

LEGAL ISSUES WITH AUTISM SPECTRUM DISORDER AND
APPLIED BEHAVIORAL ANALYSIS FROM
1999 TO MAY 2010

by

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A DISSERTATION

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ABSTRACT

Public school administrators address student programs and individual student needs on a daily basis. Children diagnosed with special education needs and, specifically, autism spectrum disorders require knowledge and understanding of appropriate programs, methods, and services. With the reauthorization of the Individuals with Disabilities Education Act (IDEA) and No Child Left Behind Act (NCLB), school administrators must provide programs that are research based with data to support results indicating annual yearly progress. Federal and state courts now address the components of IDEA and NCLB when student placement and programming is questioned.

The purpose of this study was to examine programming for public school children diagnosed with autism spectrum disorder and the methodology of applied behavioral analysis in preschool through Grade 12 from 1999 to May 2010. The intent of this research was to provide public school administrators with guidelines and recommendations when implementing programs that are appropriate and will provide the children with functional and academic growth.

Federal and State court cases included in this research were located through WESTLAW and IDELR legal resources. Cases were analyzed using the brief analysis (Statsky & Wernet, 1995). Twenty-four recommendations were generated from a content analysis of case law in the 92 cases briefs.

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CHAPTER I

INTRODUCTION TO THE STUDY

Before 1980, autism was not recognized as a disability. It appeared in the Diagnostic and Statistical Manual (DSM III) for the first time in 1980. Prior to 1980, autism was a symptom of atypical and withdrawn behavior under the classification of schizophrenic, childhood type (DSM I, II). In 1980 there were thought to be 1 in 2,000 children with autism (CDC, 2006). According to the DSM III, autism was categorized as a separate diagnostic category and titled *infantile autism*. There were six characteristics and each needed to be present for the individual to be diagnosed. The category was changed to Autistic Disorder in 1987 after some controversy over the descriptor infantile (Hinch-Ownby, 2008).

The DSM IV, released in 1994, added pervasive developmental disorders and Asperger's Disorder, Rett's Disorder, Childhood Disintegrative Disorder, and Pervasive Developmental Disorder Not Otherwise Specified (PDD-NOS) to the classification of autism. In addition to the new subareas, the 16 symptoms now used to describe autistic disorder require only 6 of the 16 to receive the diagnosis. As the subareas expanded and requirement of symptoms decreased, the number of individuals diagnosed with autism increased (National Autism Center, 2009).

With the escalation of the diagnosis of autism, estimated according to current statistical information from the Centers for Disease Control (CDC) to be 1 in 150, currently an abundance of cures, techniques, and therapies guaranteeing results of curing, lessening, and dissolving the symptoms of autism have come to the forefront. Parents, while grappling with the diagnosis and accompanying behaviors, often seek out and try many of these programs and therapies for

their young children. One only need to open a newspaper, magazine, book, or journal and read the research, stories, and personal accounts of families of students within the Autism Spectrum. They contain stories of programs and their successes and failures, of what works and what does not work. Within this push for the cause or cure, appropriate programming and disagreements of what is appropriate surface. Of the many proposed programs, applied behavioral analysis has come to the forefront, with research from the 1960s and its research-based and self-proclaimed successes (National Research Council, 2002).

Many communities even opened local schools providing applied behavioral analysis, where students are provided one-on-one instruction and programming of discrete trial training teaching skills to very young children with the promise of addressing and dissolving the characteristics and symptoms of autism and movement into a regular education program with no special education services when students reach school age (Simpson, 2005).

There has been an increase in litigation brought by parents when students enter public school, and these students attempt to make the adjustment from one-on-one instruction to small-group instruction (Simpson, 2005). This is often a rough and rocky start for students and parents, as well as the school system. Schools are burdened with the demand to carry on the one-on-one therapy, with little room for small-group instruction, and students coming from an applied behavioral analysis environment are often dependent upon one trainer for teaching. Unfortunately, the program often shows little consistent skill-based results and schools are inheriting students with scattered skills, a lack of independence, as well as a lack of generalization or carryover of the skills into other environments.

Compounding this problem, the diagnosis of autism spectrum disorder (ASD) is often part of a co-diagnosis with other disabilities, including mental retardation, seizure disorder,

bipolar disorder, and others (National Research Council, 2002). Programming and progress then can often be masked by other conditions that limit improvement and require direct intervention as well.

The definition of what is appropriate educational programming for students with disabilities was first litigated in 1982 when The United States Supreme Court in *Rowley v Henry Hudson Board of Education* attempted to define a free and appropriate education. Although Rowley examined the use of an interpreter, the *Rowley* decision defined educational progress by the student as evidence to support a free and appropriate education. Attempts to re-examine appropriate programming have surfaced often since 1984 and it appears that specific Circuit Courts of Appeal define free and appropriate education differently (Osborne, 1992). Various Circuit Courts examine meaningful benefit and programming for students with disabilities within the determination of following two procedural requirements:

1. Procedural safeguards and requirements include parental participation, notice and consent, review of records, independent educational evaluation, and right to request a due process hearing.

2. Programming developed must be reasonably calculated to enable the child to receive educational benefit.

The focus of educational programming for all students with disabilities, as determined by the Education of the Handicapped Act (EHA), and later as determined by the Individuals with Disabilities Education Act (IDEA), was providing students with an individualized educational program (IEP) that is written with the opportunity for student progress or growth in their individual needs while following procedural safeguards. With the newest reauthorization of the EHA, later the IDEA in 1990 and 2004, and the implementation of the No Child Left Behind Act

(NCLB) of 2001, schools must collect data and demonstrate this opportunity for progress in meeting educational goals.

Meeting annual yearly progress (AYP) is measured and reported for all students, including those with disabilities. Current litigation often defines a free and appropriate education for children with disabilities as a much more stringent program with AYP looming over the program for the student with a disability (Mitchell & Yell, 2000).

IDEA was first enacted as EHA, and then, in subsequent authorizations, it was renamed Education for All Handicapped Children Act (EAHCA), Handicapped Children's Protection Act (HCPA), Individuals with Disabilities Education Act (IDEA), and Individuals with Disabilities Education Improvement Act (IDEIA). For the purposes of this study, the act will be referred to as IDEA, although the proper description would be the name during the relevant timeframe.

Purpose of the Study

The purpose of this study was to examine state and federal court cases where parents of students diagnosed with ASD contest the methodology of providing services, particularly the use of applied behavioral analysis, for fulfilling their responsibilities under the IDEA. This study researched and examined court cases from 1999-May 2010 involving students diagnosed with autism and requests concomitant for applied behavioral analysis services. Data from the cases were reviewed, trends were determined, and administrative guidelines were offered to public school systems to assist in developing, implementing, and providing legally defensible programs for children diagnosed with autism.

Significance of the Problem

The problem of legal disagreements or litigation filed by parents of students in special education programs in public school systems demands knowledge and understanding of appropriate programming for students with disabilities, particularly those students diagnosed with ASD (Mitchell & Yell, 2000). School system personnel and school administrators must understand and supervise appropriate programming for students within the Autism Spectrum. Programs must be legally defensible and provide students with an individualized program to meet their unique needs. The opportunity for progress must be provided and parents must be part of the decision-making team (IDEA, 2004).

The problem of this study was to determine the legal issues and outcomes related to the delivery of appropriate educational services to students with ASD. Of the various programs, applied behavioral analysis was examined within various Circuit Court decisions around the United States. Standards of appropriate programming were examined within the context of a free and appropriate education as interpreted by the Rowley decision of 1984. Information from various Circuit Court decisions was analyzed to obtain specific legally defensible programming data. This data will provide the basis for legally defensible appropriate programming, determine trends; and provide recommendations for public school administrators who work with parents, teachers, and students with ASD.

Public school systems and school administrators must understand and offer legally defensible appropriate programming for students with ASD. Despite several opportunities to define free and appropriate education and legally defensible programs, the Supreme Court has remained silent. Relying on Rowley (1984), school systems remain vulnerable to interpretation of individual cases by hearing officers and Circuit Courts. Litigation is filed regarding

methodology, free and appropriate education, and least restrictive environment. As a result, school systems must litigate cases and demonstrate appropriate programming while incurring a heavy financial burden, as well as exerting time and energy that could be better spent on professional development and other training for teachers and administrators.

Knowledge of the IDEA and special education programming is imperative for administrators in public school systems (Weatherly, 2010). Administrators are charged with implementing appropriate programs for children with disabilities. Educational programs must demonstrate progress in meeting student individual goals. Errors made by administrators can cost the school system time and money in litigation, personal liability, and the denial of appropriate programming for students with disabilities.

Research Questions

1. What fact patterns led to the federal and state court cases regarding ASD and applied behavioral analysis between 1999-May 2010?
2. What issues arose in federal and state court cases regarding ASD and applied behavioral analysis between 1999-May 2010?
3. What was the outcome for federal and state court cases regarding ASD and applied behavioral analysis between 1999-May 2010?
4. What administrative guidelines can be discerned from federal and state court cases regarding ASD and applied behavioral analysis between 1999-May 2010?

Assumptions

This study incorporated the following assumptions:

1. All cases on topic were found using word search methodology through Westlaw and IDELR.

2. The timeframe of 1999-May 2010 provided a sufficient number of cases to provide data for the study.

3. All U.S. circuits were represented in the study and provided sufficient case data.

Limitations

When reviewing this study, the following limitations should be considered:

1. The author is a special education director in a public school system setting. While every attempt was made to keep the study free from bias, some bias may exist.

2. Court decisions involving ASD and applied behavioral analysis from 1999-May 2010 were included and summarized in case brief format.

3. The administrative guidelines and principles determined by analyzing the case law reports were limited to those cases generated from WESTLAW and those reviewed in this study.

Delimitations

The following delimitations applied to this study:

1. This study focused on legal court documents based on equal protection due process based on the Fourteenth Amendment, IDEA, free and appropriate education, and least restrictive environment.

2. School cases were categorized chronologically from 1999-May 2010 and the most current decisions were provided. If appealed, every attempt was made to provide the most current decisions and results.

3. These cases represented preschool to school-aged children and were limited to children diagnosed with autism and applied behavioral analysis methodology disagreements, which may be defined as free and appropriate education, least restrictive environment, and methodology.

4. Court cases included all cases at the state and federal level from 1999-May 2010.

5. This study was limited to litigation of children diagnosed with ASD from Grades Preschool-12 enrolled in public schools.

Definition of Terms

Applied behavioral analysis is the application of behavioral principles to the understanding and modifying of behavior. It is the procedure derived from the principles of behavior that are systematically applied to improve socially significant behavior to a meaningful degree (Bernard-Opitz, 2007).

Autism is a disorder that is present from birth or very early in development that affects essential human behaviors such as social interaction, the ability to communicate ideas and feelings, imagination, and the establishment of relationships with others. It is a developmental disorder of neurological origin that is defined on the basis of behavioral and developmental features (National Research Council, 2002).

Discrete trial teaching is an intervention grounded in behavioral learning theory principles and applied behavioral analysis. It is a strategy to teach new skills and consists of a discriminative stimulus (teacher's instruction), the child's response, and the consequence (Simpson, 2005).

Due process hearing is the principal vehicle for resolving disputes between parents of children with disabilities and school districts concerning identification, evaluation, placement, or provision of free and appropriate education (934 CFR § 300.512) (Slater & Nowlin, 2007).

Free and appropriate education is special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the State educational agency, include preschool, elementary school, or secondary school; and are provided in conformity with an individualized educational plan that is calculated for the student to learn (34 CFR § 300.17) (Slater & Nowlin, 2007).

Least restrictive environment is the location or environment in which special education services are provided. The removal of a student into a separate setting occurs only when the student cannot be educated satisfactorily in the general education classroom with the use of supplementary aids and services.

Litigation is the process by which parties to a dispute have it resolved by a court (Statsky & Wernet, 1995, p. 453).

Organization of the Study

Chapter I is an introduction to the study. A statement of the problem, the significance of the problem, the purpose of the study, the research questions, definition of terms, the significance of the study, the limitations in the research, and the delimitations of this study are included in this chapter.

Chapter II contains a review of the literature in the research area, which will include an overview of the history of Special Education, definitions of key federal law terminology, and Circuit Court decisions regarding special education programming.

Chapter III describes the methodology and procedures utilized in this study. An understanding of case research is outlined.

Chapter IV includes the case briefs and case analysis.

Chapter V contains the summary, conclusions, guidelines and recommendations for school administrators, and recommendations for further study.

CHAPTER II

REVIEW OF THE LITERATURE

Introduction: The History of Special Education

The United States has had a great history of struggle with segregation. Historically separate and unequal educational programs and facilities existed for school children based on race. The case of *Brown v. Board of Education* in 1954 brought inequality to the forefront of America with its “separate is unequal” doctrine (Alexander, 2008). Despite compulsory attendance laws, which had been in place since 1918, children with disabilities were routinely excluded from public schools. These children were often left at home or institutionalized (Pardini, 2002). The children that did attend public schools often received little, an inferior, or even no education (Martin, Martin, & Terman, 1996). Even those with mild to moderate disabilities who did enroll often dropped out before completing high school. The Civil Rights movement as well as the Brown decision, which extended equal protection under the law to minorities, paved the way for similar gains for those with disabilities (Pardini, 2002). The disability movement emerged as a result of the Brown decision (Kalaei, 2007).

The Illinois Supreme Court held in 1958 that the provision of the state constitution for providing a system of free schools did not include children defined as mentally deficient or feeble-minded (Colker, 2004). By 1969, North Carolina made it a crime for parents to insist that a disabled child be allowed to attend school after the superintendent made the decision that the child should be excluded.

By the 1970s, state legislatures, the federal courts, and the U.S. Congress enacted strong educational rights for children with disabilities. Forty-five states passed laws mandating, encouraging, and funding special education programs (Martin et al., 1996). These laws were implemented in the spirit of the equal protection and due process guarantees of the Fourteenth Amendment. They carried the policy view that schools could not discriminate on the basis of disability. In the same timeframe, parents pressed for due process rights for their children's education in court.

Two critical court decisions, including *Pennsylvania Association for Retarded Citizens (PARC) v. Pennsylvania* (1971) and *Mills v. Board of Education* (1972), demonstrated these rights. Both cases resulted in increased access for children with disabilities to attend public schools by addressing inequality in segregated facilities. In the PARC case, Pennsylvania refused to provide public education to students who did not have a mental age of 5 years by the time they were in first grade. Under the consent decree, the state agreed to provide full access to a free public education for children with mental retardation up to age 21. This case also established the standard of appropriateness. Each child was offered an education appropriate to his or her learning capacity. It also established a clear preference for placement in the least restrictive environment for each child.

In the *Mills* (1972) case, seven African American children with disabilities were denied access to District of Columbia schools. The school district admitted that it refused to enroll some students and expelled others solely on the basis of their disability. Their reason for the lack of services was financial, citing budgetary constraints. The U.S. District Court ruled that the school districts were constitutionally prohibited from deciding that they had inadequate resources to serve children with disabilities. The equal protection clause of the Fourteenth Amendment

would not allow the burden of insufficient funding to fall more heavily on children with disabilities than on other children.

From 1971-1973, the federal courts made it clear that schools owed students the equal protection of the law without discrimination on the basis of disability, just as the Supreme Court ruled in *Brown v Board of Education* (1954) regarding race (Martin et al., 1996). These proceedings led to the procedural protections afforded children with disabilities that were eventually part of The Education of the Handicapped Act (EHA), Public Law 94-142. PARC (1971) and Mills (1972) were landmark decisions which were followed by more than 30 federal courts. Despite these court decisions, no federal statutes existed that required states to integrate all students with disabilities into the public school system. Prior to EHA, state and local school systems were not prepared to meet these new responsibilities in providing a free and appropriate education to all children, regardless of disability.

In the 1960s and 1970s, the delivery of services to students with disabilities was uneven across the United States. Some states turned children away and the states that did provide services were often inappropriate, due to such practices as educating a child with a physical disability with normal intelligence in a class with children with mental retardation.

In 1975, Congressional hearings revealed that states were educating less than 20% of children with disabilities. State and federal court decisions provided an impetus for states and parents to join forces in advocating for federal leadership and subsidy in providing for the costs of special education. Congress addressed the issue with the enactment of the Education of the Handicapped Act (EHA), now known as the Individual with Disabilities Education Act (IDEA). Under the IDEA, Congress stated that children with disabilities did not have their educational

needs met by being excluded from school and their peers. Indeed, integration into public school would ensure further education, employment, and independent living.

Prior to 1975, no comprehensive programs existed for children with disabilities. The Education of the Handicapped Act (EHA) of 1970 was later amended to include procedural safeguards and special education funding to states. It was renamed the Education for All Handicapped Children Act (EAHCA). The name then changed to the Handicapped Children's Protection Act (HCPA), followed by the Individuals with Disabilities Education Act (IDEA), and finally the Individuals with Disabilities Education Improvement Act (IDEIA).

Another law on disabilities prior to the IDEA required recipients of federal funding not to discriminate based on a child's disability. More accountability and effective individualized education was included. Initially, litigation under the Rehabilitation Act focused on employment and judicial and procedural issues. Today the act addresses substantive issues such as the level of services for disabled students. Violation of a student's rights under Section 504 of the Rehabilitation Act by a school system may result in termination of federal funds. While these sanctions are drastic (and thus unlikely to occur), monitoring and review of programming dissuades schools systems from excluding and discriminating against students with disabilities. Clarity regarding the appropriate statutes responsible for grievances by parents of disabled students was unclear until the Supreme Court held in *Smith v. Robinson* in 1984 that the Education for the Handicapped Act was the vehicle for plaintiffs to assert their claims about special education against public school systems (Womack, 2002).

Interpretation of Section 504 and EHA, now IDEA, was similar although they are different substantively. Both acts have a coordinated set of regulations with Section 504 again

emphasizing discrimination, while the IDEA addressed the duty of states to deliver special education for children with disabilities a free and appropriate education (Womack 2002).

Provision of Special Education Services

To fully understand the requirements of IDEA, a list of key terminology according to federal law used throughout the statute and the definitions follows:

Child with a disability--A child with a disability is described in the IDEA as a child having one or more of a list of disorders explicitly stated in the statute. Currently, 13 disability codes exist: Autism, Deaf-Blind, Developmental Delay, Emotional Disturbance, Hearing Impairment, Mental Retardation, Multi Disabilities, Speech Language Disorder, Specific Learning Disability, Other Health Impaired, Orthopedically Impaired, Traumatic Brain Injury, and Visual Impairment (20 U.S.C .1400 et. seq.).

Special education and related services--Special education services are defined as “specially designed instruction, provided at no cost to the parents, to meet the unique needs of a child with a disability.” Related services include transportation, assistive technology devices, speech and language services, occupational therapy, and physical therapy (20 U.S.C. § 1400 et. seq.).

Individualized educational program (IEP)--An individualized educational program is defined as a written statement for each child with a disability that is developed, reviewed, and revised according to the student’s individualized needs. The IEP must include a statement of the student’s present level of educational performance, annual goals, and short-term objectives; statement of specific special education and related services required; state the need of transition

services; the date the special education services will begin and the duration of those services; and appropriate objective assessment and evaluation procedures (20 U.S.C. § 1400 et. seq.).

Free and appropriate education--Free and appropriate education are special education and related services that have been formulated and implemented with the parent participation and consultation, provided at public expense, under supervision and direction, meet the standards set forth by the State Educational Agency; and that include preschool, elementary, or secondary programs; and are provided within a defined individualized educational plan. Procedural elements of free and appropriate education are listed by the IDEA. Parents are afforded procedural safeguards, including prior written notice, parental consent, and an opportunity to examine records, independent educational evaluation, and the right to request an impartial due process hearing. Free and appropriate education is required for all students with disabilities and the federal government mandates it through funding for special education programs (20 U.S.C. § 1400 et. seq.).

Least restrictive environment—Least restrictive environment refers to the location or environment where special education services are provided for the student with disabilities. IDEA requires programming for students with disabilities to be provided in the least restrictive setting. This refers to locations in the school setting from the regular or general education classroom environment to a more restrictive setting to include self-contained classrooms, separate school settings, and to the most restrictive environment of a hospital setting. While not a clear-cut definition, least restrictive environment states the removal of a student into a separate setting occurs only when the student cannot be educated satisfactorily in the general education classroom with the used of supplementary aids and services (20 U.S.C. § 1400 et. seq.)

The goals of IDEA include improvement of educational programming, thus closing the gap, addressing learning abilities, and mainstreaming individuals with disabilities into society (Kalaei, 2007). The IDEA guarantees children with disabilities a free and appropriate education, with an individualized educational program (IEP) to meet the child's specific educational needs in the child's least restrictive environment.

A free and appropriate education is the specific program the student is provided. It is specially designed instruction to provide the student the educational goals and skills needed based on evaluation data, observation, input from parents, teachers, and other appropriate personnel.

Specifically, an IEP according to federal law includes (1) a child's present level of academic achievement and functional performance, (2) measurable annual goals, (3) services and supplementary aids . . . to be provided to the child, (4) the extent . . . to which the child will not participate . . . with nondisabled children in the regular class (5) any . . . accommodations that are necessary to measure . . . academic achievement . . . on State and districtwide assessments, and (6) the frequency, location, and duration of those services. (20 U.S.C. § 1400 et. seq.)

Students must be placed in the child's least restrictive environment. Under the least restrictive environment, schools are required to integrate students with disabilities into general or regular classrooms to the greatest extent possible. The placement of students into separate classrooms occurs only when the severity of the disability is such that it prevents the student from achieving educational goals in a regular classroom even with the use of additional aids and services.

Congress reauthorized the IDEA in 1990 to ensure that educational needs of children with disabilities would be met. The IDEA emphasized a free and appropriate education

emphasizing educational plans and related services designed to meet their individualized educational needs (Womack 2002). A specific substantive definition for free and appropriate education does not exist. Speculation over the specifics of free and appropriate education makes a case for purposeful vagueness due to the individualization of programming for students with disabilities. The varied interpretations of free and appropriate education by school systems and parents and lack of clarity by the federal government often lead to litigation between parents and schools.

The 1997 IDEA amendments further supported the effort of least restrictive environment and recognized inclusion of students with disabilities in the regular classroom. President Clinton, who advocated a sharper focus on improved educational results for children with disabilities through greater access to the general curriculum, also emphasized inclusion.

The more recent reauthorization of IDEA in 2004 buttressed the free and appropriate education standard and addressed expectations for students with disabilities to learn academic standards, follow procedural safeguards, and added substantive, education including functional and developmental skills. IDEA 2004 focused on the quality of education and a more comprehensive approach to comprehensive student needs. In conjunction with No Child Left Behind Act in 2001 (NCLB), with a mandate to move all students to proficiency by 2014, IDEA 2004 demands quality education, and control by the federal government along with accountability (Daniel, 2008). No Child Left Behind requires all school systems to report annual yearly progress on standardized assessments, including students with disabilities (IDEA, 2004).

Litigation within the IDEA

The lack of a substantive definition of free and appropriate education, which leads to varying interpretations of the individual needs of disabled students, is a cause of litigation within the IDEA. Disputes within special education services regarding appropriate education methodology are closely related to the concept of free and appropriate education. Along with the astronomical legal costs, school districts must endure, including legal fees, expert witnesses, programming models, and professional development, school systems remain vulnerable, due to the vague and inconsistent legal interpretation of appropriate programming. Clearly IDEA 2004 and its demands of quality education and adequate yearly progress have some courts interpreting the definition of a free and appropriate education in a stricter, more demanding sense.

Litigation regarding free and appropriate education and least restrictive environment is prevalent throughout the history of IDEA. Free and appropriate education was first examined in litigation in the 1982 landmark case of *Rowley vs. Hendrick Hudson Board of Education*. In *Rowley*, the disagreement surfaced under free and appropriate education with the employment of an interpreter for a student with a hearing impairment. While the disagreement and later litigation ensued regarding appropriate programming without an interpreter and the educational success of the student, parents appealed the case to the Supreme Court. The Supreme Court interpreted *Rowley* at a minimal level due to the fact that the student was learning and achieving passing grades. Free and appropriate education was provided according to the Supreme Court. However, vague in its interpretation of free and appropriate education, *Rowley* as precedent did not provide specifics. Therefore, circuit courts vary in their interpretation of what is a free and appropriate public education (Osborne, 1992).

Some circuit courts decide the free and appropriate education standard is met when personalized services are promoted with sufficient support services, thus permitting the student to benefit from instruction (Osborne, 2002). As stated in *Rowley* (1982), a school system is not required to provide every service available. However, the standard of some educational benefit must be realized. Furthermore, *Rowley* required the opportunity for access to specialized instruction and related services and individualized instruction to provide educational benefit to students with disabilities.

