978 to 2000. More recent data shows that the annual frequency of adjudicated due process hearings increased steadily nationwide from 2002 until 2004 before decreasing in 2005 (Zirkel & Gischlar, 2008).

This increase in special education litigation is occurring despite the fact that school districts prevail more often than parents do in special education due process hearings. Newcomer and Zirkel (1999) found that, nationally, school districts won 60% of the due process hearings studied while parents won 32%. Chambers, Harr and Dhanani (2003) found that 56% of the national due process cases studied were resolved in favor of the school district with 34% resolved in favor of the parent. Rickey (2003) reported that 63% of the Iowa state cases she studied resulted in favorable rulings for the school district.
Due process hearings comprise a large percentage of dispute resolutions despite the presence of less formal dispute resolution techniques such as mediation (Schrag & Schrag, 2003). Schrag and Schrag (2004) suggested that due process hearings occur at a higher rate than mediation because parents reported that solutions developed at mediation were often ineffective or not implemented. Chambers, Harr and Dhanani (2003) reported that, for the 1998-99 school year there were 3,276 due process hearings nationally. Actual counts for all states except New Hampshire showed that due process hearings accounted for 44.8% of all dispute resolutions during the 2000-2001 school year (Schrag & Schrag, 2003).

Due process hearings occur frequently in New Jersey. New Jersey ranked second nationally in terms of the overall number of due process hearings held and hearings held per 10,000 students from 1991-2005 (Zirkel & Gischlar, 2008). For 2006, 819 due process requests were received by the New Jersey Department of Education (Barger, personal communication, February 2, 2007). Seventy-three of these cases went to resolution sessions, 225 went to mediation with 70 leading to an agreement. Fifty-six of the due process requests went to a fully adjudicated hearing.

A due process hearing is an administrative hearing conducted by an administrative law judge (N.J.A.C. 6A:14-2.7). During due process hearings, both sides have the right to be advised and accompanied at the due process hearing by legal counsel and by individuals with special knowledge or training regarding children with disabilities. Both sides may present evidence, require the attendance of witnesses, and cross-examine them. The administrative law judge renders a final decision in writing at the end of the hearing. Either the school district or parent may ask for a due process hearing if there is a
disagreement over the identification, evaluation, program, placement or the provision of a free, appropriate public education to a student with a learning disability. According to the New Jersey State Performance Plan, 93% of fully adjudicated due process hearing requests were fully adjudicated within the 45-day timeline or properly extended by the hearing officer.

If either party involved in a due process hearing fails to comply with any provision of a final decision in a due process hearing, either party may seek enforcement of the decision in a court of appropriate jurisdiction (N.J.A.C 6A:14). Either party may appeal the ALJ's decision, but the appeal must be filed within 90 days of the date of issuance of the judge's decision.

Frequent Issues That Initiate Due Process Hearings

Five major issue categories appear to constitute 70% of due process cases nationally: IEP, Placement, FAPE, Identification and Evaluation, and Multiple Issues (Schrag & Schrag, 2004). Schrag and Schrag also determined that, of these five categories, 55% of all due process hearings centered on Identification and Evaluation, IEP, and Placement. Feinberg, Byer, and Moses (2002) stated that due process hearings in special education often centered on educational placement and IEP implementation. Newcomer and Zirkel (1999) found that placement was the primary issue in 63% of the cases they studied with parents seeking a setting more restrictive than the setting proposed by the public school in 76% of the cases examined. Similarly, Havey (1999) reported that parents sought a more restrictive environment for their children in 67% of the cases studied. In contrast, Rickey (2003) found that parents overwhelmingly attempted to keep their children in the local public school.
Student disability also appears to have an impact upon the likelihood a dispute resolution will be initiated. Newcomer and Zirkel (1999) reported that multiply disabled students were involved in 17% of hearings despite comprising only 1.9% of the national special education population. Schrag and Schrag (2004) noted that individuals classified under the disability categories of emotional disturbance, multiple disabilities, autism, deaf-blindness, hearing impairment, and traumatic brain injury "tend to utilize the system beyond their representation in the population" (p.4).

Emotional and Monetary Costs Associated With Due Process Hearings

While mediation is cost effective and seeks to improve relationships between parents and the district, due process hearings are costly, adversarial proceedings that often foster oppositional relationships between school personnel and parents of children living with disabilities. (Katsiyannis & Herbst, 2004; Lake & Billingsley, 2000). Getty and Sunny (2004) listed several negative emotional effects that due process hearings may have on its participants. Students can experience negative feelings that result from conflict between school district personnel and their parents. Parents may experience feelings of anger before, during, and after due process proceedings, which may result in a lack of trust in the school district once litigation has ended. School district officials may also feel anger at parents for filing the complaint or for withholding information from the school district; consequently, school district officials may become overly cautious in their interactions with the complaining parent and other parents they must work with.

The monetary costs associated with due process hearings are also significant. Katsiyannis and Herbst (2004) stated that costs associated with due process hearings include the recovery of attorney fees by parents should they prevail in the hearing,
reimbursement for related services and/or independent evaluations the parent paid for privately, and payment for compensatory education. In terms of dollar amounts, litigation can easily cost school districts $40,000 per pupil to fund (Feinberg, Beyer, & Moses, 2002). Chambers, Harr and Dhanani (2003) found the cost much higher, estimating that the average expenditure in 1999-2000 on an open litigation case was $94,600.

Cases involving placement of students into out-of-district schools are especially costly to public school districts. Katsiyannis and Herbst (2004) stated that school districts can be held liable for funding unilateral placements if an administrative law judge rules that the placement proposed by the district is inappropriate. The average expenditure on tuition, fees, and other special services for students placed in such schools is $25,580 (Chambers, Harr & Dhanani, 2003). Chambers et al. (2003) also stated that this amount is twice the expenditure for the average special education student in a public school and 3.9 times the expenditure for regular education students. Russell (as cited in Mayes & Zirkel, 2001) stated that tuition for residential placements is roughly five times greater than the national average for an in-district special education program. Mayes and Zirkel (2001) cite case law where a court approved a settlement agreement where the school district agreed to pay $100,000 in tuition for a private school placement as well as paying an additional $60,000 per year for residential and support staff costs.

The Judicial System

In New Jersey, administrative law judges (ALJ’s), who are members of the judicial system, conduct due process hearings. The judicial system, comprised of federal and state courts, as well as quasi-judicial administrative units, interprets the law and
settles controversies and disputes arising under the laws (Celso, 2002, p. 12). In the Federal Court system, in descending order of authority, the courts are: The United States Supreme Court, the United States Circuit Courts of Appeal, and the United States District Courts.

Celso (2002) wrote that the U.S. Supreme Court is the highest judicial authority and the court of last resort. Consequently, the Supreme Court considers only those cases that have significant public importance. The decisions of the U.S. Supreme Court are extremely important because they are applicable in all jurisdictions nationwide.

Celso (2002) also stated that there are 13 judicial circuits, which are geographically organized. New Jersey, Pennsylvania, and the U.S. Virgin Islands comprise the Third Circuit. The district courts generally hear and decide matters arising under federal law, and appeals from district court decisions are heard by the circuit courts. Appeals from New Jersey administrative law judge decisions are heard by the district court. The courts in the New Jersey judicial system, in descending order, are the New Jersey Supreme Court, the New Jersey Superior Court, Appellate Division, and the New Jersey Superior Court.

Pertinent Case Law at the Federal and New Jersey Court Level

The field of special education is so structured by legal statutes that knowledge of the IDEIA and accompanying case law is both appropriate and necessary (Zirkel, 2005). New Jersey administrative law judges consider pertinent case law derived from the Federal and State levels when deciding due process hearings in special education. This section describes important case law that administrative law judges often consider when they decide special education due process hearings.
The first case that the United States Supreme Court had been called upon to interpret the IDEA was *Board of Education of the Hendrick Hudson Central School District v. Rowley* (La Morte, 2005). La Morte wrote that children eligible for special education and related services have a right to a "free appropriate public education" or FAPE. This right to FAPE includes special education and related services that are provided at no cost to the parent, provided through an appropriate educational program that is under public supervision, and conforms to the child's IEP. La Morte noted that, while the meaning of the terms "free", "public", and "education" are relatively straightforward, the term "appropriate" is highly subjective. In addition, IDEA does not provide a definition of "appropriate." Because the provision of FAPE is essential to compliance with IDEA, the United States Supreme Court addressed the parameters of "appropriate" in the *Rowley* case.

This case arose in connection with the education of Amy Rowley, a deaf student who attended a school within the Hendrick Hudson school district. School district officials prepared an IEP that would have educated Amy within a mainstream first grade classroom along with the provision of a FM hearing device, additional tutoring from a specially trained tutor, and the provision of speech/language services. Amy's parents agreed with parts of the proposed IEP, yet they requested that Amy be provided a qualified sign-language interpreter in her class. Because this intervention had been attempted with little change in Amy's performance during her kindergarten year, the school district rejected the request. Consequently, the case proceeded to an administrative hearing, the District Court, and then the Court of Appeals. The Court of Appeals ruled that the school district's IEP did not provide Amy with FAPE.
Upon appeal to the United States Supreme Court, the Court wrote that “if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction” then the child is receiving FAPE as defined by the IDEA. The Supreme Court held that, while an IEP need not “maximize the potential” of a disabled student, it must provide “meaningful” access to education and “be sufficient to confer some educational benefit” upon the child for whom it is designed. Rowley established a two part test to determine if FAPE was provided: first, did the school district follow the procedural requirements of IDEIA and, second, was the IEP developed “reasonably calculated “ to enable the student to receive meaningful educational benefit. In their decision, the Supreme Court reversed the previous decision made by the Court of Appeals.

The United States Court of Appeals (Third Circuit) considered Rowley in Polk v. Central Susquehanna Intermediate Unit 1. The Circuit Court held that IDEA calls for more than a trivial, or de minimis, educational benefit and requires a satisfactory IEP to provide “significant learning” and “confer meaningful benefit”. The Circuit Court also rejected the notion that what was “appropriate” could be reduced to a single standard and that “the benefit must be gauged in relation to the child’s potential”.

The U.S. Supreme Court has ruled on special education cases concerning placement in, and tuition reimbursement for, private schools. In School Community of Burlington County v. Department of Education of Massachusetts, the Supreme Court heard the case of Michael Panico. Michael’s parents rejected the school district’s proposed IEP that would have placed him into a special education class with related services in one of the district’s public schools. The parents opted to unilaterally place
Michael in a state approved private school for the disabled. Michael’s parents filed for a due process hearing to receive reimbursement for their tuition expenditures, and the Massachusetts ALJ ruled that the IEP proposed by the district was inappropriate. Consequently, the ALJ ordered the school district to pay for Michael’s tuition. Appeals by both sides led to hearing of the case by the United States District Court and the United States Court of Appeals for the First Circuit. The final appeal resulted in hearing by the Supreme Court. The Supreme Court ruled that the IDEA allows courts to order school districts to reimburse parents for unilateral special education placement if the court deems that unilateral placement is appropriate. Mayes and Zirkel (2001) wrote that the Court in Burlington established a three-part test for approving tuition reimbursement for unilateral placements. The parent must show (a) the school district’s program did not provide FAPE (b) the private placement was appropriate and (c) that “equitable considerations” justify an award. The court did note, however, that “parents who unilaterally change their child’s placement during the review proceedings, without the consent of state or local school officials, do so at their own financial risk. If the courts ultimately determine that the IEP proposed by the school officials was appropriate, the parents would be barred from obtaining reimbursement.”

Florence County School District Four v. Carter (1988) is a U.S. Supreme Court case that presented the question of whether a court may order reimbursement for parents who unilaterally withdraw their child from a public school’s educational program proved inappropriate according to the IDEA and place them into a private school that provides an education that is proper but does not meet all IDEA requirements. Shannon Carter was a learning disabled student who attended Florence County School District Four in South
Carolina. When Shannon was about to enter the ninth grade, school officials offered an IEP that would place Shannon into mainstream educational classes except for three periods of individualized instruction per week. Shannon’s parents were dissatisfied with the proposed IEP, and they requested a due process hearing to determine the appropriateness of the IEP. The state education agency hearing officer rejected the parent’s claim and concluded that the IEP proposed by the school district was appropriate. Shannon’s parents unilaterally placed her at the Trident Academy, which was a private school for children living with disabilities that did not meet all IDEA standards. Shannon’s parents appealed to the District Court who ruled in the parent’s favor, stating that the IEP proposed by the school district was inadequate and that Shannon’s parents were entitled to reimbursement of tuition. The District Court also ruled that Trident Academy provided Shannon with an excellent education in substantial compliance with all the “substantive” requirements of IDEA. Upon appeal to the United States Supreme Court, the Court affirmed the judgment of the Court of Appeals.

There is case law concerning placement decisions and IEP development that involved New Jersey school districts. *Ridgewood Bd. Of Ed. V. N.E.* was a U.S. Third Circuit Court of Appeals case. N.E. was a student classified under the then-used “perceptually impaired” category. The Ridgewood Child Study Team proposed an IEP for the 1996-97 school year that would have provided N.E. with resource center instruction for all academic classes, two daily periods of supplementary instruction with a teacher trained in the Wilson reading program, and speech/language therapy one time per week. N.E.’s parents disagreed with the proposed IEP and filed for a due process hearing with the NJDOE, alleging that the proposed IEP did not provide FAPE. In addition,
N.E.’s parents requested placement for N.E. in a private school, the Landmark School, at Ridgewood’s expense. When Ridgewood denied the parent’s request, N.E.’s parents unilaterally placed him at Landmark. The ALJ ruled that Ridgewood failed to provide N.E. with FAPE and ordered Ridgewood to pay N.E.’s tuition at Landmark but not non-tuition costs or compensatory damages. Ridgewood appealed to the U.S. District Court, and the district court reversed the ALJ’s ruling. N.E.’s parents appealed to the U.S. Circuit Court, and the Circuit Court ruled that the District Court erred in deciding that Ridgewood’s IEP provided N.E. with FAPE. Consequently, the Circuit Court ruled that Ridgewood had to pay the tuition costs for N.E. to attend Landmark.

*Lascari v. Bd. Of Ed. of the Ramapo Indian Hills Regional High School District* was a New Jersey Supreme Court Case. This case concerned John Lascari, a neurologically impaired student who entered the ninth grade at Ramapo Indian Hills High School in September 1980. The IEP developed by the school district provided special education instruction for reading, math, and language arts with electives in the mainstream. When the Child Study Team met with the Lascari family in May 1981, the school district proposed more intensive reading and writing instruction and greater integration with nondisabled students. The Lascari’s rejected the IEP, unilaterally placed Michael in a residential special education school, and filed for a due process hearing. After two hearings in the New Jersey Superior Court, three appeals in the New Jersey Appellate Division, the case was finally heard in the New Jersey Supreme Court.

Among other things, the *Lascari* case dealt with the important issue of IEP development. The New Jersey Supreme Court ruled that an IEP must comply with the tenets expressed in N.J.A.C. 6A:14. More specifically, the Ramapo Indian Hills IEP’s for
both school years did not state the current educational performance, no rationale for placement was stated, no statement as to how the placement in the LRE was decided, and the IEP's did not provide specific, measurable goals and objectives. Consequently, the Court ruled that measurement of a child's progress would be difficult without an adequate IEP. Furthermore, an IEP incapable of review denies the parent the ability to "shape their child's education and hinders the ability to assure that their child will receive the education to which he or she is entitled." Determination that the district failed to provide John with an appropriate IEP led to the court's ruling that the Lascari's should be reimbursed for his tuition at the Landmark school.

*Oberti v. Board of Education of the Borough of Clementon School District* was another United States Third Circuit Case involving a New Jersey public school district. The case dealt with Rafael Oberti, an 8 year old boy diagnosed with Down's Syndrome. Upon his initial evaluation and classification, the school district recommended to the Oberti family that Rafael be placed in a segregated special education class located in another school district. The parent's rejected this recommendation, and both parties agreed to place Rafael into a "developmental" kindergarten in his neighborhood school for first half of the school day and a special education class in another school district for the second half of the day. Rafael exhibited significant acting out behaviors in the mainstream developmental class but not in the special education class. Consequently, the school district proposed to place Rafael in a special education class in a different school district for the following school year for the entire school day. The Oberti's filed for a due process hearing and the administrative law judge ruled that the school district's proposed placement in the segregated special education class constituted the least
restrictive environment for Rafael. The Oberti’s filed an appeal to the United States District Court, and the district court ruled that the school district had violated the IDEA, so the school district appealed to the Third Circuit Court of Appeals. The Circuit Court affirmed the district court ruling that a more inclusive IEP be developed for Rafael.

Specifically, the court ruled that three factors must be considered when the judicial system determines the least restrictive environment for a student living with a disability:

(a) The court should consider whether the district made reasonable efforts to accommodate the child in the regular classroom through the provision of supplementary aids and services.

(b) The court should compare the educational benefits the child would receive in the regular education class when compared to the benefits of the special education class.

(c) The court should consider the effect the inclusion of the child living with disabilities may have on the education of the other children in the classroom.

Summary

This review of the literature indicates that, despite the presence of less adversarial and cost-effective dispute resolution techniques like mediation, the incidence of due process hearings in special education has increased over the past three decades. Research shows that a significant percentage of these due process hearings result from conflicts over the development of IEP’s and educational placement. These conflicts exact an emotional toll on both parents and educators as trusting relationships are invariably fractured while negative feelings increase. Additionally, the monetary costs to public
school districts that engage in such litigation are significant. Special education litigation re-directs school funds away from public school educational programs and redirects it towards litigation, its associated costs, and non-public educational fees.

This study identified and explored important factors that New Jersey ALJ's considered when they ruled upon special education due process hearings. Exploration of these factors is important because it allows for the development of recommendations that will benefit New Jersey public school districts. These recommendations will allow school administrators to make educated decisions about the advisability of engaging in special education litigation. Furthermore, the recommendations will allow districts to develop effective procedural and educational policies that will maximize the likelihood that judges will rule in their favor when they do choose to litigate. Maximizing this likelihood will help school districts shift less money towards litigation and its associated feels and more money towards public school educational programs.
Chapter III: METHODOLOGY

Overview

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). The two most frequently used forms of research in education law research are frequency studies and outcome analysis (Mayes & Zirkel, 2001).

The present study employed a qualitative analysis technique to examine frequencies of specified variables as well as the outcomes of a sample of administrative law judge final rulings. Leedy and Ormond (2005) stated that qualitative approaches to research have two things in common: they focus on naturally occurring phenomena and they involve studying those phenomena in all their complexity. Leedy and Ormond also stated that qualitative researchers often formulate general research problems and ask general questions about the phenomenon they are studying. As the study proceeds, the qualitative researcher gains an increasing understanding of the area studied. Consequently, methodology evolves as the investigation progresses.

Research Design

The research design employed in the present study was a non-experimental cross-sectional descriptive design (Borg & Gall, 1989; Johnson, 2001; Leedy & Ormond, 2005). In non-experimental research, there is no random assignment of subjects to treatments (Borg & Gall, 1989). Borg and Gall also stated that, in cross-sectional research, information is collected from a sample drawn from a predetermined population (p. 418).
Descriptive research involves identifying the characteristics of an observed phenomenon (Leedy & Ormond, 2005, p. 179). Leedy and Ormond also stated that descriptive research does not involve changing or modifying the situation under investigation, nor does it intend to establish cause-and-effect relationships among variables.

Regarding methodology, this study employed a content analysis (Borg & Gall, 1989; Leedy & Ormond, 2005). Leedy and Ormond stated that a content analysis is a detailed, systematic examination of the contents of a particular body of material with the goal of identifying patterns, themes, or biases. Content analyses are typically performed on forms of human communication, such as books, newspapers, films, television shows, art, music, videotapes of human transactions, and transcripts of human conversations. Borg and Gall (1989) also wrote that a content analysis can be used to gain insight into complex social and psychological variables, the frequencies these variables occur, and the interrelationships among several content variables. Statistical procedures, such as absolute frequencies and the numbers of specific incidents in the data, are often employed in content analysis.

Sampling

The researcher accessed the Rutgers Camden School of Law website (http://lawlibrary.rutgers.edu) and reviewed all 838 New Jersey Administrative Law Decisions dealing with special education. The researcher examined cases from the year 2000 to the year 2007 so that current decisions were reviewed. This researcher found that from 2000 to 2007, 21 due process hearings were conducted that involved parents seeking unilateral placements for their emotionally disturbed and multiply disabled children. The researcher analyzed all 21 of these cases for the present study.
Data Analysis

The researcher analyzed each of the 21 cases according to the following analysis format. The analysis format was aligned with the study’s research questions:

*Analysis format:*

(a) Case Identification

(b) Case Synopsis

(c) IEP Analysis

(d) LRE Analysis

(e) Additional Factors the ALJ Considered

(f) Outcome

Following the analysis of each case, the observed factors were organized according to a frequency chart. This chart provided quantitative data regarding the frequency that the factors occurred within the sample, as well as a summary of case outcomes. The observed outcome frequencies were used to develop a chi square test (Witte & Witte, 2007). The chi square test focuses on discrepancies between observed frequencies and their corresponding set of expected frequencies, which are derived from the null hypothesis (Witte & Witte, 2007, p. 415). For the present study, the chi square
statistic was used to analyze the proportion of due process outcomes in the study sample as compared to the proportion of due process outcomes described in the national data.
Chapter IV

PRESENTATION AND ANALYSIS OF THE DATA

Introduction

The purpose of this study was to identify and explore important factors that New Jersey Administrative Law Judges (ALJ's) consider when making their rulings for special education due process hearings and how they render decisions based on their analysis of these important factors. This study employed a content analysis to examine frequencies of specified variables as well as the outcomes of 21 written decisions made by New Jersey ALJ's. An analysis format aligned with the study’s research questions was used to analyze each case and gather data regarding the research questions and study variables. The research design employed in the present study was a non-experimental cross-sectional descriptive design.

This chapter begins with an analysis of each case utilizing the analysis format. Following this analysis, observed factors were organized according to a frequency chart. This chart provided quantitative data regarding the frequency the factors examined in the present study occurred as well as the outcome of each case. Following the presentation of this frequency chart, the results of the present study were presented with linkage to the study’s research questions. Finally, the results of a chi square statistic were presented to compare study’s sample outcomes with the judicial outcomes described in the national data.
Individual Case Analysis

Case # 1: J.D. o/b/o D.D.,) v. Woodbury Board of Education. August 10, 2000

Case Synopsis.

D.D. was a student with multiple disabilities, which included Asperger’s Syndrome, ADHD, and major depressive disorder. At the end of D.D.’s seventh grade year, the Woodbury Child Study proposed placement for D.D. at the Woodbury Junior High School for his eighth grade school year. D.D.’s parent filed for a due process hearing, requesting D.D.’s placement at the Hill Top School in Pennsylvania. The Hill Top School was a non-sectarian school for children with disabilities. This school was not approved by the NJDOE to educate students with disabilities.

IEP Analysis.

The ALJ ruled that the IEP complied with N.J.A.C. 6A:14. The judge made several positive comments about the IEP. It included an “instructional guide” describing D.D.’s Asperger’s Disorder as well as effective instructional techniques teachers could use to address D.D.’s behavior. The IEP also provided social skills training, instructional modifications, as well as a one-to-one aide to help D.D. transition from class to class and interact socially.

LRE Analysis.

The district’s proposed program represented a less restrictive environment than the Hill Top School according to N.J.A.C. 6A:14. The district proposed educating D.D. within his local school in mainstream classes, which is less restrictive according to N.J.A.C. 6A:14 than an out-of-district special education school such as the Hill Top School.
Additional Factors.
The parent had requested an independent evaluation prior to the hearing. A Child Study Team affiliated with Rowan University conducted this independent evaluation. The ALJ considered these evaluations in making his determination that D.D. could be educated within a mainstream setting with sufficient support. The parent, who acted without an attorney while the district did retain an attorney, had only two witnesses: herself and her child's treating psychiatrist. The judge noted that no representatives from the Hill Top School were present to testify on the child's behalf.

Outcome.
The ALJ ordered that D.D. be placed at the Woodbury Junior High School.

Case #2: D.K. o/b/o J.K. vs. Central Regional Board of Education: (October 24, 2000).

Case Synopsis.
J.K. was a fifteen-year old emotionally disturbed student attending the ninth grade at Central Regional High School. Due to his behavior, which included 37 behavioral referrals and a student assault, the Child Study team developed an IEP to place J.K. within the in-district alternative PRIME program. J.K.'s mother filed for due process, requesting that J.K. be placed at the private Woodcliff School.