Free and appropriate education must answer two procedural requirements by addressing two questions that are defined as the Rowley Standard. The Supreme Court developed a two-part test: (1) Has the state complied with the procedures set forth in the act, and (2) Is the IEP developed reasonably calculated to enable the child to receive educational benefit.

According to the IDEA, the standard for judging the appropriateness of an educational program for a child with a disability is (1) specially designed instruction for the child's unique needs and not merely what is offered to others, and (2) reasonably calculated to confer educational benefit. "Appropriate" does not refer to maximizing educational opportunities but providing instruction with sufficient support to permit the child to benefit educationally from that instruction.

In addressing the lack of specific language in *Rowley* (1982), a very minimal standard of free and appropriate education is provided. The nation's courts are split in their interpretation of a substantive free and appropriate education standard (Aron, 2005). In deciding meaningful benefit, adequate benefit, and some benefit tests, courts vary in different parts of the country. Specifically, according to Womack (2002), six Circuit Courts apply the meaningful benefit standard, five Circuit Courts of Appeals apply the adequate benefit or some benefit, and one

Circuit Court appears to apply a mixture of both. The Second, Third, Fourth, Fifth, Sixth, and Ninth Circuits apply the meaningful benefit test. The First, Eighth, Tenth, Eleventh, and D. C. Circuit Courts employ the adequate benefit or some benefit test, and finally the Seventh Circuit appears to use a mixture of the two.

Determination of benefit in programs for students with disabilities is examined when courts decide whether the student has been provided a free and appropriate education. The Circuit Courts are inconsistent in their decisions regarding whether the benefit achieved by the student from a special education program must provide meaningful or adequate benefit. This vague and inconsistent position leaves states, school districts, and parents with great uncertainty when assessing whether to engage in litigation (Aron, 2005).

In a circuit court case involving services for the student with autism, the court interpreted the two-prong test of *Rowley* (Osborne, 2002). The first prong addressed the procedural safeguards, including parental participation and membership of the IEP team. Parents, attending an IEP meeting, may also request an independent educational evaluation if they disagree with the school system's evaluations or the school system is unable to evaluate the student. The school system is not required to implement a private evaluation but clearly must consider it in educational programming. When school systems demonstrate they have included parental participation, considered independent evaluations, and other procedural safeguards, the first prong of *Rowley* is met. The second prong of *Rowley* explores whether or not the IEP is reasonably calculated to provide some educational benefit to the child. Lack of specific guidelines from the IDEA with the lack of consistent interpretation by the Supreme Court leaves Circuit Courts to decide on their own whether or not the educational program is indeed

reasonably calculated to enable the disabled student to receive educational benefit. Data and the opportunity for progress will demonstrate a program calculated for educational benefit.

Some Circuit Courts have interpreted educational benefit to mean the basic floor of opportunity (Aron, 2005). This must be determined on a case-by-case basis. Other courts interpret educational benefit as making measurable and adequate gains in the classroom. In the Fifth Circuit Court, according to *Cypress-Fairbanks v. Michael F.* (1997), four factors were set forth as an indication of meaningful benefit:

- (1) program individualization based on assessment and performance
- (2) program is provided in the least restrictive environment
- (3) services are provided in a coordinated and collaborative manner by key stakeholders, and
- (4) positive and non-academic benefits are demonstrated. Various Circuit Court cases substantiate the lack of consistency in defining “Meaningful Benefit.”

While *Rowley* (1982) decided that educational progress determined appropriate programming at a minimal level, Circuit Courts applying the meaningful benefit standard, stated the IEP must provide meaningful access and included potential of the particular student. Levels of independence and self-sufficiency of the disabled student are considerations (Kalaei, 2008). This level of programming expects the school system to employ all means necessary to provide a meaningful program for students while looking at the broad goals of functional and developmental needs, transition, and independent living. It seems these courts see the goals of the federal government as demanding requiring more than some minimal educational benefit to meet the definition of free and appropriate education. Additional regulations from the IDEA include special factors such as transportation, occupational therapy, physical therapy, speech therapy, and assistive technology. This is interpreted as examination of areas beyond academics to determine whether or not educational benefit is achieved.

“Adequate Benefit” or “Some Benefit” Circuit Courts strictly followed the test of calculating some educational benefit and procedural process followed (Aron, 2005). The IDEA does not require the best possible education or superior results. An IEP is appropriate if it is reasonably providing educational benefits, not regression, or minimal educational advancement. The degree of educational advancement may be more minimal in more severely handicapped children, but may be inappropriate for other children.

The demanding question then is this: “What is a free and appropriate education for students with disabilities?” and, furthermore, “How is educational benefit achieved”? According to federal law, instructional matters such as curricula and elements of the IEP were under the authority of the local and state educational agencies. Services for disabled children were mandated and provided, although the specifics were determined by the state educational agencies (SEAs) and individual school districts, known as local educational agencies (LEAs), were responsible for determining individual eligibility and program specifics. Special education codes and educational need determined the special education eligibility (e. g., Alabama Administrative Code, chapter 290-010-010).

When a student is determined to be eligible for special education services, the program or method of teaching and programming is discussed at the IEP meeting (Yell & Drasgow, 2000). If there is disagreement regarding the program, parents file for mediation, due process hearings, or sue the school system in court in an attempt to compel school districts to teach their child using the specific methodology of their choice.

With the most recent authorization of IDEA, programming methodology must be research-based. In cases involving methodology disputes, the courts have emphasized the centrality of individualized instruction. According to Gallegos and Shallenburger (2008), courts

generally refuse to compare the relative merits of two different methodologies. Instead they focus on whether or not a district's methodology is reasonably calculated to provide free and appropriate education to the student in question.

Of particular vulnerability for appropriate programming are children diagnosed with ASD. Due to the wide range of symptoms and needs, as well as concurrent disorders within ASD, programming is complex and requires careful examination of all facets of a child's development. No other group of children demonstrates this need more than students within the Autism Spectrum. ASD is the newest and largest growing subset of disabilities (Zirkel, 2002a).

Autism Spectrum Disorder

The term autism appears to have been first used by Swiss psychiatrist Eugen Bleuler in 1911. Bleuler defined autism as turning inward to one's self. It applied to adults with schizophrenia. Autism was thought to be a result of inappropriate parenting and distant, sometimes called "refrigerator mothers," who appeared to be somewhat cold and isolated from their children (Bettelheim, 1967).

Later Leo Kanner, while at Johns Hopkins, used the term "infantile autism" to describe children who were socially isolated, behaviorally inflexible, and had impaired communication (Brock, Jimerson, & Hanson, 2006). He noted that children he examined did not have any obvious physical differences, so the condition could not be organic. Furthermore, all the children Kanner evaluated had normal intelligence. He perceived these children to be functionally retarded. Kanner saw a skewed population of children of university personnel and personnel with high salaries. It was believed autism occurred in high socioeconomic families.

Today it is recognized that autism occurs in all socioeconomic levels and is worldwide (Heflin & Alaimo, 2007).

Autism is defined as a lifelong disorder present from birth or very early in development that affects essential human behaviors such as social interaction, the ability to communicate ideas and feelings, imagination, and the establishment of relationships with others. Autism is best characterized by a spectrum of disorders that vary in severity of symptoms, age of onset, and are often associated with other disorders such as mental retardation, language delay, and epilepsy. With this wide range of disabling conditions and individual characteristics within the spectrum, programming is often complex and must include a variety of approaches to address all co-deficit areas and individual needs. Early intervention and sustained implementation of interventions determined by the degree of impairment will determine the long-term prognosis and success (National Research Council, 2002). Autism manifests itself in the areas of communication, socialization, and behaviors repetitive and restrictive in nature (DSM, IV, 1994).

The diagnosis of autism was first included in the third edition of the Diagnostic and Statistical Manual (DSM) in 1980. The DSM is a diagnostic tool containing the psychiatric disorders used by mental health professionals in diagnosis, treatment, and differential diagnosis of mental disorders. The DSM defines the clinical or medical component of the diagnosis of ASD. Autism was initially part of the category of Pervasive Developmental Disorders. Later, the fourth edition of the DSM included ASD along with Pervasive Developmental Disorder, Asperger's Disorder, Pervasive Developmental Disorder Not Otherwise Specified, Rett's Disorder, and Childhood Disintegrative Disorder.

Autism is one of 13 special education categories employed by educational agencies in determining eligibility and programming for special education. This vast range of disorders and

characteristics within the ASD demands a range of programming options based on careful investigation and evaluation.

Children with ASD vary greatly due to the vast range of differences between students with severe autism and significant cognitive deficits as compared to students with Asperger's Disorder, who may be successful in content level standards, but have deficits that manifest weaknesses in social skills and social communication. No child exhibits the exact same characteristics with another, therefore no one program can address each child's needs.

Instructional Methodology

The National Autism Center's Guide to providing appropriate intervention to students with ASDs (2009) provides for evidence-based practices and appropriate programming that is research-based as well as evidence-based. While the No Child Left Behind Act of 2001 references research-based practices, school systems are responsible for practices that work for students with disabilities. When considering programming, professional judgment and data based decision-making, the values of families and the student participation (if appropriate) and the ability to implement programming must be addressed.

A research-based methodology is one that has been shown to be effective through systematic application of collection of data. Of the methodologies examined, applied behavioral analysis is recognized as an effective research-based program. Applied behavioral analysis is defined as the process of systematically applying interventions based upon the principles of learning theory to improve behaviors that are socially significant (Sulzer-Azaroff & Mayer, 1991).

Applied behavioral analysis is a branch of behavioral psychology that focuses on the study of observable interactions between humans and their environment. There has been considerable research conducted on how typical students and those with disabilities learn, and it focuses on improvement of instruction resulting in improvements that occur in the areas of socialization, communication, academic, self-help skills, and addressing decreasing inappropriate or challenging behaviors. Applied behavioral analysis is a framework and not a specific program.

The field of applied behavioral analysis originated with the study of the science of behavior. Applied behavioral analysis contains two core elements:

1. The application of operant conditioning, where behavior is the focus and develops and changes as a result of interactions with the environment. In the area of education, stimulus control and reinforcement are managed for learning and instruction. Within this structure instruction is efficient, effective, significant, generalized, and replicable.
2. From theory to documentation applied behavioral analysis is assessed through ongoing observational data. Skill acquisition is monitored and both therapist and parent provide the instruction. (Heflin & Alberto, 2001, p. 178)

Supplemental to these views, Heflin and Alaimo (2007) provide intervention approaches for children with autism within three broad categories:

1. Relationship approaches address the lack of socialization and believe the core deficit in ASD is the failure to develop an attachment for and relationship with other people. The lack of relatedness or attachments is the premise of this approach. The neurological differences are the cause and this approach emphasizes unconditional acceptance, and student-led contact with others. There is no skill component, but adults stay near the child and attempt to engage him in activities he prefers.

2. Skills-based approaches address deficits that can be minimized through explicit instruction. Assessing the skill deficit area, teaching the skill systematically, and collecting data

to determine effectiveness characterize this approach. This approach employs the components of applied behavioral analysis.

3. Physiologically-based approaches address sensory and neurological functioning. The goal is improvement of behavior and relatedness. Psychopharmacologic, dietary supplements, restrictions, and various sensory programs characterize this approach. Effectiveness is either not shown or is based on testimonials that are not validated and caution is warranted in this approach.

A combination of the three approaches is often employed by school systems. This method is primarily skill-oriented and does incorporate aspects from the other two approaches and attempts to address the comprehensive needs of the students with autism.

Yell and Lowrey (2005) stated similar core elements of effective educational practices for students with ASD which they say include the following:

1. Individualized supports and specific services tailored to meet the unique needs of the student with autism, including considering family preferences regarding curriculum, an appropriate program that reflects a student's preferences and interests
2. Systematic instruction with various teaching strategies to achieve outcomes that guide instruction
3. Structured learning environments with routines and addressing behavior expectations
4. Specific curriculum content including and emphasizing language and social interaction
5. Functional approach to problem behavior to include skill development
6. Family involvement with parents knowing their children best.

As school systems struggle with the growing numbers of students with autism, programming is often the greatest area of disagreement (Gallegos & Shallenberger, 2008). Additionally, parents of students in early intervention, from birth to age 2, often receive programming of one-on-one applied behavioral analysis therapy in the home setting. Therapists, trainers, and parents implement the programming. Then parents demand that this programming continue when students become eligible for the public school setting at age 3 or older.

According to Heflin and Alaimo (2007), applied behavioral analysis is a theoretical framework for promoting behavioral change. According to the National Research Council (2002), the bulk of intervention research has been conducted on applied behavioral analysis. Applied behavioral analysis is any method that changes behavior in ways that are systematic and measurable. Applied behavioral analysis provides opportunities to learn new skills in a contained, distraction-free environment. The skills are broken down into parts or discrete trials, and behavior is rewarded when appropriate responses or movements occur.

Often applied behavioral analysis is referred to as Lovaas Therapy and/or Discrete Trial Training. Applied behavioral analysis is the framework and discrete trial training is an important component of applied behavioral analysis but not the program. Lovaas (therapy) is also used interchangeably, but Lovaas is 30 to 40 hours weekly of discrete trial training provided by a team of three to six trained team members who have had extensive training in “Lovaas Therapy” (Johns, 2006). In discrete trial training, tasks are broken down into short simple pieces or trials. The discrete trial is a single cycle of a behaviorally-based instructional routine. Every task that is given to a child consists of a request to perform a specific action, a response from the child, and a reaction from the individual working with the child. The specific trial may be repeated several times in a row, several times a day, or longer until the skill is mastered.

Much of the confusion arises from the fact that various strategies derived from behavioral principles that are found in applied behavioral analysis exist in other programming techniques as well (Heflin & Alberto, 2001). Because children within the autism spectrum demonstrate deficits in human behaviors such as socialization, communication, and the ability to relate to others, the principles of applied behavioral analysis are an important part of skill acquisition and generalization. The principles of applied behavioral analysis provide educators the opportunity

to select from a broad array of strategies that will help students with autism by linking performance to student instructional outcomes. They must contain an opportunity for communication, socialization, and address behavior in the educational setting.

The most current research on programming for children with autism, from the National Autism Center (2009), provides a listing of established treatments, emerging treatments, and unestablished treatments in providing appropriate interventions to students within the autism Spectrum. The treatments are all based on behavioral principles, developmental psychology, and special education. They provide instruction and programming based on the deficit areas. Data are obtained and provide substantiation of intervention and skill acquisition.

Various programming strategies are necessary for initiation of acquired skills, transfer of those skills to new settings, and more independent learning (Gallegos & Shallenberger, 2008). School systems and parents must work together to provide appropriate services for students within the Autism Spectrum. School systems must be open and willing to listen to and work with parents regarding student programming.

In order to provide a legally-defensible program for students with ASD, school systems must become familiar with common methodologies, provide appropriate training to certified and non-certified staff members, thoroughly evaluate students in all suspected areas, provide programming and methodologies that are appropriate for the student, monitor programming, collect data, and make decisions based on data, evaluations, and monitor progress consistently (Brock, Jimerson, & Hansen, 2006).

Parents seeking to implement alternative strategies such as Lovaas applied behavioral analysis training at the expense of the school district challenge the appropriateness of the child's IEP. Parents are entitled to an impartial due process hearing provided by the state or local

agency that is conducted with a hearing officer. If the parents challenge the findings of the hearing officer, they may bring action in a state or federal district court. The court then applies the two-prong Rowley test to assess the procedural and substantive merits of the claim (Womack, 2002).

According to Aron (2005), courts around the country seem to form patterns. They attempt to determine the benefit and progress of the disabled student and examine the school systems' following of procedural safeguards.

A Ninth Circuit Court found in *Wiles-Bond v. the State of Hawaii* (2008) that deteriorating behavior, which included the use of restraints, demonstrated the inappropriateness of the current IEP and therefore the parent was entitled to private services, attorney's fees, and supplementary educational services. The lesson learned is that the courts will not always defer to the school system if the district's methods and program do not produce positive results.

According to *Sanford School Committee v. Mr. L.* (2001), a First Circuit Court found for the parent when a teacher of a student with autism was not properly trained to provide services. Placement for a student with autism in a cross-categorical program instead of the parent's applied behavioral analysis Lovaas program was considered insufficient for a student when the expert witness and the school system's autism experts stated the child was incapable of receiving any educational benefit. The parent was awarded the costs of the school's Lovaas program as well as the home Lovaas program.

In *Z. J. v. Audubon Board of Education* (2007), the court found for the parents of a child with autism who was in a regular education program where her behavior became problematic and self-abusive acts as well as emotional outbursts occurred. The court found for the parent

because no behavior management was provided, as well as related services, and extended year services

In *J. P. v. County School Board of Hanover County, Va.* (2006), a student with regular education and special education services along with a parent-provided home Lovaas program found for the parent due to the lack of sufficient evidence that the educational methods provided by the school were tailored to meet the child's individualized needs

According to Osborne (1992), the Supreme Court in *Rowley* determined that state and local education agencies have primary responsibility for choosing educational methods for students with disabilities. Courts recognize the rights of the state and local agencies. Courts cannot substitute their own point of view in determining appropriate methods in place of those determined by the state or local school system. IDEA stated that school systems have the responsibility of adopting promising educational practices and materials.

According to a Seventh Circuit Court in *J. K. v. Metropolitan School District Southwest Allen County, Indiana* (2006), the school system made substantial decisions regarding methodology and the parents do not have the right to compel a school system to provide a specific program or employ a specific methodology.

According to a Sixth Circuit Court, in *Burilovich v. Board of Education of the Lincoln Consolidated School* (2000), a Lovaas methodology case found for the school system, as their IEP was judged appropriate even though the parents provided a home program at their own expense. The court found the lesser-cost program, which provided the child to reach her maximum benefit, was appropriate.

It appears some of the previous cases substantiate the right of the state or local educational agencies to choose and provide appropriate programming for students with autism

based on their chosen methodology. The programming, and IEP, must be determined to be appropriate and demonstrate it was calculated to provide educational benefit for the student. Some states have chosen to implement higher standards for the education of disabled children. For example, Michigan has chosen to enhance IDEAs requirements, yet the courts have not defined the term maximum potential (*McLaughlin v. Holt Public Schools Board of Education*, 2002).

In *D. D. v. New York City Board of Education* (2007), New York provided applied behavioral analysis in-home services for students in the Early Intervention Program on a first-come first-served basis. Parents sued for their play therapy and won the case when the district court found the proposed programming was inappropriate.

In *N. G. v. Frieden, New York Department of Health and Mental Hygiene* (2009), parents invoked the recommendation of a physician in determining the medical disability of the student and thus recommended applied behavioral analysis therapy. In a New York case, the courts found for the parent when the school system's expert did not know the student and the doctor's medical statement held some extra weight.

Summary

In order to demonstrate that the IEP is appropriate, school systems must provide services for students with autism based on individualized needs, programs that provide educational benefit or growth, and alternative services necessary for the child's educational programming.

It is clear from the literature that the inconsistencies in the courts and lack of clarity from the Supreme Court should deter parties from relying on previous cases. The *Rowley* two-prong

test will be the measure of the appropriateness of the IEP, yet its vague interpretation leaves the door open for further interpretation

School systems can be successful against parental claims for programming when procedural requirements of the IDEA are followed, allowing the parents to be heard and giving their opinions as members of the IEP team, offering educational options for their child, and demonstrating appropriate services based on data to make decisions. School systems must make use of the money allotted special education programs in an effective and efficient manner as well as provide defensible programming for all students with disabilities.

School systems are vulnerable to litigation and long-term disagreement and dissension with parents, as they are responsible for providing services for children with disabilities from 3-21. Only with an understanding of legal components of IDEA, NCLB, research- and evidence-based methodologies, and various Circuit Court decisions can school systems provide a legally defensible program that addresses the individualized programming for children with disabilities.

It is clear from the literature that there is a need to review court cases involved with programming for ASD students; particularly with respect to applied behavioral analysis.

CHAPTER III

RESEARCH METHODS

The purpose of this study was to analyze the federal court cases concerning children with ASD and the methodology of applied behavioral analysis from 1999-May 2010. In addition, a wide variety of sources were consulted and reviewed to provide a comprehensive analysis of the case law.

This is a qualitative research design focusing on meaning in context and interpretive research (Merriam, 1998). It is an effort to understand specific contexts within court cases. According to Erickson (1986), the most distinctive characteristic of qualitative research is its emphasis on interpretation. In qualitative studies, research questions seek patterns of unanticipated as well as expected relationships (Stake, 1995).

Federal and state court case data was evaluated and multiple constructs were developed based on understanding of the data. Analysis of the data produced guiding principles and recommendations for school administrators in developing and providing appropriate, legally defensible programming for students with autism.

Research Questions

1. What fact patterns led to the federal and state court cases regarding ASD and applied behavioral analysis between 1999-May 2010?

2. What issues arose in federal and state court cases regarding ASD and applied behavioral analysis between 1999-May 2010?
3. What was the outcome for federal and state court cases regarding ASD and applied behavioral analysis between 1999-May 2010?
4. What administrative guidelines can be discerned from federal and state court cases regarding ASD and applied behavioral analysis between 1999-May 2010?

Research Materials

Materials used in this study included judicial court decisions from the United States Supreme Court, the United States Courts of Appeal, the United States Federal District Courts, and State Courts from the time period of 1999-May 2010. This time period was selected in order to obtain a substantial number of cases to determine patterns, categories, or themes.

Research Procedures

The following procedures were used to gather data for this study:

1. A word search using standard legal resources of WESTLAW was made in order to locate and identify United States Supreme Court, United States Courts of Appeal, and United States District Court and State Court cases related to ASD and programming with applied behavioral analysis. A follow up with Individuals with Disabilities Education Law Report (IDELR) indexes were also implemented.
2. Case brief methodology analyzed each case as outlined by Statsky and Wernet (1995) in their book *Case Analysis and Fundamentals of Legal Writing*.

3. Data from the case briefs was analyzed qualitatively, with a particular focus on fact patterns, issues, outcomes, and trends in the court decisions, rooted upon a content analysis from the case briefs.

4. Guidelines and principles regarding appropriate programming for students with ASD was offered for school administrators from court decisions analyzed qualitatively.

Search for Court Cases

The cases in this study were limited to cases heard by the United States Supreme Court, the United States Court of Appeals, and United States Federal District Courts, and State Courts which addressed programming for students with autism and applied behavioral analysis. The search for court cases was conducted using the WESTLAW computerized research system. A word search methodology using IDELR was also completed electronically. General descriptors used in the word searches included ASD, free and appropriate education, least restrictive environment, and applied behavioral analysis.

Analysis of Court Cases

This was a qualitative study of research, historical in nature, and using court cases as source documents. Legal research over a 10-year time period allowed the researcher to examine legal precedents interpreting federal law and reauthorizations of IDEA as applied to the research questions. Through content analysis, data reduction, and interpretation, categories, patterns, and themes were recognized. As data were collected and compared, understanding and interpretation of data produced guidelines in programming for students with ASD.

Each case was reviewed using a standard form of analysis provided by Statsky and Wernet (1995) in their book, *Case Analysis and Fundamentals of Writing*. The outline for the case brief method in this study was as follows:

1. Citation: Identifying the information that enables you to find a law, or material about law, in the law library.
2. Key Facts: A fact that is essential to the court's holding. A fact that would have changed the holding if that fact had been different or had not been in the opinion.
3. Issue: A specific legal question that is ready for resolution.
4. Holding(s): The answer to a legal issue in an opinion; the results of the courts application of one or more rules of law to the facts of the dispute.
5. Reasoning: The explanation of why a court reached a particular holding for a particular issue.
6. Disposition: The order to the court as a result of its holding.

From a procedural viewpoint, the case briefing methodology is proxy for the interview question asked of the judge in a qualitative data-gathering methodology.

Methodology

Analysis of data involves consolidating, reducing, and interpretation of court decisions. According to Merriam (1998), data collection is a simultaneous activity in qualitative research. It begins with the first document read. Emerging insights, hunches, and tentative hypotheses direct the next phase of the study. It leads to refinement or reformulation of the questions. Patterns and themes, categories and subcategories are most commonly constructed with data analysis. A

unit of data, according to Lincoln and Guba (1985), will be identified and reveal information that can stand by itself.

Through content analysis, comparison of data into bits of information, then assigning these bits into categories or classes, and then bringing this information together provided themes. Theorizing the data provided integration and refinement of categories, leading to a tentative hypothesis and thus meaning of the data.