IEP Analysis.
The ALJ determined that the school district IEP was appropriate. It contained modified courses within the PRIME program, a behavior plan, as well as individual and group counseling.
LRE Analysis.

The school district placement, which was a special class program in J.K.'s local school district, was less restrictive than the Woodcliffe School. Woodcliffe was a NJDOE approved private school for students with disabilities.

Additional Factors.

The parent, who did not secure attorney representation, did use J.K.'s private social worker as a witness. However, the judge indicated that the social worker's testimony was negatively impacted by his lack of contact with students from the PRIME program. Also, the social worker never actually saw the PRIME program. Furthermore, the ALJ characterized the district's witnesses as credible and knowledgeable, which allowed the district to bear the burden of establishing that the PRIME program would offer an appropriate educational opportunity that met J.K.'s needs.

Outcome.

The ALJ concluded that PRIME was the appropriate placement and ordered that J.K. be placed there.

Case #3: S.M. o/b/o F.S. vs. Phillipsburg Board of Education: (July 12, 2001)

Case Synopsis.

F.S. was an emotionally disturbed eighth grade student transitioning from the K-8 Alpha Borough school district to the grades 9-12 Phillipsburg High School District during the summer of 2000. In the winter of 2000, F.S.'s father unilaterally placed him at a residential program called the New Dominion Program in Virginia. Phillipsburg sought to place F.S. into an out-of-district day program for emotionally disturbed students called
the Sand Hill School. S.M. sought reimbursement for his unilateral placement of F.S. at New Dominion.

IEP Analysis.
The ALJ decided that the IEP complied with N.J.A.C. 6A:14. The ALJ noted that Phillipsburg proposed placement in a small, structured behavior disabilities class, and F.S. had exhibited educational progress in a similar program while he attended the Alpha School District. The Phillipsburg IEP incorporated the results of a functional behavior analysis conducted by an outside evaluator when F.S. attended the Alpha Borough program, and the IEP contained individualized instructional strategies and techniques designed to support F.S. personal and social development. The IEP also contained goals and objectives in various academic areas.

LRE Analysis.
The school district proposed a NJDOE approved out-of-district day program for students with behavior disabilities. New Dominion was not approved by the NJDOE, and was essentially an “outward bound” program where the students lived outdoors in tents. Furthermore, students at New Dominion only received education when they behaved appropriately. This placement was more restrictive than what the school district proposed.

Additional Factors.
Phillipsburg produced seven witnesses. Phillipsburg secured three witnesses from their school district to testify. These three witnesses conducted assessments as part of a reevaluation, so they understood F.S.’s academic, social, emotional, and cognitive levels. Phillipsburg also employed a psychiatrist to take part in the reevaluation, and the school district also secured the psychiatrist’s testimony during the hearing. In addition, the
independent evaluator who developed the behavior plan for F.S. in Alpha also testified, as did three witnesses from Alpha Borough who had knowledge of F.S. and his issues. From the parent’s side, the parent testified, as well as a social worker who counseled F.S. privately. Two expert witnesses, an LDT-C and a neurologist, were also hired to cast doubt on the appropriateness of the school district’s IEP. The experts for the parent’s side alleged that the IEP was not individualized, did not contain behavioral goals and objectives, and did not address his need for remedial reading. The ALJ found the arguments made by the parent’s side “unpersuasive.”

**Outcome.**
The parent’s petition was dismissed.

*Case #4: D.M.C. and V.J.C. o/b/o D.M.C. v. Haddon Heights Board of Education: April 18, 2002*

**Case Synopsis.**
D.M.C. was a 13 year old emotionally disturbed student who had initially been placed within the school district’s regular middle school. Due to excessive absences and emotional issues that occurred over the course of the 2000-01 school year, the school district proposed a NJDOE approved out-of-district day program for the balance of the school year. D.M.C.’s parents filed for a due process hearing requesting reimbursement for their unilateral placement at Orchards Friends School. This school was a Quaker school and unapproved by the NJDOE.
IEP Analysis.

The ALJ ruled that the school district IEP complied with NJAC 6A:14.

LRE Analysis.

The district’s proposed program was a NJDOE approved private school for the disabled, which was less restrictive than the religious, non-approved placement the parents requested reimbursement for.

Additional Factors.

The ALJ placed strong emphasis on the testimony provided by the four district witnesses. The ALJ stated that the testimony provided by the school district established the compliance of the IEP document as well as the appropriateness of the proposed program. The district witnesses were also knowledgeable about the four out-of-district schools they proposed because they had students attend there previously. This knowledge seemed to further strengthen their testimony. The parents, who were not represented by an attorney, did not provide testimony to contradict the school district witnesses, and they had no one to cross-examine the district witnesses. The parents did provide evaluations they had done privately, but the writers of these reports did not testify regarding their contents. Consequently, the ALJ wrote that he could not rely on the reports exclusively.

Outcome.

Parent petition for reimbursement was dismissed.

Case Synopsis.
D.W. was an 11 year old multiply disabled student who was transitioning from the Lindewold Elementary School to its Middle School at the time of this case. The parent filed a due process petition requesting that D.W. be placed at an out-of-district training school.

IEP Analysis.
The ALJ wrote that the school district IEP met all of the criteria delineated in N.J.A.C. 6A:14.

LRE Analysis.
The school district recommended placing D.W.'s at his regular school, in a special class for academic instruction with partial mainstreaming for lunch, recess, Physical Education, and electives. This placement was less restrictive than an out-of-district training school.

Additional Factors.
The parent, who did not hire an attorney, was the only witness for his side. Consequently, the parent could not provide additional testimony to rebut the district witness testimony. Regarding the three witnesses from the school district, the judge deemed them "competent and convincing." Based upon district testimony, the judge wrote that D.W. made progress within the mainstream middle school program and that the proposed program would provide a free, appropriate, public education.

Outcome.
The parent's petition was dismissed.

*Case Synopsis.*

This case dealt with a sixth grade student with multiple disabilities, including cognitive deficits, ADHD, and an anxiety disorder. In the spring of D.C.'s fifth grade school year, the school district proposed an in-district educational program. However, the parents filed for a due process hearing to have D.C. placed at the Early Childhood Learning Center (ECLC) at the expense of the school district.

*IEP Analysis.*

The ALJ ruled that the school district committed several procedural violations, which resulted in an inadequate IEP. According to the ALJ's written decision, the IEP "did not address D.C.'s individual strengths, weaknesses, and needs." Furthermore, the IEP goals and objectives were deemed vague and un-measurable, which impacted the IEP team's ability to monitor his progress in the educational program.

*LRE Analysis.*

The program proposed by the district represented the least restrictive environment according to N.J.A.C. 6A:14. The program would have taken place in D.C.'s regular middle school and would have included placement in special education classes for all academic subjects, placement in some mainstream elective classes, as well as social skills training as a related service. However, the judge ruled that the placement did not meet the case law definition for LRE because it did not confer "meaningful educational benefit" and "significant learning.”
Additional Factors.
The judge considered the testimony of the board’s witnesses. The judge ruled that D.C.’s special education teacher was unable to credibly testify that D.C. was indeed making progress in her class, and the director of special services could not articulate D.C.’s IEP goals and objectives. Furthermore, the judge found the parent’s expert witnesses as credible, and these experts testified that D.C. did not make progress in the public school program. The ALJ’s estimation that D.C. did not make progress in the general education program, based upon the expert witness testimony, was tantamount to a substantive violation.

Outcome.
The judge ruled in favor of the parent by requiring that the IEP be revised and ruled that D.C. be placed at ECLC.

Case #7: W.T. o/b/o V.T. vs. Alexandria Township Board of Education: (March 17, 2003)

Case Synopsis.
V.T.’s parents alleged procedural and substantive violations by the Board of Education, and they challenged the appropriateness of the program proposed by the district. In addition, the parents sought reimbursement for their unilateral placement of V.T. at the Rock Brook School.

IEP Analysis.
The school district committed several significant procedural errors with regards to developing and implementing IEP’s for V.T. The first procedural IEP error occurred on May 10, 2001. At this meeting, school district witnesses and the parent testified that the
majority of the discussion centered on the recent evaluations. Therefore no program was discussed and no IEP was developed for the following school year. The judge ruled that no IEP was developed for the 2001-2002 school year, which violates the N.J.A.C. requirement that IEP’s be prepared and implemented at the beginning of a student’s school year. The previous IEP meeting date had been June 15, 2000, so the next IEP needed to be developed by June 15, 2001. Since no IEP was developed by June 15, this procedural error also violated the N.J.A.C. requirement that IEP’s be reviewed and revised at least annually. The district did not provide the parent with an IEP draft at the May meeting, yet the parent did receive a copy of an IEP on October 9th, 2001, which was 8 days prior to the IEP meeting scheduled for October 17, 2001. This was despite the fact that the district witnesses testified that no program had been discussed at the May 10 IEP. Furthermore, the school district failed to schedule an IEP meeting to develop an IEP for the 2001-2002 school year. This meeting was never scheduled despite two written requests by the parent. Failure to schedule the IEP meeting despite the two written requests by the parent also violated N.J.A.C. 6A:14.

With no IEP in effect for September 2001, the ALJ opined that the district’s placement in a second grade mainstream classroom represented another serious procedural violation because no placement can be decided until an IEP is in effect. The ALJ ruled that failure to develop a timely IEP and placing V.T. in the mainstream second grade classroom prior to actual development of the IEP document “harmed V.T. by causing him to lose educational opportunity” and “resulted in the denial of FAPE.” This denial of FAPE represented a serious substantive violation by the school district.
The ALJ also examined the 10/17/01 IEP document. The ALJ ruled that this document contained many flaws, such as unrealistic goals that were not specific, measurable, or even attainable. Despite V.T.’s behavioral issues, it did not contain a behavior intervention plan, which is a substantive violation. Perhaps most troubling to the ALJ was that the school district placed a child at a 4 year old developmental level into a mainstream second grade classes.

*LRE Analysis.*
The school district proposed placement in a mainstream second grade with special education programming and modifications. This represented a less restrictive environment than an out-of-district placement such as Rock Brook. Rock Brook was a private school for the disabled approved by the NJDOE.

*Additional Factors.*
While the school district did propose a placement that was less restrictive than Rock Brook, the ALJ cited prior case law that the district’s placement did not conform to the legal definition of LRE. The ALJ also noted that, based on the school district’s testing of the student’s developmental levels, the district program was too challenging. The program was not designed to address V.T.’s significant needs or help him obtain meaningful educational benefit with significant learning.

*Outcome.*
The ALJ ordered that the parent’s petition be granted. He ordered that the parent receive reimbursement for costs and expenses related to their unilateral placement of V.T. at Rock Brook School.

Case Synopsis.

M.B and M.B. challenged the appropriateness of the school district’s proposed program, which constituted placement at D.B.’s regular school. M.B. and M.B. requested reimbursement for their unilateral placement of D.B. at the Craig School.

IEP Analysis.

The ALJ ruled that the 7/15/02 IEP “met all IDEA requirements”. The judge wrote that the IEP contained the Present Levels of Educational Performance, a statement of special education courses, the use of a teacher aide, and it delineated the provision of speech/language services. The IEP also provided assistive technology, social skills training, and a behavior intervention plan. The ALJ decided that the IEP goals and objectives were appropriate and individualized, and several goals were written based upon one of the parent’s expert witness recommendation prior to the due process hearing.

LRE Analysis.

The school district proposed placement at D.B.’s regular school with special education classes, partial mainstreaming, and related services. This was less restrictive than an out-of-district school such as Craig School. Furthermore, the Craig School is a private school for the disabled that is not approved by the NJDOE.

Additional Factors.

The parent used the headmaster of the Craig school, as well two expert witnesses, to testify that the school district’s program was inappropriate and that the Craig School was the appropriate educational placement for the student. The headmaster of the Craig school testified that D.B. made educational progress at Craig. However, the school
district countered by producing nine witnesses, including their own expert witness, to
testify about the appropriateness of the IEP and program. The ALJ considered the school
district's witnesses as more credible because they had worked extensively with him and
were knowledgeable about the program and services that they were proposing.
Additionally, the school district's expert witness observed D.B. in both the school
district's program and at the Craig School.

*Outcome.*

The parent's petition was dismissed.

*Case #9: D.C. o/b/o Q.C. v. City of Trenton Board of Education (July 3, 2003)*

*Case Synopsis.*

Q.C. was a multiply disabled kindergarten student whose parent requested amendment of
Q.C.'s IEP to reflect placement in an out-of-district special education school (The Rock
Brook School) and to provide him with services consistent with recommendations
contained in a central auditory processing (CAP) evaluation that the parent had done
privately.