Changes in data over time allowed the researcher to follow the legal developments of educational law as it relates to educational programming for students with ASD. In addition, federal laws and reauthorization of IDEA were evaluated within the context of specific court decisions.

Summary

It is imperative for school administrators to examine and understand appropriate and legally-defensible programming for public school students with ASD. A thorough knowledge of special education law and data analysis of court decisions can provide school personnel with knowledge and understanding of law and legal precedents. Furthermore, data analysis can provide guidelines and principles for school administrators in implementing programs that meet the needs of the student and are legally defensible.

CHAPTER IV

DATA

Introduction

This chapter includes an analysis of the cases in the sample and their reduction to case briefs, followed by data drawn from the case briefs and an analysis of this data derived from the case briefs. A research sample consisted of 92 federal court cases at the Circuit and District level concerning autism and applied behavioral analysis methodology. The cases covered a time span from 1999 through May 2010. The cases were analyzed and briefed in case format developed by Statsky and Wernet (1995) in *Case Analysis and Fundamentals of Legal Writing*.

Case Briefs

Citation: *Joshua A. ex rel. Jorge A. v. Rocklin Unified Sch. Dist.*, 319 Fed. App'x. 692 (9th Cir. 2009).

Facts: This case involved an appeal to the Ninth Circuit from a decision of the United States District Court for the Eastern District of California. The case involved a claim filed pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of Joshua A., an autistic public school student, against the Rocklin Unified school district. The District Court had affirmed an earlier opinion by an administrative law judge (administrative law judge), which had held that the school district had provided Joshua A. with a free appropriate public education (free and appropriate education) as required by the IDEA.

Upon appeal to the Ninth Circuit, the student initially argued that the District Court had abused its discretion in its giving of due weight to the findings of the administrative law judge. The student further argued that the school district had procedurally violated the IDEA by failing to incorporate all of the goals suggested by the student's private provider into his IEP and by failing to include one of the student's private school teachers in the IEP team meetings. The student finally argued that the IEP offered by the school district was substantively inadequate, as the IEP failed to provide a meaningful benefit as that term is defined by the IDEA and that the "eclectic" methodology designated by the IEP was not based on peer reviewed research.

Issue: Whether the District Court erred (1) in giving due weight to the opinion by the administrative law judge, (2) in its finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in its finding that the IEP substantively provided meaningful educational benefits to the student, and (4) in its finding that the school district's use of an eclectic methodology was not a substantive violation of the IDEA.

Holding: The Ninth Circuit held that the lower District Court did not err in giving due weight to the opinion by the administrative law judge and that the District Court did not err in finding that the school district's IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The Ninth Circuit initially held that the District Court did not err in giving due weight to the opinion by the administrative law judge. Following its review of the record, the Ninth Circuit concluded that the findings by the administrative law judge were consistent with and supported by the testimony of several of the experts who had testified at the hearing. The student's procedural challenges were also rejected by the Ninth Circuit due to its conclusion that none of the challenges "resulted in the loss of educational opportunity or seriously infringed

upon the parents' opportunity to participate in the IEP formulation process, or . . . caused deprivation of educational benefits." Finally, the student's substantive challenges that the District's program failed to provide a meaningful benefit as required by the IDEA and that the District's program violated IDEA because it was not based on peer-reviewed research were rejected. The Ninth Circuit concluded that the evidentiary record supported the administrative law judge's finding that the District's program provided a meaningful benefit as the record demonstrated that the student's program was reasonably calculated to provide "some" educational benefit as required by IDEA. In rejecting the student's additional challenge to the District's eclectic educational program, the Ninth Circuit found upon its review of the record that the eclectic approach, while not itself peer-reviewed, was based on "peer-reviewed research to the extent practicable" as required by the IDEA.

Disposition: The judgment of the District Court was upheld in its entirety.

Citation: *Dong ex rel. Dong v. Bd. Of Educ. of the Rochester Cmty. Sch.*, 197 F.3d 793 (6th Cir. 1999).

Facts: This case involved an appeal to the Sixth Circuit from a decision of the United States District Court for the Eastern Shore of Michigan. The case involved a claim filed pursuant to the Individuals with Disabilities Act (IDEA) on behalf of Lisa Dong, an autistic public school student. The District Court affirmed an earlier opinion by a State Hearing Review Officer (SHRO), which held that the school district had provided Lisa Dong with a free and appropriate education (free and appropriate education) as required by the IDEA.

The appeal to the Sixth Circuit stated the District Court abused its discretion in agreeing with the State Hearing Review Officer. The student further argued that the placement was not appropriate, an expert was necessary in the teaching method preferred by the parents, the IEP

was procedurally defective due to the proposed significant change in placement without a comprehensive evaluation, parent participation in the IEP process was violated, the IEP failed to consider the child's unique needs. The substantive requirement of Michigan and the IDEA was not met in designing the IEP to develop the child's "maximum potential," and denying leave to amend the complaint to assert class action claims

Issue: Whether the District Court erred (1) in giving due weight to the opinion by the SHRO; (2) in its finding that the alleged procedural violations by the school district did not violate the IDEA by allowing the school system to provide programming eclectic in nature by implementing the Teaching and Education of Autistic and related Communication Handicapped Children (TEACCH) methodology along with Discrete Trial Teaching (discrete trial training) programs; (3) in its finding that the IEP substantively provided meaningful educational benefits to the student; and (4) in not allowing leave to amend the complaint in initiating class action claims based on all other students with autism requesting applied behavioral analysis/Lovaas methodology.

Holding: The Sixth Circuit held that the lower District Court did not err in giving due weight to the opinion by the SHRO and that the District Court did not err in finding that the school district's IEP met the procedural and substantive requirements of the IDEA. Additionally, the heightened standard incorporated in Michigan does not mean "absolutely best" or "potentially maximizing" education, but whether the proposed placement was reasonably calculated to provide educational benefits.

Reasoning: The Sixth Circuit held that the District Court did not err in giving due weight to the opinion by the SHRO. Review of the record indicated the findings of the SHRO were consistent with the proposed programming offered by the school district. The student's

procedural challenges were also rejected by the Sixth Circuit due to strict review of the IEP for procedural compliance did not find it invalid with technical deviations. Placement decisions made by persons knowledgeable about the child while considering evaluation and placement data, do not require the District to include an expert in the teaching method preferred by the parents. The District staff members were “extremely well qualified in the area of autism treatments, and they were fully qualified to determine of a group or one-to-one setting would be best.” The plaintiffs asserted the IEP is procedurally defective because it proposed a “significant change in placement.” Whether a proposed change in placement triggers procedural protections depends on the child’s learning is affected in some significant way. Any procedural violation was considered technical and not substantive. The plaintiff contended the District Court erred in concluding the parental participation requirement was satisfied. The plaintiff parents were afforded an opportunity to participate in discussions and decision-making during IEP meetings. The alleged Substantive Violations were based on the individual uniqueness of the student’s needs. The Sixth Circuit found the District Court and SHRO found the school district did consider the individual needs of the student finding the plaintiff expert offered usual and customary recommendations not geared to the student specifically. Competing methodologies are the crux of the disagreement. The Sixth Circuit Court agreed with the District Court and SHRO finding the individual needs of the student were being met by the program and staff designed IEP provided the student a free and appropriate education (free and appropriate education) as required by the IDEA. Finally the substantive requirement that the IEP be designed to develop the students “maximum potential” found that the Districts program was better designed to develop the students’ potential rather than the more restrictive discrete trial training program. Michigan’s maximum potential standard “does not require the best education

possible” or require “a model education, adopting the most sophisticated pedagogical methods without fiscal or geographic constraints.” The Sixth Circuit agreed with the District Court and SHRO that the IEP offered provided an free and appropriate education in the least restrictive environment. Finally, the request for a motion for summary judgment for remaining claims based on a class action suit was dismissed due to individual claims dismissed and the failure by the plaintiff to sufficiently allege facts that the class would be so numerous and the joinder of all members was impracticable.

Disposition: The judgment of the District Court was upheld.

Citation: *Adams ex rel. Adams v. Oregon*, 195 Fed. 3d 1141 (9th Cir. 1999).

Facts: This case involved an appeal to the Ninth Circuit from a decision of the United States District Court for the District of Oregon. The case involved a claim filed pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of Lucas Adams, an autistic student in an Early Intervention Services (EIS) program. The District Court had affirmed an earlier opinion by a hearing officer which had held that the school district has provided Lucas Adams with a free and appropriate public education (free and appropriate education) as required by the IDEA.

Upon appeal to the Ninth Circuit, the plaintiff argued that the District Court had abused its discretion in upholding the findings of the hearing officer. The plaintiff sought reimbursement under the IDEA of expenses incurred for professional services they engaged over and above the early intervention services funded by the state and county educational service district. The initial EIS program offered compromised at 12.5 hours per week as Lucas was age 2 and the team questioned the ability of Lucas to maintain and attend to services more than 2.5 hours per day. The team including the parent agreed and 12.5 hours of weekly services were

provided. The Adams then supplemented services with private tutoring services. The parents expressed satisfaction with the Individual Family Service Plan (IFSP) and did not seek reimbursement for the private services. These EIS services continued to be provided by the Center Development Center (CDC) with a behavioral program with substantial, but not exclusive employment of discrete trial activities. The program was provided until late spring. The team then recommended a reduction of services so staff could go on vacation during the July-September timeframe. Parents initially agreed stating that the private tutors would have extra time during those months to make up for the reduced CDC services. Parents then removed Lucas from services to attend private services in Portland over the summer. Parents then filed for reimbursement of expenses incurred from private and private summer services. The family argued the IFSP was inadequate because it did not provide services appropriate for Lucas unique needs.

Issue: Whether the District Court erred (1) in giving due weight to the opinion by the hearing officer; (2) in its finding that the IFSP substantively provided meaningful educational benefit to Lucas; (3) in its finding that the EIS use of an eclectic methodology was not a substantive violation of the IDEA.

Holding: The Ninth Circuit held that the lower District Court did not err in giving due weight to the decision by the hearing officer and that the District Court did not err in the EIS program provided for the student. It did err however, in the shortened extended school year services provided when it recommended less hours based on the availability of staff.

Reasoning: The Ninth Circuit initially held that the District Court did not err in giving due weight to the opinion by the hearing officer. Review of records indicates the IFSP provided was developed by appropriate staff including parents, with the team agreeing to the number of

hours of programming and subsequent meetings confirmed the parents desire to supplement programming at their own cost. Substantive requirements challenges were rejected due to the program being based on research findings and abbreviated due to Lucas young age and reduced tolerance. The Ninth Circuit did find a substantive violation for the student in reduction of the hours of ESY programming based not on the unique needs of the student, but the availability of staff during vacation time.

Disposition: The judgment of the District Court was affirmed in part, reversed in part, and remanded to the District.

Citation: *Renner v. Bd. Of Educ. of Pub. Sch. Of Ann Arbor*, 185 F.3d 635 (6th Cir. 1999).

Facts: This case involved an appeal to reverse a decision pursuant to the Individuals with Disabilities Education Act (IDEA) and Michigan Mandatory Special Education Act (MMSEA) from a decision from the District Court for the Eastern District of Michigan. The District Court granted the districts motion for summary judgment and parents appealed to The Court of Appeals, Wellford. The Court of Appeals held that the district's Individualized Educational Plan (IEP) provided the student with a free and appropriate education (free and appropriate education) and the IEP was designed to develop the student's maximum potential as required by MMSEA.

Upon appeal to the District Court, the judge reviewed findings of the local hearing officer (LHO) and examined the findings of the State Hearing Review Officer (SHRO). The decision of the LHO found for the plaintiffs and the district appealed. The decision of the LHO was found to be based solely on expert testimony of the plaintiffs witness and according to the SHRO was limited in examination of evidence. The SHRO reversed the decision finding the IEP was adequate and valid. The burden of proof belonged to the plaintiff rather than the defendant.

Procedural requirements of the IDEA were examined. The plaintiff disagreed with the IEP team make up of one general education teacher and one staff member trained in autism. The SHRO found any technical violation did not render the IEP as inadequate. Substantive violations sought the appropriateness of the IEP based on the student's unique needs. This is a case of methodology. The plaintiff wanted Discrete Trial Training (discrete trial training) based on the Lovaas Method of applied behavioral analysis . The district proposed an IEP to include both discrete trial training. The testimony by the plaintiff and districts expert witnesses provided appropriate programming suggestions to the IEP team. The districts staff of teachers, therapists and school district staff developed an IEP unique to the student's needs. Substantive requirements were met. The Standard of Review was defined as a "modified de novo review." The language in the IDEA "is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review...." Furthermore, "federal courts are not generalists with no expertise in the educational needs of handicapped children, and will benefit from the fact finding of a state agency with expertise in the field."

The Burden of Proof lies with the plaintiff. The courts must concern themselves with the "process by which the IEP is produced, rather than the myriad of technical terms that must be included in the written document."

The parents have "the burden of proving by a preponderance of the evidence that the IEP was inadequate."

Issue: Whether the District Court erred (1) in giving due weight to the decision of the SHRO; (2) in its finding that the alleged violations by the school district did not violate the IDEA (3) in finding that the IEP substantively provided maximum educational benefits to the

student based on Michigan law and (4) in its finding that the school districts use of a methodology that was eclectic in nature including discrete trial training programming sought after by the parent and was not a substantive violation of the IDEA.

Holding: The Sixth Circuit held that the lower District Court did not err in giving due weight to the opinion by the SHRO in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The Sixth Circuit held that the District Court did not err in giving due weight to the opinion of the SHRO. Following review of the record, the Sixth Circuit concluded that the findings of the SHRO were consistent with and supported by the testimony of experts as well as school district personnel. The students procedural challenges were rejected by the Sixth Circuit due to any technical violation did not render the IEP inadequate. Finally the students substantive challenges that the Districts program violated the IEP because it did not provide maximum educational benefits as outlined in MMSEA were rejected. The Sixth Circuit found upon review that the IEP was appropriate. The Michigan enhancement of the IDEA that an IEP be “designed to develop the maximum potential” of the handicapped child may be more precatory than mandatory. It does not require the “best education possible.” plaintiffs are not entitled to prescribe or require a specific desired methodology. Since Michigan does not define the phrase “maximum potential” the programming developed does not contain limitless options. The needs of the student must be balanced with the needs of the state to allocate scarce funds among as many handicapped children as possible. An appropriate and adequate IEP offered by the school system to meet the “maximum potential” of the child in light of his abilities and needs.

Disposition: The decision of the District Court was affirmed.

Citation: *T.H. ex rel. L.H. v. Bd. of Educ. of Palatine Cmty. Consolidated Sch. Dist. 15*, 1998 WL 850819 (D. N.D. Ill. 1998).

Facts: This case involved the parents of a student with autism, who brought action under the Individuals with Disabilities Education Act (IDEA) against the school system to enforce an administrative decision requiring the district to pay for the child's home based education program. The school district cross claimed the Illinois State Board of Education seeking reimbursement if they were found liable. The District Court judge found (1) the districts individualized educational program (IEP) violated the IDEA, (2) the student's home-based program was reasonably calculated to enable the students to receive educational benefit, (3) parents would receive full reimbursement for their home program, and (4) the school districts failure to comply with the IDEA could not be charged to a state agency.

Issue: Whether the hearing officer erred in finding for the plaintiff in ordering reimbursement of the home-based program. Level I of the administrative hearing provided the parents with a decision that the district must reimburse the parents for their home-based program through the development of an IEP that would implement the student's full applied behavioral analysis Discrete Trial Training (discrete trial training) 38-hour-a-week individually structured one-on-one instruction for 1 year. Extended school year services were part of the IEP to prevent regression and a behavior management plan was developed and written with measurable standards for mastery of specific goals and objectives. The reimbursement ordered was retroactive for training, materials and supplies from the date the order was received and to prospectively reimburse the parents for the program or a portion of it until the student is eligible for kindergarten. Level II of the hearing was an appeal by the District regarding the hearing officer at Level I applying an erroneous standard to assess the Districts IEP providing

“appropriate educational placement.” The District presented the methodology disagreement and stated the district, not the parents, have the primary responsibility for “choosing the educational method most suitable to the student’s needs.”

Holding: The District Court confirmed the decisions of the hearing officer at Levels I and II. The IEP and placement developed by the District did not meet the requirements of IDEA.

Reasoning: The District Court held that the program and IEP developed for the student was inappropriate and did not meet the requirements under IDEA. Furthermore, the Court upheld the decisions by hearing officers at Levels I and II requiring the reimbursement to the parents for the one-on-one home based applied behavioral analysis, discrete trial training program. Additional reimbursable costs of training, materials, and future programming needs were also ordered. The District is responsible for these costs, not a state agency. Attorney’s fees were also awarded to the parents.

Disposition: The judgment of the Hearing Officers Levels I and II were upheld in their entirety.

Citation: *A.M. ex rel. R.M. v. Fairbanks North Star Borough Sch. Dist.*, 2006 WL 2841054 (D. Alaska 2006).

Facts: This case involved an appeal to the District Court from a decision from an administrative hearing officer. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of a preschool student with autism. The District Court affirmed an earlier opinion by an administrative hearing officer which held that the school district had provided the student with a free and appropriate education (free and appropriate education).

Upon appeal to the District Court, the student argued that the procedural requirements of the IDEA were violated by non-participation of the parents in the IEP process, evaluation results were withheld from the parents, the program was not individually administered to the student but a half day program of 13 hours was offered to all students. The substantive requirements of the IDEA were also challenged by the student regarding the program not providing the applied behavioral analysis discrete trial training parent preferred program.

Issue: Whether the hearing officer erred (1) in finding the alleged procedural violations by the school district did not violate the IDEA (2) the program and methodology developed by the District did not violate the substantive requirements of the IDEA.

Holding: The District Court held that the administrative hearing officer did not err in finding the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court held the administrative hearing officer did not err in finding the procedural challenges were met by the District. The parents were involved in meetings by their requests to have more extensive day services and any harmless error in evaluation results did not result in loss of educational opportunity. The substantive challenges were met with the option of the programming to include the applied behavioral analysis/discrete trial training techniques were offered and included in the IEP discussion. The Districts program provided adequate benefit required for the student to progress and the IEP was reasonably calculated to provide some educational benefit as required by the IDEA.

Disposition: The judgment of the hearing officer was upheld by the District Court for the school district.

Citation: *Sch. Bd. of Martin County v. A.S.*, 727 So. 2d 1071 (Fla. 4th Dist. App. 1999).

Facts: This case involved an appeal to the State Fourth Circuit from a decision of the District Court. The school board sought review from an administrative law judge regarding an order for the school system to provide 15 hours of Lovaas one-to-one therapy for a child with autism.

On appeal to the District Appeals Court of Florida, the administrative law judge initially found there was no issue with the district's program. It was providing educational benefits to the student. The school board further argued that the administrative law judge exceeded authority in ordering additional one-on-one Lovaas therapy services since the current IEP program of the fifteen hours of one to one and two to one therapy was found to provide benefit.

Initially the 5-year-old student diagnosed with autism entered public school after preschool services were provided privately. At the time of entering public school, the parents acquired training in Lovaas-type training. The following year the school system evaluated the student and made recommendations in an IEP for a program in a model school program. The parents did not disagree with the IEP but demanded one-to-one discrete trial training. The administrative law judge ordered the school board to modify the IEP to include 15 hours per week of one-to-one discrete trial training rather than the current one-to-one and two-to-one therapy.

Issue: Whether the administrative law judge erred (1) in findings of facts that are supported by substantive evidence, (2) violated the law in requiring a specific type of methodology, and (3) abused his discretion in ordering the school board to modify the IEP.

Holding: The Fourth Circuit held that the administrative law judge did err in giving weight to the requests of the parents and found the school district's IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The Fourth District held that the administrative law judge did err in giving due weight to the parents request for a type of methodology. The courts and parents cannot dictate the methodology by which educational services are delivered to school systems. Educational benefits provided under the IDEA must be more than trivial or de minimis, but they must be meaningful, there is no requirement to maximize the child's potential. The child's parents did not argue that the IEP was procedurally deficient or the services were inadequate. They only issue raised was whether the IEP was reasonably calculated to enable the child to receive educational benefits through a specific type and quantity of therapy.

Disposition: The decision of administrative law judge was reversed finding for the school district.

Citation: *M.E. ex rel. C.E. v. Bd. of Educ. for Buncombe County*, 88 F. Supp. 2d 493 (D. W.D. N.C. 1999), *rev'd in part*, 241 F.3d 374 (4th Cir. 2001), *cert. denied*, 534 U.S. 818 (2001).

Facts: This case involved an appeal to the Fourth District in the Asheville Division of the North Carolina. The case involved a claim filed pursuant to the Individuals with Disabilities Act (IDEA) on behalf of C.E., a young child with autism, against the Buncombe County Public Schools. The plaintiffs claimed the school district denied a free and appropriate education (free and appropriate education). The administrative law judge found the plaintiffs failed to initiate a proceeding for due process hearing during the 60-day statute of limitations prescribed by the North Carolina Administrative Procedure Act.

The plaintiffs moved to North Carolina from Maryland. At that time the plaintiff, a 4 year old had been diagnosed with autism and the family had been providing their son with Lovaas therapy in the home for between 35 and 40 hours per week. A meeting was held with the plaintiff at which time his proposed placement in a preschool classroom with a special education

teacher trained in the TEACCH methodology. The placement recommendation was rejected by the parents. Within 30 days the parents were offered extended school year services to the child or to provide in-home services three times per week. These services were also rejected by the plaintiffs. Within 3 months the parents agreed to limited services in the form of one and one half hours of direct special education and speech therapy. The following month the parents again asked the District to consider funding the child's Lovaas therapy. Three months later, the plaintiffs presented an IEP written by a Lovaas institution. The District presented their IEP made minor modifications as requested by the plaintiffs and asked them to notify the District if they would accept it as it entailed the hiring of additional staff. The next month the District's attorney wrote to the plaintiffs and again asked if they wished to implement the IEP. No response was ever received and the IEP was never implemented.

Prior to the next school year, the District sent the plaintiffs a letter invitation to a conference to discuss whether the child would be placed in kindergarten. The parents attended the meeting, asked that the child's file be sealed and it was determined the child no longer needed special education services. He was removed from the program and the parents were provided a copy of their rights. Within the next month the parents again requested reimbursement for the Lovaas therapy and threatened to initiate a due process if a response was not received within ten days. A letter from the District was sent within the timeframe. The District declined the request and advised that a counteroffer could not be proposed until approval was received from the school board. Through communication from the District's attorney, the parents were advised of the recent authorizations in the IDEA and this copy of the law was placed with the parent rights and mailed. An addendum to the rights was included in the mailing

explaining that petition for due process hearing must be filed within 60 days of written notice of the contested action.

Issue: Whether the plaintiffs have shown that their petition for due process was filed timely. The plaintiffs contend the District waived the 60 day statute of limitations.

Holding: The Fourth Circuit held that the District met procedural requirements was in communication with the plaintiffs regarding the acceptance of the proposed IEP as additional staff would need to be employed. The District also responded to the letter from the plaintiffs requesting a 10 day response to their Lovaas request. The plaintiff was apprised of the right of review which contains a parental duty to place at issue the appropriateness of the IEP within a reasonable timeframe.

Reasoning: The procedural requirements of the IEP were met and the plaintiff did not initiate proceedings within the required timeframe to address the substantive requirements of the program the District offered. The Lovaas therapy requested by the parents represents a methodology issue. Both methods of Lovaas and Teacch programs are implemented by many school districts. The educational systems have the right to choose the programming methods not the parents or courts.

Disposition: The District Court found for the defendant school district and awarded summary judgment.

Citation: *Gill v. Columbia 93 Sch. Dist.*, 217 F. 3d 1027 (8th Cir. 2000), *aff'g* 1999 WL 33486650 (D. W.D. Mo. 1999).

Facts: This case involved an appeal to the Eighth District from a decision of the District Court. The case involved a claim filed pursuant to the IDEA on behalf of Matthew Gill, a child who was born with prematurely with low birth weight. He was diagnosed with failure to thrive

and had feeding difficulties. Furthermore, the child had a developmental seizure disorder and several surgeries. He had motor delays and had to be tube fed, and was later diagnosed with autism. The plaintiff alleged procedural and substantive violations of the IDEA and filed for relief against the Defendant Columbia 93 school district. The hearing officer found the District did provide Matthew with a free and appropriate education as required by the IDEA. The parents appealed.

The plaintiff argued the District Court erred in his decision that the school district had provided the child with free and appropriate education. This case involved parents unilaterally implementing Lovaas therapy in their home for their son and requesting reimbursement, while he attended a public special education program in the Columbia schools. Public school IEP meetings were attended by the parents and parents did not indicate they were implementing such a program. The child's school program was shortened by the parents to accommodate the Lovaas therapy in the home setting. The parents did not inform the school system of the autism diagnosis.