*IEP Analysis.*

The ALJ ruled that the school district committed several procedural violations in
developing Q.C.'s IEP, with resulted in an inadequate IEP that did not comply with
N.J.A.C. 6A:14. The IEP did not provide detailed goals and objectives for
speech/language services. Also, the IEP did not contain all of the CAP evaluation's
recommendations, which included the provision of an assistive hearing device. While the
IEP did state that Q.C. would receive 2 hours of home instruction during the summer as
an extended school year program, the judge deemed the extended school year program “insufficient”.

LRE Analysis.
The school district proposed placement in a special class within the student’s regular school, which was less restrictive than the out of district placement the parent requested. Rock Brook was a private special education school approved by the NJDOE.

Additional Factors.
The school district witnesses were able to testify credibly that Q.C. made progress within the special class at his regular school. The school district also delayed in initially classifying Q.C. for several months, which the judge ruled denied him a FAPE. The ALJ wrote that he believed additional testimony from the student’s teacher was warranted but not provided by the school district. While the parent hired a private psychologist to evaluate Q.C. she did not have him testify. Furthermore, the parent did not secure attorney representation.

Outcome.
The ALJ ordered D.C.’s request granted in part. The judge ruled that the IEP had to be amended. Since the parent failed to prove that Q.C. needed to be placed out of district, the judge ruled placement at his regular school with an IEP that provided more detailed speech/language goals and objectives, all of the CAP recommendations (including the FM system) and an extended school year at either Q.C.’s home or day care center that focused specifically on the subjects he did poorly in during the school year.
Case #10: JOS.B. o/b/o J.B. v. Rancocas Valley Regional High School Board of Education (July 9, 2003).

Case Synopsis.

J.B. was a 16 year-old emotionally disturbed student whose behavior both inside and outside of school necessitated incarceration and involvement with the juvenile justice system. His father, JOS.B., unilaterally placed J.B. at the residential Family Foundation School in Hancock, NY. JOS.B. filed for due process, seeking the Board of Education to pay for J.B.'s tuition and residential placement at the Family Foundation School. In contrast, the Rancocas Valley Regional Board of Education sought to place J.B. at an out of district day school for students with behavior disorders.

IEP Analysis.

The administrative law judge ruled that the November 2, 2002 IEP was N.J.A.C. 6A:14 compliant.

LRE Analysis.

The school district proposed placing J.B. at either the Brookfield School or Y.A.L.E. Both of these schools were out-of-district day programs for students with behavioral disabilities, and both schools were approved by the NJDOE. In contrast, JOS.B. sought placement for J.B. in a residential educational program that was not approved by the NJDOE. The school district's proposed placement was less restrictive then the parent's proposed placement.

Additional Factors.

The ALJ gave a great deal of consideration to J.B.'s delinquent behavior after school hours. Because of J.B.'s involvement with the juvenile justice system, the parent was able
to secure the testimony of a licensed family therapist with extensive experience working
with adolescents in the juvenile justice system. This therapist evaluated J.B. and worked
within the juvenile justice system that incarcerated J.B., so the ALJ wrote that this
therapist knew J.B. quite well. The ALJ certified the therapist as an expert witness. This
expert opined that the school district recommendations would not provide the monitoring
and structure J.B. requires after school hours, and he stated that residential placement was
necessary. The judge gave this expert’s testimony more weight than the district’s three
witnesses and ruled that a residential program was required to monitor J.B.’s maladaptive
behavior outside of school and to provide J.B. with FAPE.

JOS.B., although notified of special education due process rights by the school
district, failed to comply with special education rules. Specifically, although JOS.B
provided his signed consent to explore and place J.B. at an out-of-district day program,
he unilaterally placed J.B. at the Family Foundation School. He did not notify the school
district that he did this until he filed for due process. The judge also noted that, while the
parent was able to make the case that J.B. did indeed require a residential program,
JOS.B. could not prove that Family Foundation provided an appropriate education that
complied with the tenets of IDEA.

Outcome.
The judge ordered that the district IEP be amended to reflect a residential placement, and
he also ordered the Board of Education to notify the parent about residential schools that
will consider accepting J.B. and will provide special education and related services.
However, the judge dismissed the parent’s request for the board of education to pay for
placement at the Family Foundation School.
Case #11: J.C. o/b/o K.C. vs. Warren Hills Regional High School Board of Education  
(August 12, 2003).

Case Synopsis.

K.C. was a multiply disabled elementary school student transitioning from the Mansfield Elementary School district to the grades 7-12 Warren Hills Regional High School District. At an IEP meeting held on May 1, 2001, the school district proposed placement of K.C. at Warren Hills in the self-contained multiply disabled program, but the parent unilaterally placed K.C. at the Banyan School. Two years later, the parent filed for due process seeking reimbursement for all related expenses for K.C.’s attendance at Banyan School for his seventh and eighth grade school years.

IEP Analysis.

The ALJ ruled that the school district IEP did not comply with N.J.A.C. 6A:14. The seventh grade IEP essentially mirrored the sixth grade IEP which, based on the judge’s analysis of educational testing and expert witness testimony, did not help K.C. make any academic progress. This failure by the Warren Hills Child Study Team to design a program that would help K.C. progress was a substantive violation committed by the school district. The IEP did not reflect an appropriate special education program based on student’s disability as illustrated in the Present Levels of Educational Performance (PLEP). Furthermore, the PLEP did not specify what sources of information were used to develop it, and judge ruled that the PLEP was not individually written. The goals and objectives were poorly written and were not individualized to meet K.C.’s needs. The IEP in question did not have a behavior intervention plan, and it did not include any
recommendations made by the outside evaluators who worked with K.C. The district’s creation of an IEP with a vague PLEP, inappropriate goals and objectives, and lack of evaluation data provided by the parent’s evaluators represented significant procedural violations. The district’s failure to address K.C.’s behavior in the IEP represented a substantive violation.

_LRE Analysis._

The placement proposed by the school district, which entailed a special class within K.C.’s regular school, was less restrictive than the Banyan School, which is an out-of-district special education school approved by NJDOE.

_Additional Factors._

The parent’s five expert witnesses all testified credibly that Banyan represented a free, appropriate public education in the least restrictive environment. They were able to effectively discredit the school district’s IEP, its proposed program, and they were able to show through their testimony, exhibits, and test results that K.C. made academic progress at Banyan. In comparison, the ALJ characterized the school district’s witness testimony as “sketchy.” The school district witnesses were unable to describe why the public school program was better than Banyan and school district personnel could not explain how the Warren Hills program would bring K.C. up to grade level. Part of the problem with the district’s witness testimony is that they did not truly know K.C. because his mother unilaterally placed him at Banyan before he ever attended Warren Hills.
**Outcome.**

The ALJ ordered the school district to reimburse the parent for all costs for K.C.’s seventh and eighth grade school years at Banyan. All costs included tuition, related service fees, transportation, and all educational testing.

*Case #12: C.M. o/b/o A.L.M. v. Camden City Board of Education (August 20, 2003).*

**Case Synopsis.**

A.L.M. was an emotionally disturbed student entering the fourth grade at Wiggins Public Elementary School in Camden. A.L.M.’s mother requested placing A.L.M. at an out-of-district day program to address her emotional and academic needs. The school district proposed A.L.M.’s continued placement at Wiggins Elementary School.

**IEP Analysis.**

The ALJ ruled that the IEP developed for A.L.M.’s fourth grade school year complied with N.J.A.C. 6A:14.

**LRE Analysis.**

The school district’s proposed placement, which consisted of placement in a mainstream fourth grade class, was less restrictive than the out-of-district day school that the parent requested.

**Additional Factors.**

The school district’s witnesses, who consisted of A.L.M.’s principal and guidance counselor, were deemed “credible” by the ALJ. The parent, who did not hire an attorney, did not cross-examine or discredit testimony provided by the school district witnesses. The school district was also able to demonstrate that A.L.M. was making progress in the
mainstream classroom based on documentary evidence in the form of group standardized
achievement scores.

Outcome.
The parent’s petition for an out of district placement was denied.


Case Synopsis.
L.Z. was a 16-year old student who attended Princeton High School for her freshman
year after attending boarding school the previous school year. Upon evaluation by the
Princeton Child Study team, L.Z. was found eligible for special services under the
disability category emotionally disturbed at the end of the ninth grade. L.Z.’s parents
requested that the Princeton Regional Board of Education assume financial responsibility
for their unilateral placement of L.Z. at the Hyde School in Maine at the start of L.Z.’s
sophomore year. L.Z.’s parents alleged that the school district failed to identify L.Z. as
emotionally disturbed in a timely fashion and also committed several procedural
violations that deprived L.Z. of a free, appropriate public education. The parent also
requested compensatory education equal to the period of alleged deprivation of FAPE.

IEP Analysis.
The Child Study team committed several procedural violations when they developed
L.Z.’s IEP. An IEP meeting was held on August 16, 2002, yet all of the required members
of the IEP team were not present. The district did not have a special education teacher or
a regular education teacher attend the meeting. Furthermore, the team did not have an IEP
document prepared for the meeting, so a draft was not provided to the parent until August 27th. The decision to place L.Z. in the Departmental Program was made before the IEP document was developed, which was another procedural violation committed by the Princeton Child Study Team.

*LRE Analysis.*

The school district proposed placing L.Z. in the Princeton High School Departmental Program, and in-district behavioral disabilities program. This was much less restrictive than the Hyde School, which was a residential program unapproved by the NJDOE.

*Additional Factors.*

The ALJ deemed the school district witnesses as more credible than the parent’s expert witnesses. Upon cross examination, one of the parent’s witnesses even admitted that the district’s program would be more effective than Hyde School, which was fatal to the parent’s case. The judge also employed the case law definition of procedural errors. While it is true that the district did commit several procedural errors, the ALJ cited case law stating that for procedural violations to be sufficiently serious to deny FAPE the procedural violation must cause the student to lose educational opportunity and exclude the parent from participating in the IEP process. The ALJ ruled that the district’s violations did not meet this level of severity.

*Outcome.*

The ALJ concluded that the parents were not entitled to reimbursement for their unilateral placement so the due process petition was dismissed.
Case Synopsis.
K.C. was a 15-year old high school student suffering from multiple disabilities, which included Asperger’s Disorder, ADHD, obsessive-compulsive disorder, and scoliosis. The school district proposed a completely mainstreamed academic program with supplementary aids and services at K.C.’s regular high school. The parents contended that this placement was inappropriate and unilaterally placed K.C. at the Lewis School. The Lewis School was an unaccredited out-of-district school for children with disabilities.

IEP Analysis.
The ALJ stated that the IEP was compliant with NJAC 6A:14. The judge wrote that the IEP contained educational modifications such as extended time for tests and assignments, bi-weekly case manager contacts with staff and student, the implementation of a behavior intervention plan, in-class support services for each subject, and the provision of a one-to-one aide.

LRE Analysis.
The school district’s proposed placement did constitute the LRE as per NJAC. However, the judge ruled that the placement did not satisfy the case law definition of LRE. The judge based this decision on the many behavioral problems K.C. had in the elementary and middle school.

Additional Factors.
The judge gave strong consideration to the three expert witnesses that the parents secured for the due process hearing. The judge heard testimony from the private psychiatrist who worked with K.C. since the fourth grade, another psychiatrist who testified about what type of program K.C. needed, and the testimony of a consultant from Eden Family
Services, a private agency that provides consultation services to schools and families about autism and Asperger’s Disorder. All three experts testified on behalf of the parent that the mainstream program that the district was proposing was inappropriate. Their testimony was strengthened by their reports about how well K.C. did at the Lewis School. Furthermore, two district staff members (K.C.’s eight grade case manager who left before the due process hearing started and the projected high school case manager) stated on the witness stand that a mainstream high school environment was not appropriate for K.C.

**Outcome.**

The judge ordered that Lawrence School District reimburse the parent for the costs of K.C.’s 9th grade school year at the Lewis school and pay for continued placement there. In addition, the school district was ordered to pay the parent’s legal fees.

*Case #15: J.F. and T.F. a/b/o T.F. v. South Hunterdon Regional High School Board of Education: (June 21, 2004).*

**Case Synopsis.**

T.F. was a multiply disabled student who transitioned to the grades 7-12 South Hunterdon Regional High School District for grade 7. J.F. and T.F. sought an out-of-district placement for T.F. in a private school program utilizing the Wilson reading method. The school district proposed T.F.’s placement at South Hunterdon Regional.