The plaintiffs argued procedural violations of the IDEA including failure to identify the child's combined conditions of autism and suspected oral Apraxia, failure to include an autism or Apraxia expert with knowledge of the child for an IEP meeting, obstruction and manipulation of parental participation in meetings leading up to an IEP meeting, failure to consider the recommendations of independent evaluators, failure to issue written refusal notices to the parents. The plaintiff alleged the defendant school system did not provide the student with a program that was calculated to provide meaningful benefit and progress. The plaintiff finally argued the Lovaas program being implemented in the home was far more superior to the "eclectic" program being offered by the District.

The plaintiff later filed an a motion to alter the order claiming denial of expert testimony challenging the appropriateness of the IEP, parental denial to challenge the appropriateness of the IEP, the Missouri law requiring school districts to “maximize the capabilities” of eligible children, and the denial of the right to present any evidence challenging the appropriateness of the IEP.

Issue: Whether the District Court erred (1) in finding the alleged procedural violations by the school district did violate the IDEA; (2) in its finding that the child’s IEPs developed and implemented did violate the substantive requirements of the IDEA, and (3) in finding that the District’s eclectic methodology in the Special Education program was not a substantive violation of the IDEA.

Holding: The Court of Appeals held that the District Court did not err in finding that the school district’s IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The Eighth District held that the hearing officer did not err in giving due weight to the opinion by the hearing officer that the school district IEPs met the procedural and substantive requirements of the IDEA. The alleged violations of the District as argued by the plaintiff were not consistent and supported by the testimony at the hearing. The IEPs provided and implemented for the child did indicate progress and growth. The District did provide a state autism expert who assisted in the child’s IEP development. The program offered to the child was not category specific as defined by the Missouri code. Students from 3 and 5 years of age are not required be identified with discrete educational diagnostic categories. Parents were invited to all IEP meetings and agreed to reconvene when the autism diagnosis was shared with the District. This time allowed the District to obtain input from the state autism consultant. The District did implement some of the recommendations offered by the parents. The providing of

notices for areas of refusal was not specifically identified by the plaintiff. The Court found the District did send all required notices and there was no violation of the plaintiffs due process rights. When the parents removed the student from the District's program for one or more days to implement the home therapy program, the District noted a loss of the child's functional play and social interaction as well as self-stimulatory behaviors increased. The home program implemented by the parents is one on one and does not provide for any interaction with age appropriate peers. While this loss of play and socialization is noted, the Court does not define it as loss of educational benefit and therefore not a substantive violation of the IDEA.

Disposition: The defendants prevailed in all areas and the plaintiff filed for claims under the Rehabilitation Act and requested attorney fees as well. Both claims were denied.

Citation: Andrew S. ex rel. Margaret S. v. School Committee of Town of Greenfield, Mass., 59 F. Supp. 2d 237 (D. Mass. 1999).

Facts: This case involved an appeal to the First Circuit from the decision by a Board of Special Education Appeals (BSEA) for the District of Greenfield Massachusetts. The case involved a claim filed pursuant to the IDEA on behalf of Andrew, a public school child diagnosed with autism against the Greenfield school district. The BSEA had an opinion that the school district had provided Andrew with a free and appropriate education (free and appropriate education) as required by the IDEA.

The plaintiff alleges insufficient training and expertise by the staff of the special education program offered by the District. They requested placement in the Early Childhood Learning Center (ECLC) previously attended for preschool children up to age three or in a specialized program offered within the public school. The controversy was over placement in an "integrated" or "non-integrated" program. The request to the BSEA indicated plaintiff was then

requesting ECLC or another off-site program located in a neighboring state. The proceedings indicated the ECLC program was no longer in existence and therefore not an option. The BSEAs opinion indicated the Districts IEP was reasonably calculated to provide the maximum feasible benefit to Andrew in the least restrictive environment. The next IEP was reasonably calculated to provide maximum feasible benefit in the least restrictive environment but was hampered by inadequate staff training and insufficient home coordination. The private school is inappropriate and unduly restrictive, and the parent was entitled to an independent educational evaluation (IEE).

Issue: Whether the BSEA erred (1) in its finding that the alleged substantive violations by the school district did not violate the IDEA, (2) in its finding that the IEP substantially provided maximum benefit to the child; (3) in its finding the IEP was hindered by the inadequate training of the Greenfield staff.

Holding: The First Circuit held that the BSEA did not err in its finding for the Districts IEP met the procedural and substantive requirements of the IDEA. The Court agreed that the inadequate training of the Greenfield staff did hinder the IEP. The plaintiff received partial remedy in the complaint and filed for attorney's fees.

Reasoning: The Court held that the BSEA did not err in its decision that the District did not violate the IDEA in its IEP but it did limit or hamper the effectiveness of the program based on inadequate staff training. The grievance arose from the dissatisfaction with the nature of the services offered to the plaintiff, particularly the inadequate staff training. The Court found no claim against the defendants for broad due process or equal protection and no pattern or practice of this regard.

Disposition: The Court found the District prevailed in part as well as the parent in granting the motion for partial attorney's fees.

Citation: *Burilovich ex rel. Burilovich v. Bd. Of Educ. of the Lincoln Consolidated Sch.*, 208 F.3d 560 (6th Cir. 2000).

Facts: The case involved an appeal to the Sixth Circuit from a decision of the United States District Court for the Eastern District of Michigan. The claim was pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of Bradley B., an autistic school student, against the Board of Education of the Lincoln Consolidated Schools, and Ron Greiner, individually. The State Hearing Officer reversed an earlier opinion by a local hearing officer who had held that the school district had not provided Bradley B. with an appropriate IEP and ordered reimbursement for parents for their home program of Discrete Trial Training (discrete trial training). Both parties appealed parts of the decision. The State Hearing Officer stated the IEP proposed provide a free and appropriate education (free and appropriate education), was without procedural and substantive violations, and designed to maximize Bradley's potential in accordance with federal and state law. Reimbursement was also denied to the parents.

Upon appeal by the plaintiff to the Sixth Circuit, the student initially argued that the District Court did not recertify Bradley's eligibility as autistic. The student further argued that the district did not evaluate the student with the proper qualified professionals, include the parents in the process, the proposed IEP did not consider the student's unique needs, and the IEP was not developed to allow the student to attain his maximum potential.

Issue: Whether the District Court erred (1) in giving due weight to the opinion of the State Hearing Officer, (2) in its finding that the IEP was without procedural and substantive

violations and provided free and appropriate education to the student, and (3) and the District's IEP was developed with the student being given the opportunity to attain his maximum potential.

Holding: The Sixth Circuit held that the lower District Court did not err in giving due weight to the opinion of the State Hearing Officer and that the school district's IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The Sixth Circuit held that the State Hearing Officer did not err in his decision that the school district did provide free and appropriate education. Following its review of the record, the Sixth Circuit concluded that the findings of the State Hearing Officer were consistent with and supported by testimony at the hearing. The procedural challenges were rejected by the Sixth Circuit as the parents participated in the IEP process. Finally, the substantive challenges were rejected as the IEP was developed to provide the student with meaningful progress and provided the student to attain his maximum potential.

Disposition: The judgment of the District Court was upheld in its entirety.

Citation: *Bd. of Educ. of the County of Kanawha v. Michael M.*, 95 F. Supp. 2d 600 (D. S.D. W. Va. 2000).

Facts: This case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of the Board of Education of Kanawha County against the student, Michael M. an autistic student in the public school system. The administrative decision held that the school district had not provided Michael with a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon appeal to the District Court the school district argued that the administrative law judge had erred in finding for the parents' home based program of Lovaas Therapy providing

free and appropriate education to the student. The District argued the proposed IEP without a supplemental home program did provide free and appropriate education.

Issue: Whether the District Court erred (1) giving due weight to the decision of the administrative law judge (2) the parents' home based program was free and appropriate education and (3) the award of reimbursement for the parents' home based program.

Holding: The District Court did not err in giving due weight to the opinion of the administrative law judge in finding that District violated the substantive requirements of the IDEA and the parents' home based program did provide free and appropriate education.

Reasoning: The District Court held that the administrative law judge did not err in his decision that the parents' home based program of Lovaas therapy provided free and appropriate education. Following review of the record, the District Court concluded the findings of the administrative law judge were consistent with expert witnesses for both parents and school district. The students procedural requirements were not challenged. The substantive requirements of the IDEA were challenged due to the school district and student witnesses who testified to the progress of the student. Since the student attended both school and home programs there was no way to separate the two programs and their impact on the students' progress. The home based program was extensive when compared to the minimal services provided by the school district. Witnesses conferred to the extensiveness of the home based program and the Districts witnesses also provided testimony for the home based program and its results.

Disposition: The decision of the administrative law judge was upheld in its entirety for the parent.

Citation: *BD ex rel. Jean Doe v. DuBuono*, 130 F. Supp. 2d 401 (D. S.D. N.Y. 2000), denying motion for reconsideration, 193 F.R.D. 117 (D. S.D. N.Y. 2000), granting attorney's fees, 177 F. Supp. 2d 201 (D. S.D. N.Y. 2001).

Facts: This case involved a complaint filed by parents of preschool children diagnosed with autism against the county court health department and department individuals in their official capacity regarding the adoption of a policy limiting applied behavioral analysis in an Early Intervention program (EI), the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act, and New York Public Health Law. Plaintiffs also seek compensatory and punitive damages, costs, and attorney's fees.

The District Court stated the action was timely, administrative remedies must be exhausted before applying at the Court level, the IDEA claim was not moot, the children had a protected property right to an appropriate treatment plan, the policy of limiting applied behavioral analysis therapy violated due process, qualified immunity of the officials was still a question, and alleged reckless indifference in withholding applied behavioral analysis therapy may violate the Rehabilitation Act.

Issue: Whether the District Court erred in affirming the statute of time limitation, requiring administrative remedy exhaustion before Court decision, the validity of the IDEA claim, the qualified immunity status of administrative officials, and whether the department of EI had a policy of offering packaged programming for students diagnosed with autism limiting the numbers of hours offered to students.

Holding: The District Court found the filing of the complaint time limited to 3 years. The alleged violation of IDEA was not moot for some of the plaintiffs, (some were advised of

their procedural safeguards and chose not to file a complaint), the protected property right of the all the plaintiff students can move forward under the Rehabilitation Act.

Reasoning: The District Court did not err in finding for the plaintiffs who were not informed of their procedural safeguards, affirmed the prepackaged policy of offering a set amount of hours of applied behavioral analysis therapy to students with autism by the EI department of services, and affirmed the statute of time limitations of 3 years, and denied the decision to move forward with qualified immunity claims against individuals in their individual capacities. The District Court finally affirmed the order to allow plaintiffs to move forward with other damage claims against the Rehabilitation Act.

Disposition: The District Court found for declaratory relief for some of the students and compensatory claims may move forward under the Rehabilitation Act, for damages under 1983 against the County and other individuals.

Citation: *Pitchford ex rel. M. v. Salem-Keizer Sch. Dist.*, 155 F. Supp. 2d 1213 (D. Or. 2001).

Facts: This case involved an appeal to the District Court from a decision from the administrative law judge. The case involved a claim the District did not provide a free and appropriate education (free and appropriate education) to the student pursuant to the Individuals with Disabilities Education Act (IDEA). The District Court affirmed an earlier decision by the administrative law judge that the school district provided the student with free and appropriate education.

Upon appeal to the District Court, the student initially argued the Individualized Educational Plans (IEPs) were not reasonably calculated to provide meaningful educational benefit to the student, the District did not include a district representative as part of the IEP team

which deprived the parents to meaningful participate in the IEP process and deprived the student of educational opportunity. The methodology of applied behavioral analysis and TEACCH was also examined as appropriate programming offered to the student. Parents also seek expenses they incurred in providing the student with supplemental educational services, compensatory educational services, fees and costs.

Issue: Whether the District Court erred in (1) giving due weight to the decision of the administrative law judge regarding the appropriateness in the adequacy of the IEPs in question, (2) finding the alleged procedural violations resulted in deprivation of educational opportunity, (3) the proposed methodology of TEACCH instead of applied behavioral analysis provided appropriate programming, and (4) the decision of the Court in lack of specifics in the requested amount of reimbursement for compensatory education and tuition by the plaintiffs.

Holding: The District Court found certain IEPs did provide free and appropriate education, deferred ruling on the adequacy on the IEPs from kindergarten and the issue of extended school year services prior to third grade. The Court further ordered the parties to mediate within 90 days. Finally, the Court stated after the timeframe of 90 days it would issue an order deemed appropriate, including extending mediation or an order requiring further briefing on remaining issues.

Reasoning: The District Court did not err in giving due weight to the decision of the administrative law judge. The District found the IEPs in question did provide free and appropriate education to the student, however the kindergarten IEP is still in question due to time limitations. ESY services prior to Grade 3 are also recommended for mediation between the parties. The methodology issue of TEACCH vs. applied behavioral analysis was found for the District as the student did make progress under the TEACCH program. Expert witnesses

provided knowledge regarding both methodologies and the Court agreed with the administrative law judge regarding the District's selection of methodology of educational programming.

Disposition: The District ordered the parties to mediate the issues and report back within ninety days regarding progress. Further orders will be determined at that time on any remaining issues.

Citation: *Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.*, 267 F.3d 877 (9th Cir. 2001).

Facts: This case involved an appeal to the Ninth Circuit from a decision of the United States District Court. The case involved a claim to appeal the decision of the District Court that affirmed the decision by the State Hearing Officer (SHO) stating the District provided the student with a free and appropriate education (free and appropriate education). This reversed the decision from the local hearing officer (HO) finding the District denied free and appropriate education to the student.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the SHO, (2) in giving little or no weight to the findings of the HO, (3) finding that the alleged procedural violations in not providing copies of the evaluations indicating the possibility of autism and the need for further psychiatric evaluations by the school district did not violate the IDEA, (4) by preventing the parents of the student from fully and effectively participating in the creation of the IEP made it impossible to design an IEP that addressed the unique needs of the student thereby denying free and appropriate education.

Holding: The Ninth Circuit held that the lower District Court did err in giving due weight to the decision of the SRO in finding that the Districts IEP met the procedural and

substantive requirements of the IEP and thus provided free and appropriate education to the student.

Reasoning: The Ninth Circuit held that the District Court did err in giving due weight to the decision of the SRO and thus rejected the decision by the HO. The decision of the HO found the District failed to provide the student with free and appropriate education and therefore provided for reimbursement for the costs of assessments indicating autism and the cost of an in home program funded by the parents as well as compensation for the inappropriate Language services offered by the District during the time the student was enrolled in the District. The Ninth Circuit found that the District failed to develop an IEP in accordance with the procedures mandated by the IDEA. This procedural failure in and of itself denied free and appropriate education to the student. In light of this violation, the Court then did not address the question of substantive violations of the IEP to enable the student to receive educational benefit.

Disposition: The judgment of the District Court was reversed in its entirety and the District Court is instructed to reinstate the decision of the HO.

Citation: *Jaynes ex. rel. Jaynes v. Newport News Sch. Bd.*, 13 Fed. App'x 166 (4th Cir. 2001).

Facts: This case involved an appeal to the Fourth Circuit from a decision of the United States District Court for the Eastern Division of Virginia. The case involved a claim filed pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of the student, Stefan J. a student with autism against the Newport News School Board. The local hearing officer (HO) found for the parents and awarded full reimbursement costs for all requested amounts. The District appealed to the State Hearing Officer (SRO). The SRO affirmed an earlier decision but lowered the parental reimbursement due to the statute of limitations. The parents

appealed for the full reimbursement and the District appealed and the decision of the Court for summary judgment for the parents.

Upon appeal to the Fourth Circuit, the student initially argued the District violated procedural requirements in not providing procedural safeguards and thus denied the student with free and appropriate education. Two IEP meetings were called and when the parents did not attend, the District did not inquire about the failure of the lack of attendance by the parents and the IEP was not implemented. Furthermore, the requests for occupational therapy (OT) and extended school year services were either denied or ignored. This in addition to the repeated failures to notify parents of their rights violated the IDEA.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the SRO, (2) in not finding that the school district violated the procedural requirements of the IDEA by the failure to provide procedural safeguards to the parents on two occasions, not addressing parental requests for OT and ESY (3) thus not finding the District engaged in a pattern and practice of failing to follow the procedures set for in the IDEA. The District Court reinstated the reimbursement award of the HO and subtracted the costs of incurred prior to the statute of limitations. This challenge occurred after summary judgment was entered against it.

Holding: The Fourth Circuit held that the lower District Court did err in giving due weight to the decision of the SHO and the District Court did err in finding the District adhered to the procedural and substantive requirements of the IDEA.

Reasoning: The Fourth Circuit held the District Court did err in giving due weight to the decision of the SHO. Following its review of the record, the Fourth Circuit concluded that the findings of the SHO were not consistent and did not support the records of procedural requirements in not providing procedural safeguards to the parents thus making them aware of

the right to file Due Process proceedings. The reimbursement of the full award as decided by the HO will be awarded as the challenge by the District occurred after summary judgment was entered against it.

Disposition: The judgment of the District Court is affirmed in its entirety for the parent.

Citation: *J.P. ex rel. Popson v. West Clark Cmty. Sch.*, 230 F. Supp. 2d 910 (D. S.D. Ind. 2002).

Facts: This case involves an appeal to the Seventh District Court for the Southern District of Indiana. The case involved a claim filed pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of the student, J.P. a student with autism in a public school setting against the West Clark County Community Schools and Clark County Special Education Cooperative. The District Court affirmed an earlier decision by the hearing officer (HO) which held that the District provided the student with a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon appeal to the District Court, the student argued that the District had abused its discretion by giving due weight to the findings of the HO. The student further argued that the school district had procedurally and substantively violated the IDEA by proposing an IEP that did not provide extended school year services, costs for the program were trivial and based on improper consideration of costs, and the specific goals of the IEP are not up to the level and quantity of applied behavioral analysis the parents requested.

Issue: Whether the District Court erred (1) in giving due weight to the opinion of the HO, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in finding that the IEP substantively provided meaningful educational benefits to the

student; and (4) in finding that the school district's use of a methodology not pure applied behavioral analysis was not a substantive violation of the IDEA.

Holding: The District Court held that the hearing officer did not err in finding the IEP proposed and implemented by the school district did meet procedural and substantive requirements of the IDEA.

Reasoning: The District did not err in giving due weight to the decision by the hearing officer. The findings upon review of the record concluded the parents failed to demonstrate the decision of the hearing officer was wrong. The provision of ESY provided by the District was to prevent regression of critical skills; not to teach new skills. The goals proposed in the IEP were not trivial and designed to confer meaningful benefit to the child. Evaluation and progress reporting of the student is the responsibility of the District. The disagreement of the programming for the student amounts to a disagreement in methodology. The Court does not require or demand the district adhere to a specific method proposed by the parent. It is the responsibility of the District to determine and provide programming based on student need and the District may choose the specific methodology for the program.

Disposition: The Court granted Summary Judgment for the District.

Citation: *Samuel Tyler W. ex rel. Harvey W. v. Nw. Indep. Sch. Dist.*, 202 F. Supp. 2d 557 (D. N.D. Tex. 2002).

Facts: This case involved an appeal to the District Court in the Northern District of Texas. The claim was filed pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of Samuel T. a student with autism against the Northwest Independent school district (ISD). The District Court affirmed the decision of the special education hearing officer in finding

that the student was provided a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon appeal to the District Court, the student initially argued that the District had abused its discretion in giving due weight to the findings of the hearing officer. The student further argued procedural violation in not providing a regular education teacher at the IEP meetings. The student finally argued that the IEP offered by the school district was substantially inadequate as it failed to provide educational benefit and the methodology implemented by the District. The parents further argued the hearing officer was predisposed to find for the District as 23 of 30 cases she heard were found for the Districts.

Issues: Whether the District erred (1) in giving due weight to the decision of the hearing officer, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in finding the IEP substantively provided educational benefit to the student, and (4) in finding that the methodology the District employed was not a substantive violation of the IDEA.

Holding: The District Court held that it did not err in giving due weight to the opinion of the hearing officer and in finding that the IEP proposed and implemented by the school district met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court initially held that it did not err in giving due weight to the decision of the hearing officer. Following review of the record, the Court found the findings of the hearing officer were consistent and supported the requests of the parents, parent attorney, and the IEP and home program proposed met the substantive requirements of the IDEA. The students procedural challenges were also rejected by the District Court as the absence of a general education teacher did not result in the lack of parental participation in the IEP and loss of

educational opportunity or benefit. The in home trainers provided by the District were told by the parents to follow their plan and none other. When the student did attend the pre-kindergarten program, he did do well and received significant educational benefit.

Disposition: The decision of the hearing officer is affirmed as the school district complied with the procedural and substantive requirements of the IDEA thus providing free and appropriate education to the student. The plaintiff is not entitled to reimbursement for his alternative placement.

Citation: *C.M. ex rel. J.M. v. Bd. of Educ. of Henderson County*, 72 Fed. App'x 940 (4th Cir. 2003), rev'g 186 F. Supp. 2d 630 (D. W.D. N.C. 2002).

Facts: This case involves an appeal to the District Court for the Western Division of North Carolina. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of the student, CM, a student diagnosed with autism against the Henderson County Board of Education, Superintendent, Board Members, and the Special Education Administrator in their official and individual capacities. The District Court affirmed an earlier opinion by the Administrative Hearing Officer (HO) which held that the school district provided the student with a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon review of the records, the student argued that the District has abused its discretion in giving due weight to the findings of the HO. The alleged procedural violations of the IEP impacted the student from receiving free and appropriate education. The student further argued that the District had proposed an IEP that was substantively inadequate as it failed to provide educational benefit to the student. The issue of methodology arose as the family moved to North

Carolina from New Hampshire to obtain services in the program based on the TEACCH methodology developed and implemented in North Carolina schools

Issue: Whether the District Court erred (1) in giving due weight to the opinion of the hearing officer, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in finding that the IEP substantively provided educational benefits to the student, and (4) in finding that the methodology of TEACCH along with a Lovaas trained aide was not a substantive violation of the IDEA, (4) in denying reimbursement for an alternative placement.

Holding: The District Court did not err in giving due weight to the opinion by the hearing officer and the IEP proposed by the school district met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court did not err in giving due weight to the opinion of the hearing officer. Following review of the record, the District Court found that the findings of the hearing officer were consistent and supported the opinion that the student received free and appropriate education. Procedural and substantive requirements were met by the enrollment of the student in the program implemented by the school district indicated the student was receiving educational benefit. The alternative program presented and requested by the parents is a methodology issue and the Courts have consistently found the decision of methodology belongs to the school district. The lack of due process notices for 2 years did not fail to offer the student free and appropriate education. The school district according to the Court, is not required to develop a “utopian educational program” for a student with special needs any more so than would it be required if the student were not in need of special services.

Disposition: The District Court found for the school district in its entirety.

Citation: *Choruby ex rel. D.C. v. Nw. Reg'l Educ. Serv. Dist.*, 2002 WL 32784016 (D. Or. 2002).

Facts: This case involves an appeal to the District Court from a decision of the hearing officer for the state of Oregon. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of D.C. a preschool student diagnosed with autism against the Northwest Regional Education Services District and the Oregon Department of Education. The District Court affirmed an earlier opinion by a hearing officer (HO) which held that the school district has provided the student with free and appropriate education as required by the IDEA.

The student initially argued that the District abused its discretion in giving due weight to the opinion of the hearing officer. The student further argued that the school district had offered an IEP that was substantively inadequate as it failed to provide educational benefit and was little more than babysitting for the student as the family had an older sibling also diagnosed with autism and the program was similarly defined. The student also argued methodology issues as well as transportation and safety.

Issue: Whether the school district erred (1) in giving due weight to the opinion of the hearing officer, (2) in finding that the IEP substantively provided the student with educational benefit, (3) in finding that the methodology employed by the school district was not a substantive violation of the IDEA.

Holding: The District Court held that it did not err in giving due weight to the opinion of the hearing officer and the District Court did not err in finding that the IEP of the school district met both procedural and substantive requirements of the IDEA.

Reasoning: The District Court held it did not err in giving due weight to the opinion of the hearing officer. Following its review of the record, the District Court concluded that the findings of the hearing officer were consistent and supported by the evidence regarding the proposed program. The unilateral placement of the student in a private program by the parents did not constitute a denial of free and appropriate education but a methodology choice by the parents. The student also contends the “Bill Young Test” was employed by the hearing officer. The theory behind the test is that if there was a denial of free and appropriate education at some level the parents would have denied the individual family service program (IFSP) anyway. In other words, the parents would not accept any program if it was not their own. The Court determined the “Bill Young Test” was not applied in this case and the student was not denied free and appropriate education.