**IEP Analysis.**

The ALJ ruled that the school district developed a compliant IEP at the August 14, 2003 IEP meeting. It contained information from the Child Study Team’s evaluations, as well as information from the private evaluations the parent had conducted, to delineate his
strengths and weaknesses. The ALJ wrote that the IEP modifications were appropriate, the IEP contained measurable goals and objectives, and the IEP documented the provision of the Wilson reading program. The judge also noted that the IEP contained a statement of the decision making process for placement in the least restrictive environment that mirrored the process described in *Oberti v. Clementon Board of Education*.

**LRE Analysis.**

The district placed T.F. in special education classes for reading, math, and language arts with mainstream placement with in-class support for science and social studies. This placement was less restrictive than the out-of-district special education school that T.F.’s parents requested.

**Additional Factors.**

The ALJ perceived the district witnesses as “credible professionals” who presented their testimony well. In contrast, the parent’s expert was not perceived as credible. The expert never observed T.F. in his program at South Hunterdon and he did not dispute the appropriateness of the IEP. Additionally, while he initially agreed with another one of the parent’s independent evaluations, he contradicted himself during cross-examination by going against the report’s recommendations.

**Outcome.**

The parent’s due process petition was dismissed.

Case Synopsis.

D.E. was a multiply disabled student who attended North Hunterdon/Vorhees for four school years: 1997/98, 1998/99, 1999/2000, and 2000/01. His parents sought reimbursement for their unilateral placement of D.E. at LMB, an intensive language program in Pennsylvania, for the 2001-02 school year. In addition, they sought reimbursement for their unilateral placement of D.E. at the PACE program, a residential educational program in Illinois, for three school years following the 2001-02 school year.

IEP Analysis.

The ALJ ruled that the IEP was compliant with N.J.A.C. 6A:14.

LRE analysis.

The 2000-01 school year was D.E.’s senior year. During the winter of 2001, the parents informed the district that they had found the LMB program and requested that the school district place him there for the 2001-02 school year. The school district countered by offering a fifth year at either one of the district’s two regular education high schools. This placement was less restrictive than either the LMB or PRIME programs that the parents desired.

Additional Factors.

The district witnesses testified credibly that D.E. made some progress during his four years of high school. Despite this progress, the ALJ ruled that D.E. did not demonstrate enough improvement in his reading skills and the school district was not “committed” to
aggressive measures designed to improve D.E.'s reading skills. Consequently, the ALJ ruled that the placement at LMB was justified. The ALJ used the evaluations done by the district LDT-C to substantiate this lack of progress in reading, which he deemed was an essential academic area for D.E. The ALJ also analyzed the conflicting IQ scores that arose from the school district evaluation and the parent's expert witness. The ALJ gave more weight to the school district's evaluation because a more credible assessment tool was used while the parent's witness used a test of nonverbal intelligence. More importantly, upon cross-examination by the school district's attorney, the judge perceived that the parent's expert seemed to adjust the scores to fit the parent's desired placement, which the ALJ felt biased the evaluation results.

Outcome.
The ALJ ruled in the parents favor in part. The ALJ ordered that the parents be reimbursed for all costs for the LMB program, which encompassed the summer of 2001, the 2002-02 school year, and the summer of 2002. However, all reimbursements for the PACE program were denied.

Case #17: P.M. o/b/o A.M. v. East Brunswick Township Board of Education: (May 6, 2004).

Case Synopsis.
A.M. was a 10 year-old child with multiple disabilities who attended the East Brunswick public schools. P.M. sought placement for A.M. in an out-of-district placement at a special education day facility such as the Rock Brook School, reformation of the IEP, and compensatory education equal to the time the parent alleged deprivation of an appropriate
education. The East Brunswick Board of Education proposed continued placement for A.M. within the public school district.

IEP Analysis.
The ALJ ruled that the district IEP prepared for the 2003-04 school year complied with N.J.A.C. 6A:14. The judge noted that it contained the present levels of educational performance section, an appropriate statement considering the least restrictive environment, provision of an extended school year program, and an appropriate statement of special education services. It also provided speech/language services and social skills training as related services. Additionally, the judge ruled that the IEP contained appropriate goals and objectives as well as some of the recommendations made by the parent’s outside evaluators.

LRE Analysis.
The school district proposed placement in the school’s self-contained Learning and/or Language Disability (LLD) program with participation in extracurricular activities. The parent sought a more restrictive placement in the form of an out of district placement at a special education day facility.

Additional Factors.
The parent hired two expert witnesses to testify on A.M.’s behalf. However, the judge deemed their testimony to lack the weight that the district’s witnesses had because of their “lack of objectivity.” In contrast, the ALJ wrote that the four district witnesses were “credible and highly qualified.” The school district’s school psychologist was able to cast doubt upon the parent’s expert report regarding A.M.’s IQ and its accompanying recommendations.
Outcome.

The parent’s petition was dismissed.

Case #18: F.D. o/b/o K.D. vs. Holland Township Board of Education: October 6, 2005

Case Synopsis.

The parent unilaterally placed K.D., a multiply disabled seventh grade student, at a private school unapproved by the NJDOE called the Cambridge School. The parent filed for due process to have the Holland Township Board of Education pay for the unilateral placement. The school district proposed placement within K.D.’s regular school.

IEP Analysis.

The IEP was deemed compliant with N.J.A.C. 6A:14. K.D. was placed in a completely mainstreamed academic program with in-class support for five of eight periods. The IEP contained goals and objectives, as well as counseling and speech/language services.

LRE Analysis.

The school district proposed placement within a completely mainstreamed academic program with supplementary aids and services, which was much less restrictive than the Cambridge School.

Additional Factors.

The ALJ found that the parent committed a serious procedural violation. That is, the parent unilaterally placed the student without notifying the school district in writing. Furthermore, the parent had agreed at the most recent IEP meeting prior to K.D.’s removal to continue placement at K.D.’s regular middle school. The ALJ deemed the Board’s witnesses as “sincere and credible.” While the parent had provided enough
evidence to prove that the public school program did not adequately address K.D.'s educational needs, the parent consented to continued placement for the 2003-04 school year at the public school. The parent could not provide evidence that the Cambridge School provided an appropriate educational program and services.

**Outcome.**

The parent’s due process petition was dismissed.

*Case #19: G.L. o/b/o J.T. v. Bound Brook Borough Board of Education. (July 15, 2005).*

**Case Synopsis.**

J.T. was an emotionally disturbed student entering the eighth grade at an out-of-district day school for students with behavior disorders called the Somerset Academy. The Bound Brook Child Study team developed an IEP to return J.T. to Bound Brook High School to participate in a new behavior disabilities program within the regular education high school. J.T.'s mother filed for due process to keep J.T. at Somerset Academy.

**IEP Analysis.**

The ALJ ruled that the school district developed an IEP that complied with N.J.A.C 6A:14. The judge wrote that the goals and objectives were appropriate, substantial attention to detail was made, and the judge found that the IEP was individualized. The present levels of educational performance section described J.T.'s disability and how it affected his involvement and progress in the general education curriculum. It also contained an appropriate decision making statement for placement within the LRE.
**LRE Analysis.**

The Bound Brook Child Study team sought to bring J.T. back to his regular high school into an individualized behavior disability program. The in-district behavior disability program at Bound Brook High School was less restrictive than Somerset Academy, which was an out-of-district day program.

**Additional Factors.**

The parent, who was not represented by an attorney, did not testify. Also, the school district witnesses were not cross-examined and the parent was unable to discredit the school district IEP. The parent’s argument hinged upon concerns regarding gang activity at Bound Brook High School, not any programmatic or IEP issues. In comparison, the school district’s two witnesses were certified as expert witnesses by the judge, and their testimony was given significant weight.

**Outcome.**

The parent’s due process petition was dismissed.

*Case #20: R.M. and V.M. o/b/o N.M. v. North Brunswick Township Board of Education.*

*(December 8, 2005).*

**Case Synopsis.**

N.M. was a 13 year-old student who was classified multiply disabled. The North Brunswick school district proposed placement of N.M. in an in-school program. The parents contended that the in-school program was inappropriate and requested an out-of-district placement, reimbursement for evaluations, and compensatory education.
IEP Analysis.
The ALJ ruled that the June 21, 2005 IEP proposed by the school district was appropriate, designed to provide FAPE, and did not contain any deficiencies. The IEP documented the provision of special education programming for language arts, reading, and social studies. Science and math would take place within the mainstream with in-class support services provided. The district also incorporated recommendations made by the parent’s outside evaluators into the IEP.

LRE Analysis.
The school district’s proposed placement was at N.M.’s regular school in a mixture of special education and regular education classes. This program was less restrictive than an out-of-district placement that the parent wanted.

Additional Factors.
The ALJ lent great weight to the testimony provided by N.M.’s two special education teachers because they saw him every day and knew him well. In contrast, the ALJ did not find the parent’s witness testimony credible. In terms of representation, the parent did not retain an attorney, but instead hired a parent advocate, which resulted in some legal deficiencies on the parent’s part. For example, there was no challenging of specific IEP “deficiencies”. The parent did not testify, and the parent did not specify what out-of-district school they wanted the student placed in.

Outcome.
The judge dismissed the parent’s request for an out-of-district placement. Furthermore, the ALJ found that the parent was not entitled to costs for an independent evaluation or compensatory education.

Case Synopsis.

The New Providence Child Study Team and C.K. and G.K. placed P.K. at Watchung Hills Regional High School for grades 9-12. Watchung Hills was another New Jersey public school district that offered a self-contained Learning and/or Language Disabilities (LLD) program. C.K. participated in the Watchung Hills program for 4 years. Her senior year was the 2004-05 school year, and the school district developed an IEP to place her back at Watchung Hills for a fifth year (2005-06). C.K. and her parents unilaterally placed her at the Maplebrook School for the 2005-2006 school year. Maplebrook was a school for the disabled in Massachusetts, yet unapproved by the NJDOE. C.K. and her parent filed for due process to receive tuition reimbursement for the 2005-06 school year.

IEP Analysis.

The ALJ ruled that the IEP that the New Providence Child Study team developed for the 2005-06 school year complied with N.J.A.C. 6A:14. The judge noted that the school district worked hard to secure significant parent input and participation. Although the parent’s attorney sought to discredit the IEP’s goals and objectives for their lack of individualization, the ALJ determined that the goals and objectives were nonetheless appropriate.

LRE Analysis.

New Providence proposed placing C.K. back at the Watchung Hills LLD program for the fifth school year. The parent requested placement at Maplebrook, which was a residential
school in Massachusetts that was not accredited by the NJDOE. The program that New Providence proposed was less restrictive than Maplebrook.

Additional Factors.
The judge characterized the New Providence and Watchung Hills staff as “highly qualified educational professionals” who provided “detailed” testimony. The district witnesses, who included C.K.’s case manager and several staff members from Watchung Hills, delivered testimony deemed credible, consistent with the documentary evidence, not materially discredited on cross-examination and consistent overall. The expert witness testimony from the parent’s side was “overborne by the district witnesses.” The school district witness testimony, as well as the documentary evidence (which included progress reports and report card grades) supported the fact that C.K. made progress at Watchung Hills.

Outcome.
Parent due process petition was dismissed
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<td>J.C. vs. Warren Hills</td>
<td>No</td>
<td>Yes</td>
<td>Parent expert witnesses</td>
<td>parent favor</td>
</tr>
<tr>
<td>C.M. vs. Camden</td>
<td>Yes</td>
<td>Yes</td>
<td>No parent attorney; District witnesses credible; District showed progress</td>
<td>district favor</td>
</tr>
<tr>
<td>J.Z. vs. Princeton</td>
<td>No</td>
<td>Yes</td>
<td>District witnesses credible</td>
<td>district favor</td>
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<tr>
<td>D.C. vs. Lawrence</td>
<td>Yes</td>
<td>Yes</td>
<td>Parent expert witnesses; Case law definition of LRE</td>
<td>parent favor</td>
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<tr>
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<td>Yes</td>
<td>Yes</td>
<td>District witnesses credible</td>
<td>district favor</td>
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<tr>
<td>D.E. vs. North HunterdonVorhees</td>
<td>Yes</td>
<td>Yes</td>
<td>Lack of reading progress; parent witness testimony biased</td>
<td>split</td>
</tr>
<tr>
<td>P.M. vs. East Brunswick</td>
<td>Yes</td>
<td>Yes</td>
<td>District witnesses credible</td>
<td>district favor</td>
</tr>
<tr>
<td>F.D. vs. Holland Township</td>
<td>Yes</td>
<td>Yes</td>
<td>District witnesses credible; Parent procedural violations</td>
<td>district favor</td>
</tr>
<tr>
<td>G.L. vs. Bound Brook</td>
<td>Yes</td>
<td>Yes</td>
<td>No parent attorney; district witnesses credible</td>
<td>district favor</td>
</tr>
<tr>
<td>Case Law Frequency Chart</td>
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<tr>
<td><strong>R.M. vs. North Brunswick</strong></td>
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<td>Yes</td>
<td>No parent attorney; district witnesses more credible than parent experts</td>
<td>district favor</td>
</tr>
<tr>
<td><strong>C.K. vs. New Providence</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>District witnesses credible and highly qualified</td>
<td>district favor</td>
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Research Questions:

The following section delineates each of the study's research questions and their related findings.

*Do school districts that the ALJ decides developed IEP's that complied with N.J.A.C. 6A:14 frequently win in court?*

Consistent with prior research (Smith, 2000; Wright & Wright, 2004), the present study suggests that the development of legally appropriate IEP's is important. From a review of the study sample, school districts that develop IEP's that comply with N.J.A.C. 6A:14 frequently receive favorable rulings in unilateral due process hearings. Of the 21 cases analyzed in the present study, school districts developed compliant IEP's in 16 cases. Of these 16 cases, school districts prevailed 13 times. In the 3 cases where the district did develop a compliant IEP but did not win outright, the school district lost one case outright and received a split decision twice. In the case that the district lost, *D.C. v. Lawrence Township*, witness testimony and the case law definition of LRE influenced the ALJ's decision in favor of the parent. In the two cases where there was a split decision, parent expert witness testimony was a factor, as well as the district's failure to show that the student was able to receive meaningful educational benefit and progress within the program. However, the district did not lose these two cases outright, which limited the monetary drain on the school district. In sum, in the 16 cases where the school district developed a compliant IEP, the district won or partially won 15 times with one outright loss.

In comparison, 5 of the 21 cases involved school districts that did not develop IEP's that complied with N.J.A.C. 6A:14. Of these five cases, the parent received
favorable rulings in three cases and one split decision. In the fifth remaining case, *J.Z. v. Princeton Regional*, the school district won even though they committed several procedural violations when developing the IEP as per N.J.A.C. 6A:14. Not all required members of the IEP team attended the meeting, an IEP was not developed at the IEP meeting, and a draft was not provided to the parent until much later. Furthermore, placement was decided prior to the development of the IEP document. The ALJ stated that, although the IEP had not been reduced to writing, the program the Princeton Child Study Team was proposing was clearly described to the parent. The fact that the parent testified that he rejected the placement proposed by the school district at the meeting, and the fact that he also said he would be placing the student into a private school at the IEP meeting, indicated to the ALJ that the parent understood the program being proposed by the school district. The ALJ ruled that the district’s procedural violations did not deprive the student of FAPE, so the failure to reduce the IEP to writing was not fatal to the case.

*What are the IEP components that ALJ’s find are frequently noncompliant?*

Five cases studied involved school districts that committed procedural violations in terms of IEP development. Three of these cases involved an outright district loss. One case involved a split decision and one case resulted in a district win despite the non-compliant IEP. Of the four cases that the district did not win outright, inappropriate goals and objectives were cited in all four of them. Comments regarding these inappropriate goals and objectives centered on lack of individualization based on the child’s disability and/or needs, lack of detail, and lack of specificity and measurement. These findings regarding IEP goals and objectives are consistent with prior research. Drasgow, Yell, and Robinson (2001) stated that measurable goals and objectives are one of the three most
important components of the IEP. Wright and Wright (2004) emphasized that IEP goals and objectives must be individualized and tailored to the student’s needs.

Four of the five cases involved students who exhibited behaviors that detracted from their learning or the education of their classmates. In three district losses, the Child Study Team did not contain a behavior intervention plan or address the maladaptive behavior, and the ALJ described this as a substantive violation on the part of the school district. In the fourth case, which the district won, the school district created an extensive program to address the student’s emotional and behavioral issues. In two cases, one parent win and one split decision, the ALJ made note that the school district did not include information or recommendations made by outside experts or evaluators that the parent enlisted to evaluate or work with their child. Not including these recommendations into the IEP constituted a procedural violation.

Anecdotally, a review of the 14 cases where the school districts prevailed outright shows that the majority of these school districts took at least some input from parent experts and included it in the IEP. Based on an analysis of the cases it appears that ALJ’s believe that input from outside professionals that the parent hires should be considered and included in the IEP to help the child. This is consistent with the procedures delineated in N.J.A.C. 6A:14, which states that school districts must consider any independent evaluation when making decisions regarding a child’s special education program. In sum, it appears that ALJ’s frequently find IEP’s non-compliant when they do not include specific goals and objectives, interventions to address student behavior, or recommendations made by professionals that the parent’s hire to evaluate or work with their child.
When school districts place a child in the LRE as defined by the N.J.A.C. 6A:14, do they win more frequently than they lose?

School districts in this study who placed children in educational programs that met with the definition of least restrictive environment contained in N.J.A.C. 6A:14 won more often than they lost. In all 21 cases analyzed, the school district sought to place the student into the LRE as per N.J.A.C. 6A:14. Of these 21 cases, the school district prevailed in 14 of the cases outright and was involved in a split decision three times. School districts only lost completely four times when seeking to comply with LRE as defined by N.J.A.C. 6A:14. This is consistent with Yell and Katsiyannis (2004) who wrote that school districts must strive to place students in the LRE. The authors also wrote that, when the student’s disability or educational needs make placement in the general education class inappropriate, school districts must be able to provide a continuum of gradually more restrictive educational placements that will provide an appropriate education to the student.

When school districts place a child in the LRE as defined by N.J.A.C. 6A:14 but lose, what reasons do the ALJ’s often provide for ruling in favor of the parent?

Four cases in the research sample involved cases where the parent won outright despite the fact the school district provided placement within the least restrictive environment as stipulated in N.J.A.C. 6A:14. In these four cases, the ALJ overseeing the case cited specific case law showing that the school district did not provide a “free, appropriate, public education” in the least restrictive environment as defined in Rowley. The ALJ’s who oversaw these four cases also noted in their written decisions that the school district did not provide educational programs that were able to provide “significant
learning" and confer "meaningful benefit" as defined in Polk V. Central Susquehanna Intermediate Unit 16.

Within the four cases that the district lost outright, several judges also noted that students did not demonstrate "educational benefit" from the educational programs proposed by the public school district. Legally, the burden of proof is on the school district to show that they are providing an appropriate education (Lascari v. Ramapo Indian Hills, 1989). Students must show evidence of educational benefit and placement in appropriate programs as per Board of Education of the Hendrick Hudson Central School District v. Rowley (1982). In sum, it appears that school districts must be knowledgeable about pertinent case law in the area of special education to ensure that educational programs meet these case law requirements. This is consistent with Zirkel (2005) who wrote that knowledge of IDEIA and accompanying case law is both appropriate and necessary.

How did the ALJ's in the present study assess whether or not the programs were "appropriate", provided "significant learning", and were able to "confer educational benefit"? To gauge educational benefit, judges often relied on standardized test results provided by school district and parent witnesses. ALJ's often reviewed individual IQ scores, educational testing conducted by LDT-C's, and group standardized achievement scores. ALJ's also considered student grades, progress reports and witness testimony to ascertain whether or not the student made progress and received benefit from the program.
How frequently do school districts that exhibit procedural deficiencies in developing IEP’s, yet place the child in the LRE as defined by the N.J.A.C 6A:14, win in court?

The school districts in the present study that exhibited procedural deficiencies in developing IEP’s, even though they placed the child in the least restrictive environment, lost more than they won. In the present sample, there were five cases where school districts exhibited procedural deficiencies in developing IEP’s. Of these five cases, one district was involved in a split decision and only one school district was able to win outright.

In the split decision, D.C. v. City of Trenton, the ALJ ruled that the school district committed several procedural violations when developing D.C.’s IEP. The ALJ ruled that the IEP had to be amended to include more detailed speech and language goals and objectives, a hearing device recommended by the parent’s expert witness (which the district chose not to include in the IEP prior to the hearing) and an individualized extended school year program. However, the school district did not have to send D.C. into an out-of-district school.

The case where the school district won despite many procedural deficiencies in developing the IEP was J.Z v. Princeton Regional Board of Education. The ALJ who presided over this case cited several reasons for finding in favor of the school district. The parent’s attorney alleged several procedural deficiencies on the part of the Princeton CST. In responding to this allegation, the ALJ cited case law about exactly what a “procedural violation” is. The ALJ who oversaw this case cited many previous cases that form the body of case law regarding “procedural violations.” According to the judge,
procedural violations have been cited as causes for denying students a free, appropriate, public education. However, the existing case law indicates that the impact of the procedural violation must be considered, not the procedural violation "per se." To warrant the denial of FAPE, a procedural violation must: cause harm to the student as a result of the violation, cause the student to lose educational opportunity, and hamper the parent's ability to participate in the IEP process.

In J.Z. v. Princeton, the Child Study Team did not develop a written IEP document at the August IEP meeting, and it did not have all of the required members attend the meeting. Furthermore, placement was decided prior to the formation of the IEP document. These are clear procedural violations of N.J.A.C. 6A:14. However, the ALJ ruled that no harm came to the student as a result of these procedural violations. Furthermore, these violations did not cause the student to lose educational opportunity because the program proposed by the team would have begun in September when the school year began, not at the end of August when the IEP meeting was held and the document finalized. Furthermore, the parent attended the IEP meeting and was a full participant in all of the proceedings. Therefore, the ALJ ruled that procedural violations committed by the district did not deny J.Z. FAPE.

What are the factors that ALJ’s cite most often when they rule in favor of the parent?

Of the four cases where the parent was able to win outright, three cases involved school districts that committed procedural violations resulting in inadequate IEP’s. In all four district losses, the school district did not meet the case law requirements for FAPE and LRE. As mentioned earlier, IEP procedural violations included poor goals and
objectives and not including expert recommendations in the IEP. Missing interventions
designed to address maladaptive behavior constituted substantive violations. Additionally,
the ALJ considered that the expert witness testimony provided by the parent’s witnesses
was stronger than the testimony provided by the school district in all four cases where the
parent prevailed. In these cases, the parent witnesses were able to discredit the school
district IEP’s. Parent expert witnesses were also able to persuade the judge that the public
school program was inappropriate and that the unilateral placement was appropriate.

What other factors besides IEP development and LRE do ALJ’s consider when
ruling on unilateral placement cases? How frequently do ALJ’s consider these additional
factors when deciding such unilateral placement cases?

Witness testimony appears to be the most important factor that ALJ’s considered
when hearing the unilateral placement cases contained in the study’s sample. Of the 21
cases examined, the ALJ made specific mention of witness testimony 18 times.
Oftentimes, the ALJ’s in the present study would characterize a witness as “credible.”
When the ALJ did so, it often resulted in a positive outcome for that side. In all of the
fourteen cases that the school district won, the ALJ cited that the district witnesses were
credible and that their testimony deserved greater weight than the parent expert witnesses
testimony. In comparison, in all four cases that the parent won outright, the parent’s
witnesses were perceived as more credible than the school district’s witnesses. Of the
three split decisions, expert witness testimony was only cited one time by the ALJ with
the remaining two cases involving IEP deficiencies and failure of the school district to
show that it provided an appropriate educational program.
Regarding school district witness testimony, the teachers who worked with the students in these cases were often able to testify credibly. The judge often felt that, since the teachers worked daily with the student, the teachers were able to speak knowledgeably about the student’s strengths and weaknesses. This knowledge of the student also strengthened teacher recommendations regarding student programming. In terms of district Child Study Teams, team members who conducted detailed evaluations of the students were able to speak knowledgeably about the student’s cognitive, academic, or social levels as well as make knowledgeable recommendations for the student. District CST witnesses were able to bolster their credibility even more when they had detailed understanding of both the in-district and out-of-district programs involved in each case.

Witness testimony provided by the parent’s side was also an important factor considered by the ALJ’s. Parent experts tended to hold advanced degrees, such as a doctorate or a medical degree, and they usually conducted evaluations with accompanying evaluative reports that contained educational recommendations that the ALJ considered. In some cases, such as JOS.B. v. Rancocas Valley Board of Education, the parent’s expert witness did not hold an advanced degree yet he was extremely knowledgeable about the student. This is because the expert conducted an extensive evaluation of the student, interviewed family members, and had extensive experience working within the juvenile justice system that the student was a frequent participant in.