Disposition: The decision of the hearing officer is affirmed; the district did not violate IDEA; and no reimbursement is due to the plaintiff.

Citation: *MM ex rel. DM v. Sch. Dist. of Greenville County, S.C.*, 303 F.3d 523 (4th Cir. 2002), *cert denied*, 538 U.S. 958 (2003).

Facts: This case involved an appeal to the Fourth Circuit from a decision of the United States District Court for South Carolina. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) and behalf of MM a student diagnosed with autism against the Greenville County school district and the South Carolina Board of Education. The District Court remanded and reversed in part earlier opinions of the local hearing officer and state hearing officer which held that the school district provided the student with a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon appeal to the Fourth Circuit, the student argued that the District Court erred in deciding that the IEPs provided the student with free and appropriate education. The student further argued that the IEP offered by the school district was substantively inadequate as it failed to provide some educational benefit, and alleged procedural violation of the IDEA by the failure to have an IEP in place by the beginning of school.

Issue: Whether the Fourth Circuit Court erred (1) in giving due weight to the opinion of the District Court and the local and state hearing officers, (2) in finding that the alleged procedural violation by the school district did not violate the IDEA, (3) in finding that the IEP substantively provided some educational benefit to the student; and (4) in finding the school district's methodology was not a substantive violation of the IDEA.

Holding: The Fourth Circuit held that the lower District Court did not err in giving due weight to the opinions of the local and state hearing officers and the District Court did not err in its findings for the school district met the procedural and substantive requirements of the IDEA.

Reasoning: The Fourth Circuit held that the District Court did err in giving due weight to the opinions of the local and state hearing officers. Following review of the record, the Appeals Court concluded the findings of the District Court were inconsistent with the testimony at the hearings. The hearing officers deferred to the student making progress in a home based program rather than on whether the IEP was calculated to provide some educational benefit for the student. The Court has always deferred to educators in determining programming for students. The content of the IEP can be disagreed upon but the opportunity for access to special education and related services must be provided. The in home Lovaas program the parent provided to the student did not negate the program proposed for the student. The procedural challenges were not substantiated in any educational loss for the student. Finally the students substantive challenges

that the District failed to provide an IEP calculated to provide some educational benefit was rejected.

Disposition: The judgment of the District Court was affirmed in part, reversed in part, and remanded. The school district was granted summary judgment for the four IEPs and ESY was not required.

Citation: *G ex rel. Ssgt RG v. Fort Bragg Dependent Sch.*, 324 F.3d 240 (4th Cir. 2003), amended by, 343 F.3d 295 (4th Cir. 2003).

Facts: This case involved an appeal to the Fourth Circuit from a decision of the United States District Court for the Eastern District of North Carolina. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of the student against the Department of Defense Elementary School Fort Bragg Dependent Schools and the Superintendent and Exceptional Services Director. The District Court affirmed an earlier decision by the Appeals Board (within the Dependent schools) that the program offered to the student would be a free and appropriate education (free and appropriate education) with the incorporation of private therapies.

Upon appeal to the Fourth Circuit, the student argued that the District Court had abused its discretion by giving due weight to the findings of the Appeals Board. The student further argued that the school district offered an IEP that was substantively inadequate as it failed to provide the more stringent state standard of benefit which is applicable in North Carolina. The school district argued it is not a state school system and therefore does not apply to the state standard.

Issue: Whether the Appeals Court erred (1) in giving due weight to the opinion of the District Court and Appeals Board, (2) in finding that the alleged substantive violations by the

school district did not violate the IDEA, (3) in finding that the proposed IEP substantively provided meaningful benefit to the student; and (4) in finding that the Districts use of an eclectic methodology was not a substantive violation of the IDEA.

Holding: The Fourth Circuit held that the lower District Court did err in giving due weight to the decision of the Appeals Board. It did err in finding that the school districts IEP met the substantive requirements of the IDEA. It found the student prevailed in some areas therefore it holds the prevailing party status.

Reasoning: The Fourth Circuit initially held that the District Court erred in giving due weight to the Appeals Board. Following review of the record, the Fourth Circuit concluded that the findings of the Appeal Board were inconsistent and did not support the substantive requirements of the IDEA.

Disposition: The judgment of the Appeals Court was affirmed in part, reversed and remanded in part.

The “Full Potential” standard in North Carolina does not apply to Dependent Schools, the rejection of compensatory education was an error, student was “prevailing party” for attorney’s fees provision of IDEA, and prejudgment interest is barred by sovereign immunity.

Citation: *County Sch. Bd. of Henrico County, Va. v. Z.P. ex rel. R.P.*, 399 F.3d 298 (4th Cir. 2005), rev’g *County Sch. Bd. of Henrico County, Va. v. Palkovics ex rel. Palkovics*, 285 F. Supp. 2d 701 (D. E.D. Va. 2003).

Facts: This case involved an appeal to the District Court for the Eastern District of Virginia. The case involved an appeal to District Court after the hearing officer (HO) found the IEP did not offer a free and appropriate education (free and appropriate education) to the student

as required by the Individuals with Disabilities Education Act (IDEA) on behalf of a student diagnosed with autism against the County School Board of Henrico County, Virginia.

Upon appeal to the District Court, the school district argued the HO erred in his findings of facts and law. Further claims include not giving appropriate deference to the educators of the School Board, the failure to include extended school year services, a Behavior Intervention Plan (BIP), and criteria evaluation were procedural violations of IDEA. The student finally argued that the IEP was inappropriate due to the lack of an intense language program that had previously been offered at the initial placement offering applied behavioral analysis .

Upon review of the records from the school district, the District Court held that the evidence did not support finding that the Individualized Educational Plan (IEP) was deficient. The alleged procedural violations did not prevent the student from receiving free and appropriate education. The HO did not give deference to the professional judgment of the witnesses of the School Board. The lack of a BIP did not prevent the student from receiving free and appropriate education due to the fact that the behavior of the student was not at issue until the end of the FAISON School placement. Since the student did not attend the proposed new placement, the need for a BIP could be addressed upon observation and need. The last alleged procedural violation addressed the failure to include evaluation methods in the IEP. While this constituted a procedural defect, it did not preclude the student from receiving free and appropriate education.

Issue: Whether the Hearing Officer erred (1) in not giving appropriate deference to the professional judgment of the witnesses of the School Board (2) in its finding that the alleged procedural violations did not deny the student free and appropriate education (3) in its finding that the program offered at the Faison School differed in the program in methodology from the program offered by the school district.

Holding: The District Court held that the Hearing Officer erred in not giving due weight to the professional judgment of the witnesses of the school district and in his decision in finding that the purported IDEA violations constituted a denial of free and appropriate education for the student.

Reasoning: Following review of the records, the District Court found the decision of the Hearing Officer was not consistent with and supported by the testimony of the witnesses of the Parents and the school district who testified at the hearing. Because the evidence in the record revealed the programming at the initial placement differed in the program proposed by the school district, the Hearing Officer in essence substituted his judgment for that of the school district officials. Additionally, the alleged procedural violations by the school district were also rejected by the District Court due to the conclusion that none of the challenged resulted in the loss of educational benefit.

Disposition: plaintiffs motion for summary judgment is granted. The decision of the Hearing Officer is reversed and the final judgment is entered for the plaintiff.

Citation: *T.B. ex rel. N.B. v. Warwick Sch. Comm.*, 361 F. 3d 80 (1st Cir. 2004), aff'g 2003 WL 220694332 (D. R.I. 2003).

Facts: This case involved an appeal to the District Court of the United States District Court for the state of Rhode Island. The case addressed a claim filed pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of N.B., a student diagnosed with autism against the Warwick school district and the School Committee members in their capacities. The District Court reversed a decision by the Hearing Officer (HO) that the school district denied the student of a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon appeal to the District Court, the school district argued that the HO erred in finding that it committed procedural violations violating the individualized educational plan (IEP) of failing to afford the parents the opportunity to participate in the placement meetings, failing to sufficiently explain the reasons for rejecting the private placement, and identify the evaluations relied on for this decision, failing to complete the evaluations before proceeding with the IEP meeting, preparing an individualized educational plan (IEP) without knowledge of the student needs and failing to address discrete trial training (discrete trial training) methodology in the IEP meeting. Additionally the HO devoted little attention to the substantive requirements of the IEP due to the procedural violations invalidating the plan without reference to the substantive merits.

Issue: Whether the hearing officer (1) erred in finding the alleged procedural violations by the school district did violate the IDEA, (2) in finding that the procedural violations invalidated the substantive merits of the IEP thus making it deny free and appropriate education to the student, and (3) in finding that the school district placement provided free and appropriate education and therefore the Court did not address the issue of the appropriateness of the private placement; and (5) not addressing the entitlement of attorneys fees as they only awarded if free and appropriate education is denied and the private placement is appropriate under the IDEA.

Holding: The District Court held that the Hearing Officer did err in finding the procedural violations did constitute a denial of free and appropriate education under the IDEA thus invalidating the substantive merits of the IEP.

Reasoning: Following review of the record, the District Court found that the findings of the HO were not consistent with the professional judgment of the witnesses that testified at the hearing. The procedural violations were rejected by the District Court due to the conclusion that none of the challenges amounted to a denial of free and appropriate education for the student.

The alleged procedural violations did not invalidate the substantive requirements of the IEP thus failing to provide adequate benefit to the student. The differences constituted a difference in methodology and when the school district offered an IEP with the TEACCH methodology and the parent demanded discrete trial training. The Court deferred to the educational personnel in addressing methodology decisions.

Disposition: The Court found the District fulfilled its obligation under the IDEA to offer free and appropriate education and the decision of the hearing officer is reversed; the claim for attorney's fees is dismissed.

Citation: *Johnson ex. rel. Johnson v. Olathe Dist. Sch. Unified Sch. Dist. No. 233*, 316 F. Supp. 2d 960 (D. Kan. 2003).

Facts: This case involved an appeal to the District Court from a decision by a hearing officer (HO) for the state of Kansas. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of Ben Johnson, a student diagnosed with autism against the Olathe Unified school district. The HO found the IEP of the school district was appropriate.

Upon appeal to the District Court, the Tenth Circuit argued that the District Court abused its discretion in giving due weight to the findings of the Hearing Officer. The student argued that the district procedurally violated the IDEA and denied free and appropriate education by not have a member of the IEP team with the title of special education teacher attend the meeting. The student further argued that the Districts failure to included measurable criteria to address the annual goal of lowering aggressive behaviors and using redirection to address aggressive behaviors also denied the student free and appropriate education. Finally the student argued that

the placement of the student in the Districts junior high school rather than home schooled was not reasonably calculated to provide the student with free and appropriate education.

Issue: Whether the District erred (1) in giving due weight to the decision of the hearing officer, (2) in finding the alleged procedural violation by the school district did not violate the IDEA and deny free and appropriate education, (3) in finding the IEP provided meaningful educational benefits to the student; and (4) in finding the least restrictive environment for the student was in the public school setting.

Holding: The Tenth Circuit held that the District Court did not err in giving due weight to the decision of the hearing officer and the District Court concurred that the students IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court did not err in giving due weight to the decision of the hearing officer. Following review of the record, the District Court concluded that the decision of the hearing officer was consistent and supported by evidence that did not support the plaintiffs allegations or the procedural errors were not substantial enough to rise to the level of denying the student free and appropriate education. The two issues that appear to be the basis of the complaint by the plaintiff are: (1) the plaintiffs wanted the student at home and (2) the aggressive behaviors should have been controlled by ignoring as stated by the parent; rather than redirection as stated by the school district. The court will not second guess the District and the educational authorities on the decision of methodology. These complaints did not rise to the level of violating the substantive requirements of the IDEA and thus deny the student free and appropriate education. The Court believed the questions of methodology belong to the school system.

Disposition: The judgment of the hearing officer was upheld, and the school district was granted summary judgment.

Citation: *S.W. ex rel. N.W. v. Bd. of Educ. of the City of New York (Dist. Two)*, 257 F. Supp. 2d 600 (D. S.D. N.Y. 2003).

Facts: This case involved parents who filed and prevailed in an administrative review against the New York City Board of Education District Two. The case involved N. W. a student diagnosed with autism who filed a claim pursuant to the Individuals with Disabilities Education Act (IDEA) denying a free and appropriate education (free and appropriate education). The parents then appealed to the District Court for attorney's fees and instant fee application. The District Court awarded fees as modified.

The student initially argued the educational support and interventions of applied behavioral analysis that he received in the preschool and extended day setting needed increased time and intensity. The parents filed an administrative proceeding and the administrative law judge held for the parents. Now the student, upon review of the records of the School Board, did not challenge the plaintiff's entitlement for the administrative hearing, but argues that the hourly rate exceeded the prevailing rate for the type and quality of services provided. Additionally the alleged inadequate record keeping should reduce the time billed by the counsel.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the administrative law judge in attorneys costs and fees for the hearing, (2) whether the "lodestar" approach for calculating fees was applied appropriately in billing for legal fees and costs.

Holding: The District Court held that the administrative law judge did not err in giving due weight to the opinion finding the school district did not provide the student with free and

appropriate education but the administrative law judge did err in awarding the legal costs and fees billed by the plaintiff.

Reasoning: The District Court held that the administrative law judge did not err in giving due weight to the finding for the plaintiff including legal fees and costs. Following review of the record, the District Court concluded the billing was accurate for hourly costs and fees for services. There was an error in one associate billing which was corrected.

Disposition: The judgment for the plaintiff was upheld and the award of attorneys fees was modified.

Citation: *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966 (10th Cir. 2004), vacating 214 F. Supp. 2d 1172 (D. Utah 2002).

Facts: This case involved an appeal to the Tenth Circuit from a decision of the United States District Court for the state of Utah. The case involved a claim filed pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of K.B. a student diagnosed with autism against the Nebo school district. The District Court had affirmed an earlier opinion by the hearing officer that held that the school district had provided the student with a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon appeal to the Tenth Circuit, the student initially argued that the District Court had abused its discretion in giving due weight to the decision of the hearing officer. The student further argued that the assigned hearing officer was not impartial the state often employs hearing officers who find for school districts, and the individual assigned as the hearing officer in this case was not impartial as his wife worked in the same district as the expert autism witness testifying for the school district. The student challenged the quantity of applied behavioral analysis services offered to the student and the preschool program with disabled and non-

disabled students in attendance. The student finally argued that the placement offered by the District was not the least restrictive environment for the student.

Issue: Whether the District Court erred (1) in giving due weight to the opinion of the hearing officer, (2) in finding the alleged substantive violations by the school district did not violate the IDEA, (3) in finding the placement offered to the student was in the least restrictive environment.

Holding: The Tenth Circuit held that the lower Court did not err in giving due weight to the impartiality of the hearing officer and that the District did err in finding the alleged substantive violations by the school district did not violate the IDEA. However, the Tenth Circuit found the placement offered to the student was not in the least restrictive environment.

Reasoning: The Tenth Circuit initially held that the District Court did not err in giving due weight to the decision of the hearing officer. Following review of the record, the Tenth Circuit concluded that the findings of the hearing officer and were not consistent with the testimony at the hearing. The private program the student currently attended did provide free and appropriate education and the more restrictive program offered by the District did not as well as the amount of applied behavioral analysis services was disputed. Finally, the program offered by the District was not in the least restrictive environment. At the courts discretion the student is also eligible for reasonable attorney and litigation costs which should be determined by the District Court.

Disposition: The judgment of the Court affirmed in part and reversed in part the District Courts decision and remands the case for further proceedings.

Citation: *Wikol ex rel. Wikol v. Birmingham Public Sch. Bd. of Educ.*, 360 F.3d 604 (6th Cir. 2004).

Facts: This case involved an appeal to the Sixth Circuit from a decision of the United States District Court for the state of Michigan. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of Anika Wikol, a student diagnosed with autism against the Birmingham Public Schools. The school district settled a claim for prior services with costs and the future in home program would be reimbursed at 50% by the District. The school district then offered an Individualized Educational Plan (IEP) for the student providing a free and appropriate education (free and appropriate education).

Upon appeal to the Sixth Circuit, the student argued the District Court erred in denying the recovery of attorney fees and costs incurred within time limits. They further argued the Court erred in the decision by jury that found the IEP offered by the school district was substantively adequate.

Issue: Whether the Sixth Circuit Court erred (1) in giving due weight to the decision of the District Court; (2) in finding that the IEP substantively provided adequate benefit to the student, (3) whether the student was the prevailing party and thus due reimbursement for attorney fees and legal costs incurred was within time limits and appropriately filed.

Holding: The Sixth Circuit found that the appeal from the judgment of the District Court was untimely and the denial of attorney fees was an abuse of discretion.

Reasoning: The Sixth Circuit initially held that the decisions of the District Court were limited as the school district argued that they are time barred. After extensive examination of the complexity of rules regarding timeliness of appeals, the District Court had no choice but to dismiss the appeal for attorney costs and legal fees. Upon review the Sixth Circuit the bulk of the claims are time barred, but the issue of attorney's fees must be addressed on a case by case basis.

Disposition: The judgment of the Appeals Court found the bulk of the claims were time barred and the Court only has jurisdiction over attorney's fees and costs, which were vacated and remanded with instructions to reconsider.

Citation: *Wagner v. Bd. of Educ. of Montgomery County*, 335 F.3d 297 (4th Cir. 2003), vacating and remanding 198 F. Supp. 2d 671 (D. Md. 2002), on remand, 340 F. Supp. 2d 603 (D. Md. 2004).

Facts: This case involved an appeal to the Fourth Circuit from a decision of the United States District Court of Montgomery County, Maryland. The case involved a claim filed pursuant to the IDEA on behalf of Daniel Wagner, a student diagnosed with autism against the Montgomery County Board of Education. The District Court affirmed the school district provide the student with free and appropriate education under the IDEA.

Upon appeal to the Fourth Circuit, the student argued that the District Court had abused its discretion by finding the school district provided free and appropriate education under the IDEA. The student further argued the school districts alleged procedural violations prevented the parents from participating in the IEP and therefore denied free and appropriate education. Finally, the student initially argued the request of "stay put" as the current placement of a preschool program that relied heavily on applied behavioral analysis and had an in home component.

Issue: Whether the District Court erred (1) in giving due weight to the alleged procedural violations of the school district not impacting the access of the student to free and appropriate education, (2) in finding the proposed public school placement constituted free and appropriate education, (3) in finding the alleged procedural violations not subject to liability or

reimbursement for educational expenses; and (4) in finding the student was not entitled to “stay put.”

Holding: The Fourth Circuit held that the District Court did not err in finding the school districts IEP provided free and appropriate education under the IDEA. Minimal procedural violations did not result in the student losing educational opportunity, thus the school district is not liable for reimbursement for educational expenses, no reinstatement of “stay put” and contempt relief.

Reasoning: The Fourth Circuit initially held that the District Court did not err in giving due weight to the school districts IEP meeting procedural and substantive requirements of the IDEA. Following review of the records the Fourth Circuit concluded the findings of the District Court were consistent and supported the experts who testified at the hearing. The parents unilaterally enrolled the student in a private program and later moved out of Maryland.

Disposition: District favored on all counts; summary judgment.

Citation: *Diatta v. District of Columbia*, 319 F. Supp. 2d (D. D.C. 2004).

Facts: This case involved an appeal to the District Court from a decision of a hearing officer for the District of Columbia Public Schools (DCPS). The case involved a claim pursuant to the IDEA on behalf of Alex Keita, a student diagnosed with autism against the DCPS. The hearing officer found the student had been denied free and appropriate education as required by the IDEA.

Upon the appeal to the District Court, the student initially concurred that the hearing officer had found the IEP developed by the DCPS substantively violated the IDEA by failing to provide a program for the student with appropriate goals and objectives to address the students autism and behavioral needs. However, the hearing officer abused his discretion by stating

compensatory education services requested by the student were denied as they were beyond the scope of IDEA.

Issue: Whether the hearing officer erred (1) in finding that the IEP developed by the school district denied the student free and appropriate education, (2) in finding the IEP developed by the DCPS violated the substantive requirements of the IDEA by lacking in behavior goals for the student and (3) in finding that the request for compensatory education was beyond the scope of the IDEA.

Holding: The District Court held that the hearing officer did not err in finding that the IEP developed by the DCPS denied the student free and appropriate education, but did err in denying compensatory education for the student as part of the substantive violation of the IDEA requirements.

Reasoning: The District Court found that the hearing officer did not err in giving due weight to the decision of the hearing officer regarding the IEP developed by DCPS denied free and appropriate education. Following review of the record, the Court found the IEP developed for the student violated the substantive requirements of the IDEA and furthermore, the lack of any appropriate program offered for 4 years for the student with severe autism was inexcusable.

Disposition: Judgment for the plaintiff is granted in its entirety.

Citation: *D.F. ex rel N.F. v. Ramapo Cent. Sch. Dist.*, 430 F.3d 595 (2nd Cir. 2005), vacating and remanding 348 F. Supp. 2d 92 (D. S.D. N.Y. 2003).

Facts: This case involves an appeal to the District Court in the Southern District of New York. The case involved a claim pursuant to the IDEA on behalf of N.F., a student diagnosed with autism against the Ramapo Central school district. Both local and state hearing officers

held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student argued the hearing officers had abused their discretion in finding the school district implemented an IEP that provided free and appropriate education. The student further argued the program did not prove any meaningful benefit or progress and therefore a home program of applied behavioral analysis was needed to supplement the school based program.

Issue: Whether the local and state hearing officers erred (1) in finding that the IEP the school district implemented provided free and appropriate education to the student, (2) in finding the IEP substantively provided meaningful benefit to the student; and (3) and in denying a behavioral in home program for the student.

Holding: The District Court held that the hearing officers did err in finding the IEP for the school district provided free and appropriate education and met the substantive requirements of the IDEA providing meaningful benefit and in denying the in home behavioral program.

Reasoning: The District Court initially held that the hearing officers did not err in finding the IEP of the school district provided free and appropriate education. Following the review of the record, the District Court concluded the findings of the hearing officers were not consistent or supported by the testimony of the witnesses in the IEP providing meaningful benefit and meeting substantive requirements of the IDEA. The Court also rejected the argument that the supplemental in home program was not necessary to provide free and appropriate education.

Disposition: The judgment was for the plaintiff in its entirety. The student was denied free and appropriate education as required by the IDEA due to the school districts failure to include one-on-one home instruction in the IEP.

Citation: *D.D. ex rel. V.D. v. New York City Bd. of Educ.*, 2004 WL 633222 (D. E.D. N.Y. 2004), vacated in part, 465 F.3d 503 (2nd Cir. 2006), amended opinion on denial of rehearing, 480 F.3d 138 (2nd Cir. 2007).

Facts: This case involved an appeal to the District Court for the Eastern District of New York from decisions by local and state hearing officers. The case involved a claim pursuant to the IDEA on behalf of D. D. a student diagnosed with autism and all others similarly situated against the New York City Board of Education. plaintiffs claimed (1) denial of free and appropriate education in violation of the IDEA, (2) Title II of the ADA, and (3) Section 504 of the Rehabilitation Act.

Upon appeal to the District Court the court had pending a motion for class certification, motion to dismiss individual (Chancellor) claim, and motion for preliminary injunction to the class. The school districts alleged violations of procedural and substantive requirements of the IDEA were staggering. The school district timely evaluated students however, due to the number of students with autism and other Developmental Delays the contracted service providers could not keep up with the need. Students often waited months for services and filed due process complaints for compensatory education as well as immediate programs. The hearing officers found the school district had a wait list for services that at times was over 500 students. This along with the lack of enough service providers prevented students from receiving services in an appropriate timeframe. Substantive requirements including applied behavioral analysis therapy caused further violations.

Issue: Whether the District Court erred in (1) finding class certification (2) in dismissing the motion for the individual in their capacity, and (3) dismissing the motion for preliminary injunction.

Holding: The District Court held that it did not err in finding class certification, motion for dismissal of individual and denial of motion for preliminary injunction. The procedural and substantive violations presented to the school district are areas they state they are working to improve and actively seeking more services for preschool children in their District.

Reasoning: The District Court held that they did not err in finding class certification. However, the court did err in dismissal of individual motion for preliminary injunction. Class certification will address procedural and substantive issues of all services required in IEPs.

Disposition: The claims against the individual for money damages under IDEA and Section 504 are dismissed, the motion to dismiss injunctive relief claims is denied.

Citation: *County School Board of Henrico County Virginia v. Z.P. ex. rel., R.P.*, United States Court of Appeals, Fourth Circuit, Virginia, 2005.

Facts: This case involved an appeal to the Fourth Circuit from a decision of the United States District Court, Virginia. The case involved a claim sought judicial review of a hearing officer's determination that the Henrico County School Board did not provide free and appropriate education to a student diagnosed with autism. The District Court reversed the decision of the hearing officer, granted summary judgment for the School Board and the parents appealed.

Upon appeal to the Fourth Circuit, the school district stated the District Court accurately examined the records and determined the decision of the hearing officer was based on limited witness testimony and the testimony for the school district was not deemed as important. The

school district further stated the decision from the hearing officer was given no deference because he did not make his decision accurately as he did not adequately, if all consider the testimony of three of the School Boards witnesses.

Issue: Whether the District Court erred (1) in giving no weight to the decision of the hearing officer, (2) in giving no weight to the school districts substantive violations of the IEP regarding the lack of ESY, and (3) in giving no weight to the school districts choice of methodology not violating the substantive requirements of the IDEA.

Holding: The Fourth Circuit held that the District Court did not err in giving no deference to the decision of the hearing officer however this decision was not entitled to presumptive validity as the hearing officer did not make the decision in a regular manner with evidence supporting this and did not give adequate deference to the local educators.

Reasoning: The Fourth Circuit initially held that the District Court erred in giving not weight to the decision of the hearing officer. Upon review of the records, the Fourth Circuit concluded that the District did not err in not giving due weight to the decision of the hearing officer. The findings of the District Court supported the decision with the exception of the manner the decision was made. The hearing officer did not address the issue of appropriateness of the IEP and the substantive requirement regarding methodology and the program developed for the student by the school district. The Fourth Circuit then agreed with the decision of the District Court based on the reasons above.

Disposition: The judgment of the District Court was affirmed.

Citation: *Deal ex rel. Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840 (6th Cir. 2004), rev'g in part 259 F. Supp. 2d 687 (D. E.D. Tenn. 2003), and cert. denied, 126 S. Ct. 422 (2005). *Deal ex rel. Deal v. Hamilton County Bd. of Educ.*, 258 Fed. App'x 863 (6th Cir. 2008),

aff'g 2006 WL 5667836 (D. E.D. Tenn. 2006), and aff'g 2006 WL 2854463 (D. E.D. Tenn. 2006).

Facts: This case involved an appeal to the Sixth Circuit from a decision of the United States District Court of Tennessee. The case involved a claim pursuant to the IDEA on behalf of Zachary Deal, a student diagnosed with autism against the Hamilton County Board of Education. The administrative law judge found procedural and substantive violations of the IDEA thus denying free and appropriate education to the student and ordered the school system to pay for some reimbursement for private programming services sought by the plaintiffs. The District Court reversed the decision and found no IDEA violations. It also reversed the reimbursement ordered by the administrative law judge.

Upon appeal to the Sixth Circuit, the student initially argued that the District Court abused its discretion in allowing additional evidence and expert witnesses presented by the school district. The student further argued that School System procedurally and substantively violated the IEP by not including general education teachers in IEP meetings and predetermining the students placement by not allowing for any applied behavioral analysis services for the student.

Issue: Whether the District Court erred (1) in allowing and relying upon additional evidence, (2) in failing to take judicial notice of federal court filings challenging the credibility of one of the expert witnesses, (3) reversing the aspect of the administrative law judge's decision in procedural and substantive violations of the IDEA and reimbursement to the plaintiffs, and (4) awarding costs to the defendants.

Holding: The Sixth Circuit held that the District Court did err in reversing the decision of the administrative law judge and that the District Court did err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The Sixth Circuit held that the District Court did err in reversing the decision of the administrative law judge. Following its review of the record, the Sixth Circuit concluded that the findings of the administrative law judge were consistent as well as thorough and supported by the additional evidence provided by the testimony of additional witnesses. The students procedural challenges were supported by the school district not including appropriate IEP team member of the general education teacher. This effectively precluded the student from consideration for participation in the general education curriculum. Finally offering an eclectic program to the student rather than the methodology chosen by the parent was a substantive violation of the IDEA. As a result of these issues, the Appeals Court reversed the decision of the District Court regarding procedural and substantive violations of the IDEA as well as reimbursement related to these issues.

Disposition: The decision of the District Court was affirmed for additional evidence and judicial notice issues. The court reversed the District Courts determination regarding procedural and substantive violations. Plaintiffs are now the prevailing party, therefore the issue of costs is moot and the case is remanded for further proceedings.

Citation: *Z.F. ex rel. Foster v. South Harrison Cmty. Sch. Co.*, 2005 WL 2373729 (D. S.D. Ind. 2005).

Facts: The case involved a claim filed pursuant to the IDEA on behalf of Z. F., a student diagnosed with autism against the South Harrison Community School Corporation in the Southern District of Indiana. This case involved an appeal to the District Court from a decision

by the local and stating hearing officers. The decision by the local hearing officer was upheld by the Board of Special Education Appeals (BSEA) which held that the school districts IEP complied with the IDEA providing the student with free and appropriate education.

Upon appeal to the District Court, the student initially argued the District abused its discretion by giving due weight to the decision of the local and state hearing officers. The student further argued that the procedural requirements of the IDEA were violated by not providing academic goals, and confidentiality was breached by school district personnel observing and discussing the due process hearing. The student further argued that the teaching methods were inadequate, personnel were not properly trained, and lack of transition for movement into the classroom, and the denial of a full time assistant were substantive violations of the IDEA.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the hearing officers, (2) in finding the alleged procedural violations by the school district violated the IDEA, (3) in finding the alleged substantive violations by the school district violated the IEP, and (4) in the motion by the plaintiff for leave to submit additional evidence.

Holding: The District Court did not err in giving due weight to the opinion of the hearing officers and that the District Court did not err in finding that the school district did not violate procedural safeguards of the IDEA. The District Court did err in finding the school district did not violate the substantive requirements of the IDEA.

Reasoning: The District Court did not err in giving due weight to the decision of the hearing officers. Following review of the record, the Court concluded the school district did not violate procedural safeguards of the IDEA. The District did find the school district failed to provide the student with one-on-one assistance and therefore they erred in finding the proposed

IEP was calculated to enable the student to receive educational benefits. The decision of the hearing officers is reversed for that point. The other alleged violations of the IEP were not substantiated by the plaintiff and therefore those portions are affirmed.

Disposition: The decision for summary judgment for the District and cross motion for summary judgment by the plaintiffs are granted in part and denied in part.

Citation: *Jack P. ex rel. Jessica P v. Auburn Union Elementary Sch. Dist.*, 2005 WL 2042269 (D. E.D. Cal. 2005).

Facts: This case involved an appeal to the District Court from a decision of the hearing officer for the Eastern District of California. The case involved a claim filed pursuant to the IDEA on behalf of Jack P. a student diagnosed with autism against the Auburn Union school district. The hearing officer held that the school district had provided Jack P. with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student argued that the hearing officer erred in finding that the school district did not violate the procedural requirements of the IDEA by not accurately evaluating the student in the area of Auditory Processing. The student further argued the school district violated the substantive requirements of the IDEA.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the hearing officer, (2) in finding the alleged procedural violations by the school district did not violate the IDEA, (3) in its finding the IEP substantively provided meaningful benefit to the student; and (4) in finding the placement provided the student with free and appropriate education.

Holding: The District Court held that the hearing officer did not err in giving due weight to the decision of the hearing officer and that the hearing officer did not err in finding that the school district's IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court initially held the hearing officer did not err in finding the school district provided a free and appropriate education for the student and did not violate the procedural and substantive requirements of the IDEA. Following review of the record, the District Court found the procedural requirements of the IEP were upheld and the student was evaluated as requested, the IEP proposed provided the student with ESY, behavioral services, and the placement appropriate. The withdrawal of the student into a private setting outside the boundaries of the school district precluded moving forward with the IEP.

Disposition: The judgment of the hearing officer was upheld in its entirety.

Citation: *S.K. ex rel. N.K. v. Parsippany-Troy Hills Bd. of Educ.*, 2008 WL 4561512 (D. N.J. 2008).

Facts: This case involved an appeal to the District Court from a decision from the administrative law judge. The case involved a claim filed pursuant to the IDEA on behalf of N. K. a student diagnosed with autism against the Parsippany-Troy Hills Board of Education. The administrative law judge held that the school district had provided the student with free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student argued the administrative law judge erred in finding for the school district. The student further argued that the school district had procedurally violated the IDEA by predetermining the placement, not providing a behavior and transition plan, and failed to develop goals and objectives for the student. The school district filed a motion for the current placement to be considered "stay put" and the right of the Court to

stipulate such therefore allowing the movement to the proposed placement upon the decision of the hearing officer.

Issue: Whether the administrative law judge erred (1) in finding the alleged procedural violations of the school district did violate the IDEA, (2) in finding the alleged substantive violations with regard to the IEP providing meaningful benefit to the student did violate the IDEA, (4) in finding the current placement can be considered “stay put” with the movement to the proposed placement.

Holding: The District Court did not err in upholding the decision of the administrative law judge and the School System did provide free and appropriate education to the student and met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court held that the administrative law judge did not err in finding that the school district provided free and appropriate education for the student. The students procedural and substantive challenges were rejected due to the conclusion the school district provided the student with an appropriate IEP in the least restrictive environment. The parent participated in the IEP meetings, the proposed placement was presented to the parent for discussion, and the behavior and transition plans did not substantially harm the student. The request for movement to stay put was rejected by the Court.

Disposition: The plaintiffs motion for summary judgment seeking reversal of the decision of the administrative law judge is denied, and the school districts cross motion seeking affirmation of the administrative law judges decision is granted. The school districts motion that placement proposed in the IEP be declared “stay put” is denied.

Citation: *J.K. ex rel. Kraft v. Metro. Sch. Dist. Sw. Allen County*, 2005 WL 2406046 (D. N.D. Ind. 2005).

Facts: This case involved an appeal to the District Court from a decision from the Board of Special Education Appeals (BSEA). The case involved a claim pursuant to the IDEA on behalf of J. K. a student diagnosed with autism against the Metropolitan school district in the south west district of Indiana. The BSEA reversed a decision by the local hearing officer which held that the District did not provide the student with a free and appropriate education.

Upon appeal to the District Court, the student argued that the Court abused its discretion in giving due weight to the decision of the BSEA. The student further argued that the District had procedurally and substantively violated the IDEA by failing to evaluate, identify, and provide appropriate services in a timely manner. The student finally argued that the district did not implement the appropriate amount of the parent chosen methodology.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the BSEA, (2) in finding that the alleged procedural violations did not violate the IDEA, (3) in finding that the IEP substantively provided adequate and meaningful benefit to the student; and (4) in finding that the school districts choice of an eclectic methodology to include components of the parents methodology of applied behavioral analysis met the substantive requirements of the IDEA.

Holding: The District Court held that the BSEA did not err in reversing the decision by the local hearing officer and that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court initially held the BSEA did not err in finding for the school district and essentially reversing the decision of the local hearing officer. Following review of the record, the District Court concluded the findings of the BSEA were consistent and supported the school districts IEP. The students procedural challenges were rejected by the

District Court due to its conclusion that none of the challenges resulted in educational loss. The Districts substantive challenges that the school districts program failed to provide an adequate, meaningful benefit were also rejected as the program developed included aspects and programming of the methodology chosen by the parent, applied behavioral analysis, and the school day was lengthened to address parent concerns regarding generalization of services and consistency.

Disposition: The judgment of the BSEA for the school district was upheld and summary judgment was awarded.

Citation: *C.B. ex rel. W.B. v. New York City Dept. of Educ.*, 2005 WL 1388964 (D. E.D. N.Y. 2005).

Facts: This case involved an appeal to the District Court from a decision by the State Hearing Officer (SHO) for the Eastern District of New York. The case involved a claim filed pursuant to the IDEA on behalf of W. B. a student diagnosed with autism. The SHO affirmed an earlier decision which had held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court the student argued that the school district violated the procedural and substantive requirements of the IDEA by failing to provide an IEP and reimburse the parents for the requested private program costs and behavioral therapy hours the parents provided in the home setting. The student furthermore argued the school district violated the substantive requirements by offering a program that did not meet his individual needs.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the SHO, (2) in finding that the alleged procedural and substantive violations did not violate the IDEA, (3) in finding the placement proposed by the school district provided free and appropriate

education; and (4) in denying reimbursement and costs for the private program and applied behavioral analysis therapy.

Holding: The District Court did err in giving due weight to the opinion of the SHO and also erred in finding the alleged procedural and substantive violations did not violate the IDEA.

Reasoning: The District Court initially held that the SRO did not err in finding the school district did provide free and appropriate education for the student and met the procedural and substantive requirements of the IDEA. Following review of the record, the District Court found the IEP proposed by the school district failed to comply with the procedural requirements of the IDEA in preparing the IEP for the student but it also lacked the appropriate goals and an appropriate behavior plan. The District Court further addressed the appropriateness of the program obtained by the parents. The pendency clause was also not addressed as it was determined to be a separate issue.

Disposition: The Court found summary judgment for the parent. The defendant was ordered to reimburse the parents for the private program and private behavioral therapy as well as reasonable attorney fees and costs.

Citation: *Pachl ex rel. Pachl v. Seagren*, 453 F.3d 1064 (8th Cir. 2006), aff'g 2006 WL 1140618 (D. Minn. 2005). *Pachl ex rel. Pachl v. Sch. Bb. Of Indep. Sch. Dist. No. 11*, 2005 WL 428587 (D. Minn. 2005).

Facts: This case involved an appeal to the District Court from a decision of the hearing officer in Minnesota. The case involved a claim filed pursuant to the IDEA on behalf of Sarah Pachl, a student diagnosed with autism against the Minnesota Department of Education and the Anoka-Hennepin Independent school district. The hearing officer held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student argued that the school district had procedurally and substantively violated the IDEA by rejecting the mainstream/least restrictive environment setting and denied the appropriate extended school year services.

Issue: Whether the District erred (1) in giving due weight to the decision by the local hearing officer, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in finding that the IEP developed by the school district substantively provided meaningful benefits to the student.

Holding: The District Court held that the hearing officer did not err in finding the school district provided free and appropriate education in the least restrictive environment to the student and the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court initially held that the hearing officer did not err in finding that the hearing officer found the school district provided the student with free and appropriate education. Following review of the record, the District Court concluded that the findings of the hearing officer were consistent with and supported by the expert witnesses. The school district substantive challenges were also rejected as the school district did not include the recommendations from the expert hired by the parent; however, the school districts expert found the IEP developed by the school district did provide the student free and appropriate education in the least restrictive environment.

Disposition: The judgment of the hearing officer was upheld; the defendant school districts motion for judgment on the Administrative Record is granted and the plaintiffs motion for judgment on the Administrative Record is denied.

Citation: *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634 (9th Cir. 2005).

Facts: This case involved an appeal to the Ninth Circuit from a decision of the United States District Court for the Western District of Washington. The case involved a claim filed pursuant to the IDEA on behalf of M. L. a student diagnosed with autism against the Federal Way school district. The District Court affirmed an earlier opinion by the administrative law judge which held that the school district provided the student with free and appropriate education as required by the IDEA. Parents appealed and the District Court granted summary judgment for the school district and the parents of the student appealed. The Court of Appeals vacated and remanded whether to award attorney fees and costs to the parents as prevailing parties.

Upon appeal to the Ninth Circuit, the student initially argued that the school district procedurally violated the IDEA by failing to include a regular education teacher on the IEP team. The student further argued that the IEP offered by the school district was substantively inadequate as it failed to mainstream the student into a regular education class, and failed to take remedial action after the student was being teased.

Issue: Whether the District Court erred (1) in finding that the alleged procedural violations by the school district did not violate the IDEA, (2) in finding that the IEP substantively provided meaningful educational benefits to the student and did not violate the IDEA, and (3) in finding that the student was the prevailing party in the case, thus eligible for attorney fees and costs.

Holding: The Ninth Circuit held that the District Court did err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The Ninth Circuit found that the District Court did err in finding that the school district did not violate the procedural and substantive requirements of the IDEA. The students procedural challenges were supported by the Ninth Circuit stating the failure to include

at least one regular education teacher in the IEP meeting constituted a structural error and it was not deemed harmless. Therefore, the Court remanded the District Court to select an IDEA compliant IEP team. The parties agreed to a settlement and the question then becomes who is the “prevailing party”? In reviewing the attorney fees and costs due the prevailing party, the court examined the earlier settlement offer of compensatory education or a specified number of hours of applied behavioral analysis services. When examining costs and previous settlement offers, the Ninth Circuit found the parents of the student as the prevailing party and awarded attorney fees and costs.

Disposition: The judgment of the Ninth Circuit was granted for the parent.

Citation: *N.J. ex rel J.J. v. Nw. R-School Dist.*, 2005 WL 2738389 (D. E.D. Mo. 2005).

Facts: This case involved an appeal to the District Court from decisions of administrative and state hearing officers. The case involved a claim filed pursuant to the IDEA on behalf of N.J. a student diagnosed with autism against the Northwest R-1 school district. The state hearing officer affirmed an earlier decision by an administrative hearing officer that held the school district provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court the student argued that the state hearing officer abused its discretion in finding that the school district met the procedural and substantive requirements of the IDEA and provided free and appropriate education to the student. The student further argued that it prevailed on a significant issue at the administrative hearing and was the prevailing party due attorney costs and fees.

Issue: Whether the District Court (1) erred in giving due weight to the decision of the administrative hearing officer, (2) in finding that the alleged procedural violations by the school

district did not violate the IDEA, (3) in finding that the IEP did not substantively provide meaningful advancement on the goals, and (4) that the student qualified as the prevailing party.

Holding: The District Court did not err in giving due weight to the decision of the state hearing officer and the state hearing officer did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA the school district was the prevailing party.

Reasoning: The District Court initially held that it did not err in giving due weight to the decision of the state hearing officer. Following review of the record, the Court concluded the findings of the state hearing officer were consistent and supported the findings that the school district met the procedural and substantive requirements of the IDEA provided the student with an appropriate IEP tailored to meet his needs, addressed the medical diagnosis of autism, and demonstrated more than trivial advances progressing toward IEP goals.

Disposition: The court finds in favor of the defendant and motion for attorney fees by the plaintiff is denied. The judgment of the state hearing officer was upheld in its entirety.

Citation: *William D. ex rel. Dennis D. v. Manheim Twp. Sch. Dist.*, 2007 WL 2825723 (D. E.D. Pa. 2007).

Facts: This case involved an appeal to the District Court from a Special Education Due Process Appeals Panel (Appeals Panel) for the Eastern District of Pennsylvania. The case involved a claim pursuant to the IDEA on behalf of William D. a student diagnosed with autism against the Manheim Township school district. The Appeals Panel affirmed an earlier opinion by a Pennsylvania Special Education Hearing Officer (Hearing Officer) which had held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student initially argued that the school district had abused its discretion in giving due weight to the decision of the Appeals Panel. The student further argued that the school district procedurally violated the IDEA as it relied on an inaccurate medical diagnosis of the disability, did not consider all seven required factors in determining ESY eligibility. The student finally argued that the IEP provided by the school district was substantively inadequate as it did not include testimony by the mother or the applied behavioral analysis consultant addressing the students loss of skills thus requiring ESY.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the Appeals Panel, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, and (3) in finding that the IEP substantively addressed the students ESY needs.

Holding: The District Court did not err in giving due weight to the decision of the Appeals Panel and the Appeals Panel did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court did not err in giving due weight to the decision and opinion of the Appeals Panel. Following review of the record, the District Court concluded that the findings of the Appeals Panel were consistent and supported the school districts IEP. The students procedural challenges were also rejected by the District Court as the state factors required for consideration in ESY were considered and applied. Finally, the substantive challenges that the IEP failed to consider the testimony of the mother and applied behavioral analysis consultant in alleged loss of skills was unfounded.

Disposition: The judgment for the defendant was granted.

Citation: *Brown v. Bartholomew Consolidated School Co.*, 2005 WL 2406046 (D. N.D. Ind. 2005).

Facts: This case involved an appeal to the District Court from a decision of the State Board of Educational Appeals, (BSEA). The case involved a claim pursuant to the IDEA on behalf of Robert Brown, a student diagnosed with autism against the Bartholomew Consolidated school district. The BSEA had affirmed an earlier decision by a hearing officer which held that the school district had provided Robert Brown with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student initially argued that the BSEA had abused its discretion in its giving of due weight to the findings of the hearing officer. The student argued that the school district had procedurally violated the IDEA by predetermining the students placement, neglecting to develop a transition plan, and implement objectively measurable criteria to ensure that progress toward the agreed upon goals and objectives would be objectively measured. The student further argued that the IEP offered by the school district was substantively inadequate as the IEP was not reasonably calculated to provide the student with educational benefit. Finally, the student claimed the proposed IEP would have exceeded the limit that mainstreaming be done to the “maximum extent appropriate.” Additional evidence not previously available was reviewed for independent attention.

Issue: Whether the District Court erred (1) in giving due weight to the opinion of the BSEA officer, (2) in finding that the alleged procedural violations by the school District did not violate the IDEA, (3) in finding that the IEP substantively provided meaningful benefits to the student, and (4) in finding that the school districts program of a chosen methodology rather than the parent program of applied behavioral analysis provided free and appropriate education.

Holding: The District Court held that the BSEA did not err in giving due weight to the decision of the hearing officer and that the BSEA did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court initially held that the BSEA did not err in giving due weight to the decision of the hearing officer. Following review of the record, the District Court concluded that the findings of the BSEA were consistent and supported by the testimony of the notes, memos, and emails that the parents were involved in decisions regarding the proposed placement. This in addition to the observations, testimony, by expert points to the parents interaction in the process, a proposed transition plan presented, and criteria to measure goals was stated in the IEP. The students procedural challenges were also rejected by the District Court due to the conclusion that the parents were consistently noticed and invited to be part of the IEP team. A proposed transition plan was not affirmed due to the lack of parent participation and agreement. Finally, the measurable goals and objectives contained the criteria for measurement. The substantive challenge that the school districts IEP was inadequate was rejected as the chosen program for services was developed by professionals who have devoted their careers to educating children with ASD and related disabilities. The least restrictive environment component was rejected as a one-on-one home program clearly is more restrictive than any public school programming. A school program while reluctant to integrate disabled children with their non-disabled peers is essentially a case of methodology challenge. The courts have repeatedly recognized they should generally defer to the decisions of the state and local agencies in such disputes. Additional evidence presented did not confirm the inappropriateness of the proposed IEP based on the student's age.

Disposition: The decisions of the IHO and BSEA were affirmed for the school district.

Citation: *County School Board of Henrico County, Virginia, v. R.T. et, al.*, United States District Court E. D. Virginia, Fourth Circuit, 2006.

Facts: This case involved an appeal to the District Court from a decision of the hearing officer. The case involved a claim filed pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of the County School Board of Henrico County Virginia against R. T. a student diagnosed with autism. The hearing officer found the School Board failed to provide a free and appropriate education (free and appropriate education) as required by the IDEA for the student and the School Board appealed the decision to the District Court.

Upon appeal to the District Court, the School Board initially argued that it had offered an IEP that substantively met the individual and educational needs of the student. The school district further argued that the IEP implemented indicated that the student was making progress although the cognitive level of the student was difficult to measure and therefore progress was slow. The school district finally argued that the methodology they chose to implement was appropriate and the Courts have consistently found the school district may make the determination of the methodology of choice, not the parent.

Issue: Whether the hearing officer erred (1) in finding that the school district did not develop and implement an IEP that provided the student with a free and appropriate education, (2) in finding that the IEP substantively provided meaningful benefit to the student, (3) and in that the District chosen methodology was not a substantive violation of the IDEA, (4) in finding the least restrictive environment for the student was the private school placement.

Holding: The District Court found that the hearing officer did not err in finding that the school districts IEP did violate the substantive requirements of the IDEA.

Reasoning: The District Court found that the hearing officer did not err in finding that the school districts IEP was substantively challenged and did not provide the student with a free and appropriate education. Upon review of the records, the Court found the testimony of the School system witnesses was not credible as the student lacked in attending skills and the parent chosen methodology of applied behavioral analysis and the private school placement addressed this individual need, not the TEACCH program recommended and implemented by the school district. The school districts substantive challenges were further substantiated by the Court as the evaluation of the student by private personnel indicated that there was no progress noted or observed.

Disposition: The judgment was for the parent defendants.