Witnesses from the unilateral placements were also important. It appears they were used not only to prove that the district’s offered program was inappropriate under the IDEIA, but also to prove that the private school placement provided the child with educational benefit. This need to prove that the district’s placement was inappropriate
and that the private school was appropriate is stipulated in *Florence County School District 4 v. Carter*. In the four cases that the parent won, the parent secured witnesses from the private school program to testify that the student did indeed benefit from the educational placement.

ALJ’s gave consideration to documentary evidence in every case analyzed in the present study. Evaluations conducted by district Child Study Team members were considered by the ALJ’s, and specific portions of report excerpts were often included in the judge’s final written rulings. It appears that several judges used student IQ and educational evaluations to gauge benefit “in relation to the child’s potential” as mentioned in *Polk v. Central Susquehanna Intermediate Unit 1*. Other important documents that the ALJ’s considered were evaluations conducted by the parent’s experts, student grades, school progress reports, and student scores on group standardized achievement tests.

Attorney representation also appears to have been an additional factor that influenced the outcomes of the cases in the present study. In seven cases where the parent did not seek legal representation, the parent lost six times and was involved in a split decision once. In contrast, in all four cases won by the parent and in the three cases where the decision was split, the parent retained an attorney. From the school district’s perspective, the school district employed their board attorney in every case and won 14 times outright with three split decisions. As per N.J.A.C. 6A:14, lawyers can directly examine and cross-examine witnesses. It appears that lawyers involved in the study’s cases used direct examination and cross-examination techniques to elicit favorable testimony and discredit testimony for the other side. For example, a witness in *J.F. v.*
South Hunterdon contradicted himself during cross-examination, which seemed to weaken his testimony. In J.Z. v. Princeton Regional, the parent’s expert witness eventually testified under cross-examination that the school district’s proposed program was appropriate, which proved fatal to the parent’s case. In D.E. v. North Hunterdon/Vorhees, the district’s attorney was able to discredit the parent’s expert witness who conducted an IQ evaluation. While North Hunterdon/Vorhees did not win the case outright, the parent did not receive all that they requested in their due process petition. This saved the school district a significant amount of money.

*How do the outcomes of the cases involved in this study compare with the outcomes described in the national data?*

To address this question, the researcher conducted a chi square analysis. Outcomes were described in terms of four categories—parents won, split (i.e. each side partially won), district won, and undecided—consistent with presentation of due process outcomes in a national sample (Chambers, Harr, & Dhanani, 2003). The outcomes described in the national data were compared to the outcomes of the 21 cases analyzed in the present study. The chi-square analysis revealed that the distribution outcomes of the study’s sample differed from the outcomes claimed for the U.S. population [χ² (3, n=21)=15.3, p.< .05]. Upon review of the data, the proportion of parent wins in the study sample was not consistent with the national data. Parents won a higher percentage of due process hearings nationally than the parents in the study sample won. The proportion of district wins in the sample was higher than the proportion of district wins in the national sample. Split decisions were also more prevalent in the sample than in the national data. Additionally, all of the cases in the sample were resolved while in the national data, a
small percentage of cases did not reach a resolution. The chi square analysis is presented in Table 2.

Summary of Main Findings

Based on the results of the present study, school district personnel who develop IEP’s that comply with N.J.A.C. 6A:14 frequently receive favorable rulings in unilateral due process hearings. School district personnel that committed procedural violations when they developed IEP’s lost more due process hearings than they won. The ALJ’s in the present study cited inappropriate goals and objectives, lack of behavior interventions, and the district’s failure to incorporate parent expert suggestions, as the main reasons why they found IEP’s non-compliant.

When school district personnel placed students in educational programs that met with the N.J. A.C. 6A:14 definition of LRE, school district personnel were able to win more cases than they lost. During the instances where school districts placed a child in the LRE according to N.J.A.C. 6A:14 but lost, ALJ’s cited case law to show that the districts did not provide a LRE that conferred educational benefit as dictated by the existing case law. Regarding specific case law, ALJ’s in the study frequently cited Rowley, Lascari, and Polk when they analyzed the legal appropriateness of the educational program proposed by the school district.

Additional factors that ALJ’s consider when overseeing unilateral due process hearings emerged over the course of this study. Witness testimony was a factor that was frequently mentioned in the written decisions examined in the present study. For the school district side, ALJ’s perceived witnesses as credible when they displayed good knowledge of the child through detailed evaluations by CST members or through
Table 2

Outcomes Comparison of National Versus Sample

<table>
<thead>
<tr>
<th></th>
<th>Parent Win</th>
<th>District Win</th>
<th>Split</th>
<th>Unresolved</th>
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<tr>
<td></td>
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<td>%</td>
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</tr>
<tr>
<td>Sample</td>
<td>4</td>
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<td>3</td>
<td>0</td>
<td>21</td>
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<td></td>
<td>19</td>
<td>66.7</td>
<td>14.3</td>
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<td>1,825</td>
<td>269</td>
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X² = 15.3

*Significant at 0.05
extensive experience gleaned from teaching the child on a daily basis. Furthermore, Child Study Team witness credibility was enhanced by detailed knowledge of the school district’s program and the program proposed by the parent. For the parent, their expert witnesses tended to be perceived as more credible when they had advanced educational degrees, detailed knowledge about the child, and a good understanding of the unilateral placement. Documentary evidence, in the form of standardized test results, evaluation reports, school progress reports, and grades, was also considered by ALJ’s when hearing these cases. Attorney representation was also an important factor. The parents in the present study who were not represented by an attorney lost many more cases than they won. The presence of an attorney improved parent ability to win. For the district side, it appears that attorney representation was beneficial as well.

In terms of hearing outcomes, the outcomes described in the present study differed from a national sample of due process hearing outcomes. Parents won a larger proportion of cases nationally while school districts won a larger proportion of cases in the study sample.
Chapter V: SUMMARY AND RECOMMENDATIONS

Introduction

The purpose of this chapter is to summarize the major findings of the present study and provide recommendations for policy, practice, and future research that are linked to the study’s findings and relevant literature. This chapter begins with a re-statement of the problem explored during the present study. Following this, the purpose of the study and the research method applied to examine the problem is reported. After the major findings of this study are presented and discussed, this chapter concludes with a list of recommendations related to the study’s findings and existing literature.

Problem Statement

Parents and school personnel who participate in the educational planning process for students living with disabilities often have strong feelings regarding the services these children need. While these strong feelings are often addressed and resolved at IEP meetings, there is a significant number of instances where these feelings cannot be reconciled within the collaborative venue of an IEP meeting. When differing viewpoints cannot be reconciled at IEP meetings, both parents and school staff may access dispute resolution mechanisms that are available through the IDEIA. Due process hearings are one of these dispute resolution mechanisms. Due process hearings can place parents and school district personnel into adversarial, stressful situations that damage working relationships while taking funding away from public school educational programs.
Purpose of the Study

The purpose of the present study was to identify and explore important factors that New Jersey administrative law judges considered when making their rulings for special education due process hearings. The researcher examined cases dealing with parents who sought more restrictive environments for their ED and MD children. This study initially focused on the judge’s analysis of IEP’s and LRE. Additional factors that the ALJ considered were identified and analyzed as the study progressed.

Research Method

The research design employed in the present study was a non-experimental cross-sectional descriptive design. There was no random assignment of subjects to treatments and information was collected from a sample drawn from a predetermined population (convenience sample). This study also identified the characteristics of observed phenomenon. In the present study, there was no changing or modifying of the situation under investigation, and no cause-and-effect relationships among the variables were established.

This study employed a content analysis. The researcher accessed the Rutgers-Camden School of Law website and reviewed all 838 New Jersey Administrative Law Decisions dealing with special education. This researcher examined cases from the years 2000 to 2007 and found 21 decisions rendered that involved parents seeking more restrictive educational placements for their ED and MD children. All 21 cases were analyzed using an analysis format aligned with the study’s research questions. After
analyzing the cases according to the analysis format, observed factors were organized according to a frequency chart. The observed outcome frequencies were used to develop a chi square test to examine discrepancies between the sample’s judicial outcomes and the judicial outcomes of a national sample of due process hearings.

Review of Findings and Interpretations

School districts in the present study won more often than they lost when they developed IEP’s that complied with N.J.A.C. 6A:14. This is consistent with the relevant literature indicating that the development of educationally sound and legally compliant IEP’s is important (Yell & Katsiyannis, 2004; Wright & Wright, 2004). When ALJ’s deemed IEP’s in the present study to be non-compliant, the ALJ’s often cited goals and objectives that were not specific, measurable, or individualized. This is consistent with existing research emphasizing the importance of developing goals and objectives that are tailored to the individual student and their educational needs (Lynch & Adams, 2008; Wright & Wright, 2004). Lack of interventions to address problematic behavior, as well as the district’s failure to incorporate parent expert suggestions, were also reasons why ALJ’s found school district IEP’s non-compliant. These findings strongly suggest that school districts should ensure that IEP’s contain all of the components required in N.J.A.C. 6A:14. However, care should be especially taken to ensure that IEP goals and objectives are measurable and specific to the needs that emanate from the child’s disability. When student behavior is problematic, it appears that ALJ’s desire that the student’s IEP contain appropriate intervention plans to address the student’s behavior. This finding is consistent with Yell and Katsiyannis (2004) who wrote that school
districts should consider problem behavior. In addition, ALJ's appear to look favorably upon school district personnel who include recommendations from outside professionals that parents hire to work with or evaluate their child. It does not appear that ALJ's require school districts to incorporate all expert recommendations; however, it seems that recommendations that are germane to the student and compliment the district’s educational initiatives should be considered and included within the IEP to the greatest extent possible.

School district personnel who placed students in the LRE as defined in the N.J.A.C. 6A:14 won more due process hearings than they lost. This is consistent with Yell and Katsiyannis (2004), who wrote that it is important for school districts to focus on student placement in the general education class, with the ability to provide a continuum of program options, when they seek to meet the placement requirements of the IDEIA. However, ALJ’s consider more than the N.J.A.C. 6A:14 definition of LRE. ALJ’s often cited specific case law that school districts must obey when placing students in educational programs. School district personnel who place a learning disabled child into a completely mainstream program may gain a false sense of security that they have met all of their legal requirements for placement in the LRE. However, if the district cannot prove that the child is gaining meaningful educational benefit and is progressing in the program, then the district is not meeting its legal burden to provide FAPE. ALJ’s seem to rely heavily on documentary evidence in the form of standardized test results, grades, and progress reports to determine if the school district is meeting its legal burden. ALJ’s also consider witness testimony to determine if the school district is providing an appropriate education to the learning disabled student.
Additional factors that ALJ's consider emerged over the course of the present study. Analysis of the 21 cases strongly suggests that witness testimony is a very important factor that ALJ's consider frequently when they hear unilateral due process hearings. Furthermore, case outcomes appear to hinge on how credible the ALJ perceives the witnesses for each side in the dispute. The findings suggest that school district personnel were perceived as credible when they were able to demonstrate a good understanding of the child and the programs being considered. District Child Study Team members seemed to be perceived as credible when they conducted detailed evaluations. These detailed evaluations allowed the Child Study Team members to clearly delineate the child’s needs, which in turn allowed them to make positive decisions regarding appropriate educational placements as recommended by Yell and Katsiyannis (2004). District Child Study Teams also tended to be considered credible when they were knowledgeable about both the district and the parent’s proposed placements. Teachers were often perceived as credible since they worked directly with the student. For the parent side, ALJ’s also found expert witnesses credible when they held advanced academic degrees and had extensive knowledge of the child and the unilateral placement. Parents often used school district staff from the unilateral placements as witnesses to describe how the out-of-district program provided benefit to the child.

Attorney representation also seems important. Of the seven cases where the parent did not seek representation, the parent lost six times and split once. In comparison, every school district involved in the study employed their board attorney and won more cases than the parents did. It seems that attorneys are able to elicit favorable testimony from their witnesses upon direct examination, and are also able to discredit witness testimony
for the other side upon cross-examination. Furthermore, attorneys provide extensive knowledge of special education law and courtroom procedures.