Citation: *S.A. v. Riverside Delanco Sch. Dist. Bd. of Educ.*, 2006 WL 827798 (D. N.J. 2006)

Facts: This case involved an appeal to the District Court from a decision from an administrative law judge and a motion for attorney's fees by the student. The case involved a claim pursuant to the IDEA on behalf of S. A. a student diagnosed with autism, against the Riverside Delanco school district. The administrative law judge opined for the student and the request now comes for reasonable attorney fees and costs as the prevailing party under the IDEA. The school district filed a motion to reverse the decision finding their IEP provided free and appropriate education.

Upon appeal to the District Court, the student initially argued the prevailing party and thus due costs and fees in the administrative action. In the administrative hearing, the student initially argued substantive violations in the minimal preschool program proposed by the school district which did not provide a program grounded in applied behavioral analysis and discrete

trial training techniques. None of the school district personnel were trained in these techniques and the startup time would be approximately 2.5 months and the student would then be a “guinea pig” for the program. The defendant school district contends the administrative law judge failed to accord the educators their deference that was due, improperly permitting the parents of the student to impose their preferred methodology on the School Board. The School Board filed a motion for reversal of the decision based on the appropriateness of their IEP and program methodology.

Issue: Whether the District Court erred (1) in failing to give weight to the testimony of the personnel of the school district, (2) in finding the IEP substantively violated the IDEA by not providing meaningful benefit to the student, and (3) in finding the methodology chosen by the school district was not a substantive violation of the IDEA, and (4) in finding the parent the prevailing party and due costs and fees associated with the administrative hearing.

Holding: The District Court held that the administrative law judge did not err in failing to give deference to the personnel of the school district and did not err in finding that the school districts IEP failed to provide meaningful benefit and meet the substantive requirements of the IDEA.

Reasoning: The District Court initially held that the administrative law judge did not err in giving due weight to the testimony of the private school personnel. Following review of the record, the school district personnel lacked training in the preferred methodology deemed appropriate for the student making the IEP lacking substantively in meaningful benefit and meeting the requirements of the IDEA.

Disposition: The judgment of the administrative law judge was upheld in its entirety for the plaintiff.

Citation: *Belken ex rel. Belken v. Sioux City Cmty. Sch. Dist.*, 2006 WL 2925660 (D. N.D. Iowa 2006).

Facts: This case involved an appeal to the District Court in the Northern District of Iowa from a decision from an administrative law judge. The case involved a claim filed pursuant to the IDEA on behalf of Lev Belkin, a student diagnosed with autism against the Sioux City Community school district and Western Hills Area Education Agency. The administrative law judge held that the school district provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student initially argued that the school district procedurally violated the IDEA by changing material provisions of the IEP without prior written notice, and substantively violated the IDEA by failing to comply with the provisions of the IEP concerning intervention techniques and supports in the classroom, the parent aide was retaliated against for advocating on her sons behalf, and the failure to provide assurances that the IEP would be fairly and fully enforced in the classroom.

Issue: Whether the District Court erred (1) in finding the alleged procedural violations by the school district did not violate free and appropriate education, (2) in finding that the IEP substantively provided adequate benefits to the student; and (3) in finding that the personnel change was not retaliation against the parents for their advocacy of their son.

Holding: The District Court did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The administrative law judge initially held that the school districts IEP procedurally and substantively met the requirements of the IDEA. Following review of the record, the District Court concluded that the findings of the administrative law judge were

consistent and supported by the school district working with the parents procedurally regarding the choice of classroom aide, and offering the parents choices in replacement aides when communication between aide and teacher broke down. The substantive challenges were rejected when the school district implemented methodology choices of and with the parent in providing adequate benefit in the behavioral program. The Court further rejected the parents' claim of retaliation toward the parent aide when the school district kept the family informed of options for replacement aides and often acceded to parental requests.

Disposition: The judgment of the administrative law judge was upheld and found in favor of the defendant.

Citation: *Clear Creek Indep. Sch. Dist. v. J.K. ex rel. Jose K.*, 400 F. Supp. 2d 991 (D. S.D. Tex. 2005).

Facts: This case involved an appeal to the District Court from a decision from a local hearing officer. The case involved a claim pursuant to the IDEA on behalf of the Clear Creek Independent school district against J. K. a student with autism. The local hearing officer held that the school district had denied the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the school district initially argued that the District Court must give the hearing officer's decision due weight but it must reach its own conclusion based on the evidence. The school district further argued that the failure to include home training in the IEP did not deny the student free and appropriate education. Finally the District argued that the IEP did not substantively violate the IDEA as it provided educational benefit, in the least restrictive environment, in a collaborative manner, and the student received academic and non academic benefits.

Issue: Whether the District Court erred (1) in finding that the alleged IEP substantively violated the IDEA by lack of progress in using assistive technology and a self-care skill, and (2) in finding that the omission of the in home program substantively violated the IEP and denied free and appropriate education to the student.

Holding: The District Court did err in giving due weight to the decision of the hearing officer in finding that the school districts IEP substantively failed to provide a free and appropriate education to the student and the District Court did not err in finding that the school districts IEP met the substantive requirements of the IDEA.

Reasoning: The District Court initially held that the hearing officer did not err in finding that the school district failed to provide the student a free and appropriate education in omitting the in-home program. Following review of the record, the District Court found that the findings of the hearing officer were not supported by the evidence. The student did receive some educational benefit and new skills were developed. Furthermore, the Court found the school district is not obligated to provide every service or the very best education that might be desired for the student.

Disposition: The motion for summary judgment by the plaintiff school district was granted.

Citation: *J.P. by Karl & Linda Peterson v. County School Board of Hanover County Virginia*, United States Court of Appeals, Fourth Circuit, 2007.

Facts: This case involved an appeal to the Fourth Circuit from a decision of the United States District Court for Virginia. The case involved a claim filed pursuant to the IDEA on behalf of J.P. a student diagnosed with autism against the County School Board of Hanover County. The District Court reversed an earlier decision from a State Hearing Officer which had

held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the Fourth Circuit, the school district initially argued that the District Court had abused its discretion in failing to give deference to the State Hearing Officers decision. Following review of the record, the Court found the decision at the hearing officer level was not made in a regular manner as the hearing officer did not sufficiently explain how the credibility of the witnesses was assessed and did not provide a detailed analysis of the resolution of the legal and factual issues in the case.

The student then argued that the school district had procedurally violated the IDEA by failing to evaluate the student in language. The student finally argued that the proposed IEP was substantively inadequate as it failed to provide progress data and provide meaningful benefit.

Issue: Whether the District Court erred (1) in giving no weight to the decision of the state hearing officer, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, and (3) in finding that the IEP substantively provided meaningful benefit to the student.

Holding: The Fourth Circuit held that the lower District Court did err in giving no weight to the decision of the state hearing officer as the District Court held the hearing officers decision to a standard not dictated by statute or case law and ignored the constraints under which the hearing officer operates. As a result the Court did not address the procedural and substantive alleged violations.

Reasoning: The Fourth Circuit initially held that the District Court did err in giving no weight to the decision of the hearing officer. Following review of the record, the Fourth Circuit

concluded that the findings of the hearing officer were not determined in a regular manner and therefore not due entitled to deference.

Disposition: Therefore, the District Courts decision was vacated and remanded for reconsideration regarding the substantive challenged to the IEP and award for attorney fees. After remand, the Court will address the District Courts decision and give deference to the decision of the hearing officer.

Citation: *W.S. ex rel. C.S. v. Rye City Sch. Dist.*, 454 F. Supp. 2d 134 (D. S.D. N.Y. 2006).

Facts: This case involved an appeal to the District Court from a decision of the local and state hearing officers in the Southern District of New York. The case involved a claim filed pursuant to the IDEA on behalf of C. S. a student diagnosed with autism against the Rye City School District. The state hearing officer affirmed an earlier decision by a local hearing officer which held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student initially argued that the school district procedurally violated the IDEA by predetermining the students placement by not advising private schools of the students needs, and failing to complete a FBA and BIP in a timely manner. The student further argued that the IEP offered by the school district was substantively inadequate as it contained overly broad goals.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the state hearing officer, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in finding that the IEP substantively provided meaningful

educational benefit to the student, and (4) in finding that the placement recommended by the school district was not a substantive violation of the IDEA.

Holding: The District Court held that the state hearing officer did not err in giving due weight to the decision of the state hearing officer and in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court did not err in giving due weight to the decision of the state hearing officer. Following review of the record, the District Court concluded that the findings of the state hearing officer and local hearing officer were consistent with the evidence presented. The students procedural challenges were rejected by the District Court due to the conclusion that the school district was not required to notify private schools of the students needs. Furthermore, the IEP was substantively appropriate demonstrating progress, meaningful benefit, programming in both regular and special education placements, and addressed behavior.

Disposition: The judgment of the state hearing officer was upheld in its entirety for the school district.

Citation: *DeKalb County Sch. Dist. V. J.W.M. ex rel. W.M.*, 445 F. Supp. 2d 1371 (D. N.D. Ga. 2006).

Facts: This case involved an appeal to the District Court from a decision of the administrative law judge for the Northern District of Georgia. The case involved a claim pursuant to the IDEA on behalf of W.M. a student diagnosed with autism against the DeKalb County school district. The administrative law judge found that the student was not offered free and appropriate education. The school district appealed the decision and the parents filed counterclaim. School district moved to dismiss counterclaim.

Upon appeal to the District Court, the school district filed a motion to appeal the decision of the administrative law judge and the parents filed counterclaims. The school district moved to dismiss the counterclaims by the student as they were not included in the initial due process hearing request. These claims included deprivation of food, restraint, compensatory education of the applied behavioral analysis/discrete trial training program paid for by the parent, and the award of attorneys fees and costs.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the administrative law judge, (2) in finding that the alleged counterclaims by the student warrant dismissal, (3) in seeking enforcement of the decision of the administrative law judge, (4) in appealing the decision of the administrative law judge and providing compensatory education and reimbursement of private costs incurred by the parents; and (5) in awarding attorney fees and costs.

Holding: The District did not err in upholding the decision of the administrative law judge and the District Court did not err in dismissing the counterclaims of the student.

Reasoning: The District Court did not err in giving due weight to the decision of the administrative law judge. Following review of the record, the District Court concluded the claim for enforcement of the decision of the administrative law judge is granted. The claim for compensatory educational and reimbursement of private program costs is time barred and dismissed. Finally the request for attorney fees and costs can be filed after disposition of the substantive claims.

Disposition: The judgment of the District Court held that the students fraudulent concealment claim was time barred and the motion was granted.

Citation: *Schoenbach v. District of Columbia*, 309 F. Supp. 2d 71 (D. D.C. 2004).

Facts: This case involved an appeal to the District Court from a decision from a local hearing officer. The case involved a claim pursuant to the IDEA on behalf of Anna Schoenbach, a student diagnosed with Asperger's Syndrome, a form of higher functioning autism against the District of Columbia Public Schools (DCPS). The hearing officer found the placement proposed by the school district was a free and appropriate education and the parents were not entitled to private placement reimbursement.

Upon appeal to the District Court, the student initially argued that the hearing officer erred in finding that the school district provided a free and appropriate education as required by the IDEA. The student further argued that the school district had procedurally violated the IDEA by not providing the parents with meaningful input in the IEP and the placement was predetermined. The student finally argued that the IEP was substantively inadequate as the IEP placement proposed by the school district was not the best placement.

Issue: Whether the hearing officer erred (1) in finding that the alleged procedural violations by the school district did not violate the IDEA, (2) in finding that the IEP provided the parents with meaningful educational benefit in IEP development, and (3) in finding that the placement proposed by the school district was not a substantive violation of the IDEA.

Holding: The District Court held that the hearing officer did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court did not err in giving due weight to the decision of the hearing officer. Following review of the record, the District Court concluded that the findings of

the hearing officer were consistent and supported school district. The students procedural and substantive challenges were rejected by the District Court due to its conclusion that the IEP provided meaningful benefit to the student, included parental participation, and was appropriately calculated to meet the students specific needs in the least restrictive environment.

Disposition: The judgment of the hearing officer was upheld in its entirety.

Citation: *Michael J v. Derry Twp. Sch. Dist.*, 2006 WL 148882 (D. M.D. Pa. 2006).

Facts: This case involved an appeal from a decision of the Special Education Due Process Appeals Panel of the Commonwealth of Pennsylvania. The case involved a claim filed pursuant to the IDEA on behalf of Patrick J. a student diagnosed with autism against the Derry Township school district. The State Hearing Officer held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student initially argued that the District Court abused its discretion by giving weight to the findings of the hearing officer and the State Due Process Appeals Panel. The student further argued that the school district had procedurally violated the IDEA by failing to offer an IEP, obtain updated and meaningful present educational levels as baseline data for the IEP, failure to accommodate to the parents schedule to meet thus precluding the parents from meaningful participation in the development of the IEP, and preparing the draft IEP and determining placement without parental input. The student finally argued that the IEP offered by the school district was substantively inadequate as it failed to provide meaningful benefit to the unique, individual needs of the student.

Issue: Whether the District Court erred (1) in giving due weight to the opinion of the State Due Process Appeals Panel, (2) in finding that the alleged procedural violations by the

school district did not violate the IDEA, (3) in finding that the IEP substantively provided meaningful benefits to the student providing a free and appropriate education.

Holding: The District Court did not err in giving due weight to the decision of the State Due Process Appeals Panel and in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court did not err in giving due weight to the decision of the State Due Process Appeals Panel. Following review of the record, the District Court concluded that the findings of the Appeals Panel were consistent with the supported the evidence presented at the hearing.

The students procedural challenges were also rejected by the District Court Due to the conclusion that the school district prepared an IEP with input from evaluations, requested parental input, and prepared an IEP for review by the team. The District relied on levels and data in developing a program that was intense, individualized to meet the students needs, while in the least restrictive environment possible.

Disposition: The judgment of the State Due Process Appeals Panel was upheld in its entirety.

Citation: *W.C. ex rel. R.C. v. Summit Bd. of Educ.*, 2007 WL 4591316 (D. N.J. 2007).

Facts: This case involved an appeal to the District Court from a decision of the administrative law judge in the state of New Jersey. The case involved a claim pursuant to the IDEA on behalf of R. C. a student diagnosed with autism against the Summit Board of Education. The administrative law judge held that school district had failed to provide the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student argued that the administrative law judge reduced the award of reimbursement for violations of notice provisions, and unreasonableness in actions taken by the parents. The student argued the school district did not provide an IEP, unilaterally enrolled the student in a private placement, did not allow the school district release form necessary to examine placement in a state approved school. Furthermore the proposed IEP was temporary as the student did not cooperate with the school district in developing a permanent IEP.

Issue: Whether the administrative law judge erred (1) in finding for the student regarding a free and appropriate education, (2) in awarding attorney fees and costs as the prevailing party although reduced due to provisions noted and unreasonableness by the parents, (3) in unilaterally enrolling the student in a private placement.

Holding: The District Court held that the administrative law judge did not err in finding for the student regarding denial of a free and appropriate education and the actions of the parents were unreasonable and violated notice provision therefore reducing the amount of attorney fees and costs.

Reasoning: The administrative law judge initially held that the student was denied a free and appropriate education when the District did not provide an IEP. The lack of an appropriate program being in place prior to the school districts program places the burden of proof on the school district to defend their IEP as substantive by providing meaningful educational benefits proportionate to the students potential.

The parents did not implement an IFSP when the student was preschool age due to the lack of trained applied behavioral analysis personnel the parent felt would be appropriate for the program. The parent then began investigating private programs containing applied behavioral

analysis methodology for the student. This was done without the knowledge of the school district. The District Court held that the administrative law judge did not err in finding for the student and agreed to reduction of attorney fees and costs. The parents then filed due process over the lack of an appropriate IEP and reimbursement of private program costs.

Disposition: The judgment of the administrative law judge was upheld and the amount of the attorneys fees will be addressed in a separate ruling.

Citation: *L.J. ex rel. V.J. v. Audubon Bd. of Educ.*, 2008 WL 4276908 (D. N.J. 2008), denied motion for delayed appeal, 2009 WL 995458 (D. N.J. 2009), *aff'd*, 2010 WL 1408296 (3rd Cir. 2010).

Facts: This case involved an appeal to the District Court from a decision by an administrative law judge. The case involved a claim pursuant to the IDEA regarding L.J. a student diagnosed with autism against the Audubon Board of Education. The District Court affirmed an earlier opinion by the administrative law judge which held that the school district did not provide L. J. with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court the student initially argued the school district did not comply with the order of the administrative law judge. The student further argued that the school district had substantively violated the IDEA by failing to incorporate evaluate and incorporate a behavior plan in the IEP, include appropriate hours of applied behavioral analysis therapy, and provide compensatory education services. The student finally argued the school district should be held in contempt for failure to implement the decision of the administrative law judge.

Issue: Whether the administrative law judge erred (1) in finding the school districts IEP did not substantively meet the IDEA requirements, (2) in finding that the IEP lacking a behavior

plan violated the IDEA, and (3) the proposed applied behavioral analysis hours were lacking in meeting substantive requirements of the IDEA, and (4) in finding that the alleged failure in complying with the decision of the administrative law judge warranted the motion for contempt.

Holding: The District Court held that the administrative law judge did not err in finding the school district did not provide free and appropriate education and ordered the implementation of a behavior assessment and plan, compensatory education of applied behavioral analysis hours as determined by the administrative law judge, and denied the motion for contempt.

Reasoning: The District Court held that the administrative law judge did not err in holding the school district did not provide the student with a free and appropriate education. The IEP proposed by the school district was substantively inadequate as it did not address behavior, applied behavioral analysis hours. The Court denied the motion for contempt as the school district did address some of the order and the District Court. The Court ordered the school district to evaluate and implement a behavior plan, provide compensatory education in weekly hours of applied behavioral analysis therapy, and designate personnel to implement the requirements.

Disposition: The decision of the administrative law judge was upheld and the motions of the student were granted in part and denied in part.

Citation: *L.M.P. ex rel. E.P. v. Sch. Bd. of Broward County, Fla.*, 516 F. Supp 2d 1294 (D. S.D. Fla. 2007).

Facts: This case involved an appeal to the District Court from a decision of an administrative law judge. The case involved a claim pursuant to the IDEA on behalf of triplets E.P., D.P., and K.P. against the School Board and members of Broward County, Florida. The administrative law judge did not reach the free and appropriate education issue and the students

were not eligible to receive the reimbursement the parents were seeking. The parents then filed this action. The District Court held that the IDEA did not provide claim for monetary relief against members, and members actions were not motivated by discriminatory animus.

Upon appeal to the District Court, the student initially argued that the school district had procedurally violated the IDEA by failing to have an IEP in place by the students third birthday. The student argued that the IEP offered by the school district was substantively inadequate as it failed to offer the appropriate applied behavioral analysis programming requested by the parent. The parent then requested reimbursement for a private program including applied behavioral analysis therapy.

Issue: Whether the administrative law judge erred in (1) failure to address the free and appropriate education issue, (2) denying the monetary requests by the student, (3) finding the members of the school district were acting in a discriminatory mode.

Holding: The District Court held that the IDEA does not provide for monetary relief the parents were requesting. The District Court did not address the alleged procedural and substantive violations of the IDEA.

Reasoning: The District Court initially held that the administrative law judge did not err in failure to address the free and appropriate education issue. Following review of the record, the Court found the decision to deny monetary reimbursement was consistent with the IDEA and the alleged actions of the school board members was not substantiated. The District Court further found the case could address the free and appropriate education issue in the future.

Disposition: The judgment of the administrative law judge was granted in part and denied in part.

Citation: *K.S. ex rel. P.S. v. Fremont Unified Sch. Dist.*, 545 F.Supp.2d 995 (D. N.D. Cal. 2009).

Facts: This case involved an appeal to the District Court from a decision from an administrative law judge in the Northern District of California. The case involved a claim pursuant to the IDEA on behalf of K. S. a student diagnosed with autism against the Fremont Unified school district. The District Court affirmed the decision of the administrative law judge which held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student initially argued the school district did not provide a free and appropriate education to the student. The student further argued the school district had offered an IEP that was substantively inadequate as it did not provide the student with the requested hours of applied behavioral analysis therapy. Finally the school districts consideration of the students intellectual level was appropriate and expert testimony must be included.

Issue: Whether the District Court erred in (1) upholding the decision of the administrative law judge, (2) finding that the alleged substantive violation by the school district did not violate the IDEA, (3) finding the capacity of the student was determined appropriately, and (4) including the testimony of the expert.

Holding: The District Court did not err in upholding the decision of the administrative law judge and did not err in finding the school districts IEP met the substantive requirements of the IDEA.

Reasoning: The District Court did not err in upholding the decision of the administrative law judge. The Court rejected the alleged substantive violations of the IEP and found the

determination of the students cognitive capacity was appropriate. Furthermore, the testimony of the expert witnesses was included with the denial of the convergent validity determination made by one expert.

Disposition: The decision of the administrative law judge for the defendant school district was upheld.

Citation: *J.D. ex rel. Davis v. Kanawha County Bd. of Educ.*, 357 Fed. App'x 515 (4th Cir. 209), aff'g unpublished decision No. 2: 06-cv-00167 (S.D. W. Va. 2008)

Facts: This case involved an appeal to the District Court from a decision from a local hearing officer in West Virginia. The case involved a claim pursuant to the IDEA on behalf of J. D. a student diagnosed with autism against the Kanawha County Board of Education. The hearing officer found for the student on some issues, but determined the IEP at issue did provide the student with a free and appropriate education.

Upon review of the records the student initially argued that the school district did not provide the student with a free and appropriate education as the Special Education services offered by the School Board were predetermined, thus violating the procedural requirements of the IDEA. The student further argues the substantive violations of the IDEA included the Special Education services offered to the student were not reasonable calculated to enable the student to receive educational benefit that was more than trivial and meaningful, and the program offered was damaging as the proper supports and services were not in place.

Issue: Whether the District Court erred (1) in upholding the decision of the hearing officer, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in finding that the IEP substantively provided meaningful benefit to the student

and (4) in finding that the methodology employed by the school district was well suited to achieve the goals and objectives in the IEP at issue.

Holding: The District Court held did not err in upholding the decision of the hearing officer in part and the District Court did not err in finding that school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court initially did not err in upholding the decision of the Hearing officer. Following review of the record, the District Court concluded that the findings of the hearing officer were consistent and supported by the evidence. The students procedural challenges were rejected by the District Court as the IEP team met five times with the parents. Finally, the students substantive challenges that the District failed to provide meaningful benefit as required by the IDEA because it did not provide the methodology the parent sought. The Court was careful not to impose its view of preferred educational methods on the board, but does remind the school district to plan an individually designed plan for each student, rather than a one size fits all solution for children on the Autism Spectrum.

Disposition: The motion for summary judgment by the school district was granted in part as it addresses IDEA claims, and denied in part on the motion for summary judgment on all counts.

Citation: *S.W. ex rel. J.W. v. Warren*, 528 F. Supp. 2d 282 (D. S.D. N.Y. 2007).

Facts: This case involved action to the District Court in the Southern District of New York by preschool students diagnosed with autism. The case involved a claim pursuant to the IDEA, Rehabilitation Act, and New York Law on behalf of preschool students diagnosed with autism and others similarly situated against the Orange County Department of Health, Director of Early Intervening Services (EIS) , and County of Orange.

Upon review, the students initially argued that the EIS, and Department of Health and County of Orange implemented policies which have resulted in a shortage of service providers, including services of physical and occupational therapy, speech, and applied behavioral analysis therapists. Limitations have been enacted in the amount of time, extended school year services, and billing of parents insurance for therapy which reduced the benefits and future coverage. In addition, the student claims the procedural and substantive violations of the IDEA in the failure to evaluate, develop appropriate programs, and requiring excessive travel for the services.

Issue: Whether the student erred (1) in filing to the District Court rather than exhausting administrative remedies of due process, (2) in finding that the program offered to the students met the procedural and substantive requirements of the IDEA, (3) in finding the EIS and Department of Health implementation of programs limits the accessibility of services due to the limited availability of service providers.

Holding: The District Court held that the students were not required to exhaust administrative remedies as the defendants instituted systematic policies which resulted in the failure to provide adequate services, the discrimination claim in violation of the Rehabilitation Act was sufficient to dismiss and the time limitation did not apply to claims. The alleged violations in IDEA of procedural and substantive requirements of the IDEA were granted and denied in part.

Reasoning: The District Court found the EIS did implement policies that resulted in the inability to provide adequate services to the students. The District Court held that the defendants motion to dismiss IDEA claims is granted in part and denied in part. Procedural and substantive alleged violations were denied and granted in part. Section 1983 claims are also granted in part and denied in part.

Disposition: The District Court granted in part and denied in part the defendants claims.