Chi square statistical analysis of the study sample outcomes when compared to a national sample of due process hearing outcomes indicated that the distribution outcomes of the study’s sample differed from the outcomes claimed for the U.S. sample \( x^2 (3,n=21)=15.3, \) p. <.05. Parents were able to win a higher percentage of due process hearings nationally than the parents in the sample. The proportion of district wins in the study sample was higher than the proportion in the national sample. Split decisions were more prevalent in the study sample than in the national sample. All of the cases in the sample were resolved while a small percentage of national cases went unresolved. The reason for unresolved endings to the due process hearings in the national sample can be explained by the method used for gathering data. The national data used in the present study was compiled via the Special Education Expenditure Project (SEEP). The authors of the SEEP utilized 23 separate surveys to collect data regarding the outcomes of due process hearings nationally at the state, district, and individual school levels (Chambers, Harr, & Dhanani, 2003). Overall, Chambers et al. created a database that represented a sample of approximately 10,000 students with disabilities, over 5,000 special education teachers, over 5,000 regular education teachers, more than 1,000 schools, and over 300 local education agencies. Because the researchers gathered a significant amount of data from diverse populations, differing interpretations of disputes, their resolutions, and who “won” may have resulted in the small percentage of respondents who responded “unresolved.” In contrast, every one of the 21 cases analyzed in the present study had a
Recommendations for Policy and Practice

After reviewing the findings of the present study, the following recommendations for policy and practice are suggested:

1. School districts must develop IEP’s that comply with N.J.A.C. 6A:14. Since the IEP is both a process that develops a student’s program and a document that describes the child’s program (Yell & Katsiyannis, 2004), care must be taken to ensure proper participation by all stakeholders, and care must be taken to develop a document that complies with N.J.A.C. 6A:14. Consistent with the research (Katsiyannis & Herbst, 2004; Yell & Drasgow, 2000) the present study suggests that parental participation is essential to the IEP process. From a practice perspective, it allows the provision of important information to the planning process. From a legal perspective, parent participation in the IEP process is legally required; failure to include the parent’s participation is a legal violation that can be construed by ALJ’s as a denial of FAPE. To ensure proper IEP development, school districts should develop a policy requiring Child Study Team members entering the school district to engage in a professional development workshop covering IEP development as per N.J.A.C. 6A:14. In practice, districts should provide professional development to ensure CST knowledge of N.J.A.C. 6A:14. School district CST’s should also take care to explicitly document within the present levels of academic and functional performance section of the IEP the parent’s concerns and input.
2. Goals and objectives are often observed as district deficiencies when school districts lose due process hearings. In order to develop appropriate goals and objectives, Child Study Teams must first conduct detailed evaluations to clearly ascertain the student’s strengths, weaknesses, and to accurately diagnose their disability. This clear delineation of the child’s levels results in the team’s ability to develop the present levels of academic and functional performance section of the IEP, which drives the development of an appropriate program in the LRE and its accompanying goals and objectives (Drasgow, Yell, & Robinson, 2001). Detailed evaluations by CST members will also allow better knowledge of the child should the team member be required to testify in court at a later date. District policy requiring each evaluator to observe the child in a separate class as well as conduct at least one teacher interview should be considered to increase knowledge of the child beyond the testing session. CST members should employ valid and standardized measures of cognitive, academic, social, and emotional behavior to strengthen their recommendations with quantifiable data.

3. Students who exhibit behaviors that detract from their education or the education of other students must have a behavior plan included in the IEP to address the behavior. District professional development should be provided to district Child Study Teams to teach them how to conduct an appropriate functional behavior analysis (FBA) and how to develop an appropriate behavior intervention plan (BIP). Districts should develop a departmental policy that requires an automatic FBA and accompanying BIP for all students classified ED or MD. When appropriate, in-school counseling should be provided and documented in the IEP to address social and emotional issues. Documented implementation of a BIP and supportive counseling will not only help support the child’s
behavior and emotions, but will also ensure that this is not an IEP deficiency that ALJ’s focus on should the student’s case proceed to a due process hearing.

4. District CST’s must review evaluations and information provided by the parent. School districts should develop a documentation system to show that these evaluations have been read and considered by district CST members. In addition, care should be taken to incorporate information and recommendations from these outside evaluations into the child’s IEP.

5. School district CST members must understand the continuum of placements along the LRE as per N.J.A.C. 6A:14. In addition, they must know what the existing case law demands in terms of providing FAPE and placing students in the LRE. School districts should provide professional development in the form of a workshop conducted by the board attorney to review the LRE continuum as described in N.J.A.C. 6A:14. Additionally, the board attorney should review the following case law which appears to be very important in terms of how ALJ’s make determinations during unilateral due process hearings: *Board of Education of the Hendrick Hudson Central School District v. Rowley; Polk v. Central Susquehanna Intermediate Unit 1; Ridgewood Bd. Of Ed. V. N.E.; Lascari v. Bd. Of Ed. of the Ramapo Indian Hills Regional High School District; Florence County School District Four v. Carter.* Funding for professional development may be drawn from the amount that district Boards of Education allot to each district department for the purpose of staff professional development. School districts may access their respective Departments of Curriculum and Instruction for additional funding or access Federal funding. For example, district Boards of Education can apply for Federal funding through the IDEIA.
6. Since problems implementing IEP's can lead to litigation (Katsiyannis & Herbst, 2004) school district policies should require all teachers to undergo IEP specific professional development. School district teachers must understand that the IEP is a legal document that must be implemented as written. In addition, professional development should be provided to help them learn how to implement strategies or modifications included in student IEP's. Furthermore, school districts should consider the practice of providing all individuals who work with the child a copy of their IEP so they have a clear knowledge of what they are legally required to provide the child. Proper implementation of student IEP's will not only help school districts avoid legal issues of non-compliance, but will also maximize the child's potential to receive educational benefit from the program and progress effectively within it.

7. Districts should adopt the practice of providing release time (i.e. common prep periods) for regular education and special education teachers to collaborate. Regular education teachers can share their knowledge of content with the special education teacher, and the special education teacher can help develop differentiated instruction and assessment approaches to reach all learners in the class while maximizing the application of IEP modifications and accommodations.

8. School districts should ensure that district Child Study Team case loads remain manageable so that case managers can collaborate with teachers regarding instructional strategies and perhaps even move into the classroom to observe students and/or model behavior management or instructional activities. This will also allow the case manager to monitor the child's progress in terms of the IEP goals and objectives as well as maximize the child's potential for success. Case managers who realize a lack of student progress
(through observations, discussions with teachers, and observations of progress reports) must be proactive and call for IEP meetings. At the IEP meeting, the student’s problem can be reviewed by the IEP team. After the student’s problem is reviewed, IEP interventions or program changes can be implemented to help the child learn and progress effectively within the educational environment.

9. School districts must consider using Intervention and Referral Services Teams to help students who are experiencing academic, behavioral, and health difficulties. N.J.A.C. 6A:16-8.1 requires Boards of Education to establish a coordinated system in each building for the planning and delivery of interventions to assist at-risk students. The multidisciplinary team that develops these interventions to assist regular education students can also be used to support students with disabilities. Application of this model can be used to generate appropriate interventions that can be incorporated into the student’s IEP.

10. Since school districts must be able to prove that the child is benefiting from the educational program, care must be taken to ensure that documentary evidence is maintained to show that the child is making progress and receiving educational benefit. School districts, via the student’s case manager, should consider and carefully monitor the student’s standardized testing results, grades, and teacher progress reports to ascertain educational benefit. However, when it is indicated that the child is not making progress or receiving educational benefit, case managers should call IEP meetings to address and ameliorate these problems.

11. Because students placed in out-of-district schools are more difficult to monitor due to their separate placement, departmental policy should be implemented to
require district case managers to visit the child’s school at least one time per year in addition to the annual review IEP meeting. This visit can allow the CST member to observe the student in class, talk with the student’s teachers, and interact with the child. This will strengthen knowledge of the student as well as help monitor their progress. The departmental policy should also require the case manager to document the visit with a letter to the parent to prove that the district is monitoring the child’s program.

12. In terms of practice, school districts should first strive to place students within the mainstream with supplementary aids and services and move the student to a more restrictive environment as regular classes with proper supports prove inappropriate. School districts should provide professional development to teach district teachers and Child Study Team members educational and behavioral interventions grounded in empirical research (Katsiyannis & Herbst, 2004). These research-supported interventions can then be incorporated into the IEP document by CST members and implemented effectively by classroom teachers, which will maximize the child’s ability to benefit from the program.

13. Mediation is a dispute mechanism preferred over due process hearings (Mayes & Zirkel, 2001). From a practice perspective, school districts should arrange for NJDOE mediators to provide professional development to district CST members. This will allow district CST members to employ effective mediation skills at informal problem solving meetings and formal IEP meetings to deescalate conflict and foster agreement. In addition, school districts should consider proactively calling for mediation through the NJDOE when district attempts at conflict resolution break down and due process proceedings are anticipated.
14. Professional development, in the form of conflict resolution strategies, communication techniques, and negotiating strategies, should also be provided to district Child Study Team members to address conflict at the school district level and prevent litigation. Research suggests that there are several models and techniques to provide these skills (Kaplan, 1996; Karrass, 1970; Lake & Billingsley, 2000).

15. From a practice perspective, school district personnel, especially district CST members, should act to create and maintain positive relationships with parents and students. Informal case manager meetings with both students and parents at the start of the school year can help begin the school year in a positive fashion. Parent phone calls and e-mails should be returned in a timely fashion and all parent concerns should be respected and investigated. When a parent's concern is valid, district personnel should act to correct problems so that the parent's anxieties are lessened and the child's education is maximized. Actions such as these taken by district CST members will help foster a positive relationship with parents, which can help maintain parent-school relationships during times of disagreement or conflict. Maintenance of these relationships during times of stress can help resolve disagreements and avoid litigation.

16. School districts should adopt the practice of retaining attorneys who specialize in special education litigation. It is difficult for attorneys to represent their clients in all areas of law effectively due to the extensive knowledge and specialty required for each area (Karrass, 1970). Having attorney representation by individuals who specialize in special education ensures that they are knowledgeable about this area of education law.
17. When school districts engage in due process hearings with parents, they must ensure representation from the board attorney. In addition, witness preparation by the board attorney should be provided to enhance the production of testimony that will benefit the district. The school district attorney can also engage in practice cross-examination with the district witness to prepare him/her for cross-examination that the parent attorney will conduct during the due process hearing.

18. School districts should consider hiring their own expert witnesses with expertise and/or credentials when engaging in due process hearings. This can strengthen existing district testimony and documentary evidence. Hiring an expert witness may also be effective if the parent has hired an expert witness that could be perceived as more credible than the district witnesses.

19. Prior to engaging in due process hearings, school district personnel, in concert with the board attorney, should engage in the practice of in-group bargaining processes (Karrass, 1970). This approach should begin with an assessment of the strength of the school district case as compared to its weaknesses. Careful examination should be paid to the district’s IEP development, educational placement in the LRE, whether or not the documentary evidence shows that the child has received educational benefit, as well as potential witness testimony. If the in-group process reveals that district weaknesses outweigh district strengths, pre-trial settlement with the parent should be seriously considered to minimize monetary and emotional cost to the district budget and personnel. If district strengths outweigh weaknesses and it is deemed appropriate to pursue litigation, the in-group bargaining process should continue to unify in-group goals in order to help the district succeed in court.
Recommendations for Future Research

The following recommendations are suggested for future research:

1. Replicate the present study with a different sample of student disabilities to see if the outcomes and frequency of the study variables were consistent or discrepant from the present study.

2. Consider gathering direct information from ALJ’s to further understand what factors they consider when they deliberate over due process hearings. An objective questionnaire could be developed and disseminated to New Jersey ALJ’s to gather information from them directly rather than extrapolating their thought processes from their written rulings. Their responses could then be compiled to provide variables supported by quantifiable data.

3. Gather a sample of written rulings of the same student disability population but from a state other than New Jersey. Apply the analysis format to the sample of cases, then compare and contrast the results with the results of the present study.

4. Gather a sample of written rulings from a different section of the state or federal judicial system (i.e. U.S. Supreme Court decisions, New Jersey Superior Court decisions). Apply the analysis format to the sample of cases, then compare and contrast the results with the results of the present study.

5. Analyze a sample of New Jersey Administrative Law rulings where the main area of contention is transition from a secondary to a post-secondary environment. Employ a content analysis to identify and explore important factors ALJ’s consider when they examine this component of the student’s IEP.
References

National Association of State Directors in Special Education.


Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et seq.


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