Citation: *T.P. ex rel. S.P. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247 (2nd Cir. 2009), rev'g and remanding 2007 WL 5396672 (D. S.D. N.Y. 2007).

Facts: This case involved an appeal to the District Court from administrative decisions from the local hearing officer and state review officer (SRO) for the southern district of New York. The case involved a claim pursuant to the IDEA on behalf of S.P. a student diagnosed with autism against the Mamaroneck Union Free school district. The SRO affirmed that the school district had provided the student with a free and appropriate education as required by the IDEA. The District Court found the student had been denied a free and appropriate education.

Upon review of the record, the District Court reviewed the decision of the SRO for objective evidence and whether or the not the student is likely to make progress or regress under the proposed plan. The student argued that the school district predetermined the placement regarding the implementation of applied behavioral analysis therapy of the student thus depriving the parents of meaningful participation in the IEP process, failing to consider the full continuum of services available, did not address extended day services and parent training. The alleged substantive violations of the IEP based on the school districts lack to develop a transition plan, offer a FBA, and BIP. Reimbursement of private programming provided by the parents was also examined.

Issue: Whether the District erred (1) in finding the alleged procedural violations by the school district did not violate the IDEA and deny free and appropriate education, (2) in finding the IEP substantively provided meaningful educational benefits to the student and (3) the reimbursement for private therapy is due to the student.

Holding: The District Court held that the SRO did err in finding for the school district and the school districts program did violate the procedural and substantive requirements of the IDEA denying the student a free and appropriate education.

Reasoning: The District Court held that the SRO did err in finding for the school district. Following review of the record, the Court found the school district violated the procedural and substantive requirements of the the IDEA when the students placement was predetermined, failed to give prior written notice of the rejection of services requested, did not provide the parents with a copy of the IEP until after the start of the school year, did not provide an appropriate transition plan, failed to address the parents request for ESY, an aide for applied behavioral analysis, and a FBA and BIP. Request for reimbursement for private services provided by the parents was also awarded to the student.

Disposition: The judgment of the SRO was reversed and found for the student.

Citation: "*Makiko D.*" v. *Hawaii*, 2007 WL 1153811 (D. Haw. 2007).

Facts: This case involved a declaration of revised status of the ruling of the Hearing Officer for the state of Hawaii. The case involved a claim pursuant to the IDEA on behalf of Jake D, a student diagnosed with autism against the State of Hawaii. The hearing officer found the program offered to the student did provide him with a free and appropriate education.

Upon review of the records, the Court found the student had been enrolled in a preschool program but was withdrawn due the alleged lack of speech services not received per his IEP. Parents enrolled the student in a private preschool, hired a private autism consultant, private speech path, and intensive instructional coordinators. The student alleged the Department of Education (DOE) did not provide prior written notice acknowledging the DOE would not pay for the program due to the parents unilaterally withdrawing the student from the program. The

student further alleged the DOE did not notify the parent of their procedural safeguards including private school related services and placement requirements. The hearing officer found the request for reimbursement of private program tuition was denied due to the statute of limitations.

Issue: Whether the hearing officer erred (1) in denying the reimbursement for the private program, and (2) in providing written notice of procedural safeguards of the IDEA.

Holding: The District Court found the hearing officer erred in denying the request for private related services and the District Court did not err in denying reimbursement for private tuition and could not determine the free and appropriate education issue.

Reasoning: The District Court held that the hearing officer did err in denying the reimbursement for related services for private programming. Following review of the record, the District Court found the issue of free and appropriate education could not be determined without further review. It was remanded back to the hearing officer for further determination. The issue of stay put and substantive requirements of the IEP will also be addressed by the hearing officer.

Disposition: The judgment of the hearing officer was upheld in part, denied in part, and remanded back to the hearing officer.

Citation: *O'Dell v. Special Sch. Dist. of St. Louis County*, 503 F. Supp. 2d 1206 (D. E.D. Mo. 2007).

Facts: This case involved an appeal to the District Court from a hearing panel in the Eastern District of Missouri. The case involved a claim pursuant to the IDEA on behalf of the student, a preschooler diagnosed with autism against the Special school district of St. Louis County. The hearing panel found the school district provided the student with a free and appropriate education as required by the IDEA. The parents appealed to the District Court.

Upon appeal to the District Court, the student argued that the hearing panel erred in procedural and substantive requirements of the IDEA including failure to evaluate and therefore develop an appropriate IEP, failure to provide adequate prior written notice, failure to provide necessary services, including related services. The student therefore secured services at their own expense.

Issue: Whether the District Court erred (1) in upholding the decision of the hearing panel, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, and (3) in finding that the IEP substantively provided adequate benefit to the student.

Holding: The District Court did not err in upholding the decision of the hearing panel and the school districts IEP met the procedural and substantive requirements of the IDEA providing adequate educational benefit to the student.

Reasoning: The District Court initially held that the hearing panel did not err in finding the school district provided a free and appropriate education to the student. Following review of the record, the District Court concluded that the findings of the hearing panel were consistent with the evidence presented. The students procedural challenges were rejected by the Court as the student was evaluated, an IEP was developed by the appropriate IEP team members with parent input, related services were evaluated and provided, the educational program developed and implemented was appropriate and the decision for specific methodology is determined by the team, the Court found the IDEA does not require the best possible education but an education program that is “reasonable calculated to enable the child to receive educational benefit.”

Disposition: The decision of the hearing panel was upheld in its entirety.

Citation: *Fisher ex rel. T.C. v. Stafford Twp. Bd. of Educ.*, 2007 WL 6743034 (D. N.J. 2007), aff'd 289 Fed. App'x 520 (3rd Cir. 2008).

Facts: This case involved an appeal to the Third Circuit from a decision of the United States District Court for New Jersey. The case involved a claim filed pursuant to the IDEA on behalf of T. C. a student diagnosed with autism against the Stafford Township Board of Education. The District Court affirmed an earlier opinion by an administrative law judge which held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the Third Circuit, the student argued that the District Court erred in upholding the findings and decision of the administrative law judge. The student further argued that District should reimburse the parent for out of pocket expenses in supplementing the salaries of the in home applied behavioral analysis trainers. Finally the student argued that a free and appropriate education was denied as the education was not “free.”

Issue: Whether the District Court erred (1) in upholding the decision of the administrative law judge, (2) denying payment to the parent for the supplemental costs of the applied behavioral analysis in-home trainers.

Holding: The Third Circuit held that the lower District Court did not err in upholding the decision of the administrative law judge. The student did not disagree with the IEP and its appropriateness; she is challenging the decision not to reimburse her for the additional funds given to the applied behavioral analysis trainers as the parent believes they would not have worked for the District.

Reasoning: The Third Circuit initially held that the District Court did not err in upholding the decision of the administrative law judge. Following review of the record, the Third Circuit concluded that the findings by the administrative law judge were consistent and the alleged challenges were not of a substantive nature as the IEP was agreed upon. The request for

reimbursement by the parent as she supplemented the salaries of the applied behavioral analysis in home trainers was not proven. Therefore, the Appeals Court affirms the decision of the District Court in finding for the defendant.

Disposition: The decision of the District Court was affirmed for the school district.

Citation: *J.C. ex rel. J.C. v. Vacaville Unified Sch. Dist.*, 2006 WL 2644897 (D. E.D. Cal. 2006), modified, 2007 WL 112138 (D. E.D. Cal. 2007).

Facts: This case involved an appeal to the District Court from a decision at the administrative hearing level for the Eastern District of California. The case involved a claim pursuant to the IDEA on behalf of J. C. a student diagnosed with autism against the Vacaville Unified school district. The student argued that a free and appropriate education was denied for five IEP years.

The administrative hearing level held that the school district provided a free and appropriate education to the student in 2 of the 5 years questioned. The decision held for the student in 2 of the 5 challenges. The District Court must determine attorneys' fees and costs requested by the parents. The student filed a complaint for additional compensatory services during years the program offered to the student did not provide a free and appropriate education. The prevailing party status would substantiate the awarding of attorney fees and costs, however, settlements made prior to the hearing and decision were offered and the Court must determine whether or not they negate the awarding of fees.

Issue: Whether the District Court erred (1) in directing the District to pay the compensatory education package agreed upon in the hearing officers order, (2) in finding that the plaintiff was the prevailing party and due attorneys fees and costs, and (3) in finding the student prevailed in 2 of 5 year IEP issues.

Holding: The District Court did not err in granting payment to the student for compensatory education costs and did not err in finding the student prevailed in 2 of 5 IEP years. Finally the attorney fees and costs were lowered based on prevailing rates.

Reasoning: The District Court upheld the hearing officers order with compensatory education costs. Upon review of the records, the settlements offered to the student in effect negating the awarding of fees as the student did not prevail in specific IEP issue years. Finally the student argued the rate of attorneys' fees and costs. Using the Lodestar and Kerr approaches, the Court found a less per hour fee was an appropriate rate and therefore decreased the award.

Disposition: The judgment for attorney fees was lowered and granted to the student.

Citation: *M.M. ex rel. A.M. v. New York City Dept. of Educ. Region 9 (Dist. Two)*, 583 F. Supp. 2d 498 (D. S.D. N.Y. 2008).

Facts: This case involved an appeal to the District Court from a decision from a state review officer (SRO) for the Southern District of New York. The case involved a claim pursuant to the IDEA on behalf of A. M. a student diagnosed with autism against the New York City Department of Education Region 9, District 2. The SRO affirmed the decision that the school district had provided the student with a free and appropriate education as required by the IDEA. The District Court upheld the decision of the SRO in finding that the school district provided the student with a free and appropriate education.

Upon appeal to the District Court, the student initially argued the SRO upheld the decision of the impartial hearing officer. The student further argued that the school district has procedurally and substantively violated the IDEA by predetermining the IEP by preparing a draft IEP, improperly staffed the IEP team without a general education teacher, denying the applied behavioral analysis hours recommended by the applied behavioral analysis personnel,

developing and recommending inappropriate goals and objectives, denying the consideration of Assistive Technology, parent training, a FBA and BIP. The student finally argued the school district did not find the stay put status for the student to remain in the preschool setting.

Issue: Whether the District Court erred (1) in upholding the decision of the SRO, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in finding that the IEP substantively provided meaningful benefit, and (4) if the current placement was “stay put.”

Holding: The District Court held that the SRO did not err in upholding the opinion of the independent hearing officer and the District Court did not err in upholding the decision of the SRO.

Reasoning: The District Court held that the SRO did not err in affirming the decision of the independent hearing officer. Following review of the record, the District Court affirmed the decision of the SRO and concluded that the school district provided the student with free and appropriate education as required by the IDEA. The alleged procedural violations were rejected by the Court as the student did not prove predetermination of program and services, the lack of a general education teacher at the IEP meeting did not result in loss of educational opportunity for the student. Furthermore, the IEP was found to substantively provide appropriate goals, objectives, and services for the student. Finally the request for “stay put” status was rejected as the student did not agree to any placement or program following early intervening, preschool services.

Disposition: The decision of the State Review Officer was upheld and the school district was granted summary judgment.

Citation: *D.L. ex rel. J.L. v. Springfield Bd. of Educ.*, 536 F. Supp. 2d 534 (D. N.J. 2008).

Facts: This case involved an appeal to the District Court from a decision at the administrative law judge level. The case involved a claim filed pursuant to the IDEA on behalf of J. L. against the Springfield Board of Education. The student filed a due process for denial of a free and appropriate education based on the proposed placement and program offered by the school district. The school district filed a notice of motion for summary judgment to dismiss the case without a hearing. The administrative law judge granted summary judgment for the school district and the parent appealed.

Upon appeal to the District Court, the student initially argued the IEP proposed by the District was inadequate and therefore placed the student in a private program with applied behavioral analysis services the student had been accustomed to receiving in a preschool program. The student did accept the related services of occupational therapy and speech therapy for the remainder of the IEP. The student also provided written notice to the school district of their intent to seek reimbursement for their expenses related to his education.

Issue: Whether the administrative law judge erred (1) in dismissing the due process hearing requested by the student, (2) in whether the student can receive reimbursement for a private program when the school districts program was not accepted.

Holding: The District Court held that the administrative law judge did err in dismissing the due process hearing. The determination for reimbursement of private programming costs must be addressed through administrative remedies before the Court system.

Reasoning: The District Court found that the student must exhaust administrative remedies prior to appealing to the Court system. Following review of the record the District Court found the various circuits address the aspect of non attendance in school settings and reimbursement requests. Exhaustion of administrative remedies must be sought to determine

whether the proposed placement would have provided the student with a free and appropriate education.

Disposition: The Court therefore remands the case for a due process and grants summary judgment for the student and denies summary judgment for the school district.

Citation: *S.B. ex rel. Dilip B. v. Pomona Unified Sch. Dist.*, 2008 WL 1766953 (D. C.D. Cal. 2008).

Facts: This case involved an appeal to the District Court from a decision of the administrative law judge for the Central District of California. The case involved a claim pursuant to the IDEA on behalf of S. B. a student diagnosed with autism against the Pomona Unified school district. The administrative law judge opined for the school district finding that the student had been provided a free and appropriate education as required by the IDEA. The parents appealed.

Upon review of the record, the student initially argued that the school district had procedurally violated the IDEA by failing to include the current teacher in the IEP meeting. The student further argued that the IEP developed was substantively inadequate as the IEP failed to provide the appropriate applied behavioral analysis program necessary for the student. The student finally argued reimbursement for the independent educational evaluation initiated by the parent.

Issue: Whether the District erred (1) in reversing the decision of the administrative law judge, (2) in finding the alleged procedural violations did violate the IDEA, (3) in finding that the IEP was substantively inadequate and violated the IDEA, warranting private program reimbursement, and (4) in finding that the reimbursement for the IEE was appropriate.

Holding: The District Court held that the administrative law judge erred in finding for the school district in all areas. Following review of the record, the District Court concluded that the school districts IEP did not meet the procedural and substantive requirements of the IDEA.

Reasoning: The District Court initially held the administrative law judge did not err in opining for the school district in all counts. Following review of the record, the District Court found the findings were not consistent with the decision of the administrative law judge. The students procedural and substantive challenges were affirmed found to have resulted in the loss of educational opportunity, caused deprivation of educational benefits, and the program was not calculated to provide meaningful benefit to the student. Finally, the reimbursement for the IEE was granted.

Disposition: The judgment of the administrative law judge was reversed and found for the student.

Citation: *V.M. v. Brookline Sch. Dist.*, 2008 WL 2001733 (D. E.D. Ark. 2008).

Facts: This case involved an appeal to the District Court from a decision from a hearing officer in the Eastern District of Arkansas. The case involved a claim pursuant to the IDEA on behalf of D.M. a student diagnosed with autism against the Brookland school district. The student claims to be the prevailing party, however, the school district contends they were not prevailing party as a settlement was made more than 10 days before the hearing.

Upon review of the record, the student initially argued that the school district had failed to develop an appropriate educational program for the student meeting the student's individual needs. The student further argued the school district should include personnel trained in the individual behavioral and communication needs of children with autism. This programming

placement must be in the least restrictive environment, and compensatory education or reimbursement must address the students past denial of a free and appropriate education.

Issue: Whether the hearing officer erred (1) in finding the student was denied a free and appropriate education, (2) in finding the alleged substantive violations did violate the requirements of the IDEA, and (3) in awarding prevailing party and attorney costs and fees to the student.

Holding: The District Court found the hearing officer did not err in upholding the decision of prevailing party for the student, and the IEP did not provide substantively adequate benefit to the student.

Reasoning: The District Court initially held that the hearing officer did not err in finding the student was denied a free and appropriate education. Following review of the record, the District Court found the findings of the hearing officer were consistent with and supported the prevailing party status of the student. The school district offered a settlement, negotiations occurred, including a continuance and the offer to the student included the school district obtain services of a trained applied behavioral analysis consultant. The hearing officers decision contained the order to obtain applied behavioral analysis consultative services to assist with behavioral and communication assessments, assist in developing appropriate programming, training of School personnel, parents, aides, therapists, monitoring and evaluation of program implementation, participation and membership of said personnel in IEP meetings, extended school year services, and submission of a hearing report to the SDE to determine the District has complied with the directives of the hearing officer.

Disposition: The judgment of the hearing officer was upheld and was in favor of the parents to include fees.

Citation: *J.M.C. ex rel. E.G.C. v. La. Bd. of Elementary and Secondary Educ.*, 584 F. Supp.2d 894 (D. M.D. La. 2008), on reconsideration 562 F. Supp. 2d 748 (D. M.D. La. 2008).

Facts: This case involved an appeal to the District Court from a due process complaint in the Middle District of Louisiana. The case involved a claim pursuant to the IDEA on behalf of E.G. C., a student diagnosed with autism. The District Court found the student did not exhaust administrative remedies by following alternative state hearing procedures. The settlement agreement reached was an agreement that is judicially enforceable and not under District Court jurisdiction.

Upon review of the records, the student initially argued the school district did not meet the requirements of the complaint. The student filed a formal complaint with the State of Louisiana alleging the school district failed to meet the IEP requirements of applied behavioral analysis training for the teachers, aides, and other service providers. A mediation session was held which was not successful. The school district received a Corrective Action Plan to address the failure of the training. The student was withdrawn from school by the parent. The parent then filed for due process. The statement addressed the failure of the school district to comply with the Corrective Action Plan. A resolution session and settlement agreement was written and offered to the student.

Issue: Whether the (1) settlement agreed upon by the parties conferred jurisdiction upon the District Court, and (2) lack of exhaustion of administrative remedies following the alternative state hearing procedures prevented the student from appealing to the District Court.

Holding: The District Court held that the settlement agreement was enforceable in the Court system and the school district failed to adhere to the settlement agreement.

Reasoning: The District Court initially held that the student did not exhaust administrative remedies in following alternative state hearing procedures. The settlement agreement reached was enforceable by the parents and subject to enforcement in State and Federal Courts. The failure of the school district to provide training as agreed upon in the settlement agreement is enforceable in State and Federal Courts.

Disposition: The failure to exhaust administrative remedies and the settlement agreement is insufficient to confer jurisdiction upon the Court but is enforceable under IDEA.

Citation: *A.Y. v. Cumberland Valley Sch. Dist.*, 569 F. Supp. 2d 496 (D. M.D. Pa. 2008).

Facts: This case involved an appeal to the District Court from a local hearing officer and state appeals panel for the Middle District of Pennsylvania. The case involved a claim pursuant to the IDEA on behalf of B. Y. a student diagnosed with autism against the Cumberland Valley school district. The state appeals panel affirmed the hearing officers order indicating the school placement was not appropriate, the private school placement was not appropriate and the District was not ordered to pay tuition or transportation. The state appeals panel then ordered the District to complete an evaluation, IEP, and notice of recommended placement. Both parties appealed the decision. The student argued the school district had denied the student with a free and appropriate education as required by the IDEA.

Upon review of the records, the student argued the program offered by the school district was inappropriate for the student and he was withdrawn and enrolled in a private school. The school district reimbursed the parent for tuition and transportation. The student further argued the private program was not effective over time and the school district offered the student placement in a program being newly developed for children with autism. The parent refused the program and filed for due process.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the state appeals panel, and (2) in finding that the program offered to the student did not provide free and appropriate education.

Holding: The District Court did not err in upholding the decision of the state appeals panel and the school districts recommended placement did not provide the student with a free and appropriate education.

Reasoning: The District Court initially held that the State appeals panel did not err in finding the IEP proposed by the school district did not provide the student with free and appropriate education. The private placement provided by the school district did not provide the student with an appropriate placement. Additional recent evidence not previously admitted was relevant in the appropriateness of the tuition reimbursement claim. Updated evaluative information did not provide the individualized recommendations necessary for the student. The additional evidence was addressed through administrative review if the parties agree rather than a full trial.

Disposition: Summary judgment was denied for both parties and further examination was addressed by both parties through administrative or trial modes.

Citation: *Astourian v. Blue Spring R-IV Sch. Dist.*, 2008 WL 3834101 (D. W.D. Mo. 2008).

Facts: This case involved an appeal to the District Court from a decision from the Due Process Hearing Panel for the Western District of Missouri. The case involved a claim pursuant to the IDEA on behalf of a student, diagnosed with autism against the Blue Springs school district. The Due Process Hearing Panel held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student argued that the school district procedurally violated the IEP by depriving the parents of the student with participation in the IEP process. The student further argued that the IEP offered by the school district was substantively inadequate as the IEP failed to offer adequate benefit by failing to include the students present levels of performance, include a functional behavioral assessment and therefore reimbursement for the parents' home program is warranted.

Issue: Whether the District Court erred (1) in upholding the decision of the Due Process Hearing Panel, (2) in finding that the alleged procedural violations did not violate the IDEA, (3) in finding that the IEP substantively provided adequate benefit to the student, and (4) in finding that the school district provided a free and appropriate education and reimbursement for the parents home program is not warranted.

Holding: The District Court did not err in upholding the decision of the Due Process Hearing Panel and did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court did not err in upholding the decision of the Due Process Hearing Panel. Following review of the record, the District Court concluded that the findings by the Due Process Hearing Panel were consistent and supported by the evidence at the hearing. The students procedural challenges were rejected by the District Court due to the conclusion that the parent was notified and attended meetings scheduled. The students substantive challenges that the school districts program failed to provide adequate educational benefit was also rejected as the student was properly identified and evaluated, and the school district provided the necessary special education and related services as required by the IDEA.

Disposition: The judgment of the Due Process Panel was upheld in its entirety.

Summary judgment was granted to the school district and denied to the student.

Citation: *Wiles v. Dep't of Educ.*, Haw., 2009 WL 196197 (D. Haw. 2009).

Facts: This case involved an appeal to the District Court from a decision at the administrative hearing officer level for the State of Hawaii. The case involved a claim pursuant to the IDEA on behalf of Bryan Wiles Bond, a student diagnosed with autism against the Department of Education, State of Hawaii. The student argued the denial of a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student initially argued that the school district's IEP was appropriate but it did not provide the student with the Teaching Assistant (TA) trained to work with the student and have knowledge and training in American Sign Language. The student further argued that the District did not provide a suitable replacement within two weeks of the termination and therefore failed to comply with the order by the hearing officer and thus the IEP. The student finally argued the school district did not provide a trained, certified, and qualified special education teacher to prepare a social skills curriculum, teach during the extended school year period, and have training and proficiency in American Sign Language.

Issue: Whether the hearing officer erred (1) in granting the motion to not introduce certain evidence (limine), and (2) notice additional undisputed facts.

Holding: The District Court upheld the motion to limine and notice additional facts that the school district took additional effort to comply with its obligation by attempting to recruit skilled trainers by advertisement, and finally hired a mainland company to provide the services. In the midst of the contract period, the student relocated to the mainland.

Reasoning: The District Court upheld the request for the motion to limine and notice additional facts. Following review of the record, the District Court concluded the undisputed facts were consistent. The Court found the students needs were great and both sides agreed to the decision of the hearing officer. There is no dispute that the student did not receive a free and appropriate education and the initiation of a new company was in process when the student left the state.

Disposition: The Court grants the motion for Limine by the plaintiff and published the facts established by prior order.

Citation: *M.W. ex rel. Wang v. Clarke County Sch. Dist.*, 2008 WL 4449591 (D. M.D. Ga. 2008), denying reconsideration, 2008 WL 4848802 (D. M.D. Ga. 2008).

Facts: This case involved an appeal to the District Court from a decision at the administrative law judge (administrative law judge) for the Middle District of Georgia. The case involved a claim pursuant to the IDEA on behalf of M. W. a student diagnosed with autism against the Clarke County school district. The administrative law judge held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student initially argued that the school district had procedurally violated the IDEA by failing to include the parents in the IEP process, assessments and thus IEP were based on English rather than the students native language of Mandarin Chinese. The student further argued the IEP offered by the school district was substantively inadequate as it did not contain the correct goals, omitted critical social and communication goals, the placement was inappropriate as behaviors associated with autism were being imitated by the student, sensory issues were not addressed, an appropriate amount of 1 on 1 education was not provided, and the IEP was not based on the students individualized needs.

Issue: Whether the District Court erred (1) in upholding the decision of the administrative law judge, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in finding that the IEP substantively provided the student with adequate educational benefit, and (4) in finding the placement in the school district proposed provided the student with a free and appropriate education in the least restrictive environment.

Holding: The District Court did not err in upholding the decision of the administrative law judge and the District Court did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court initially held that the administrative law judge did not err in finding for the school district. Following review of the record, the District Court concluded that the findings of the administrative law judge were consistent and supported by the experts who evaluated and taught the student. The students procedural challenges were rejected by the District due to the conclusion that none of the challenges resulted in loss of educational opportunity or prevented the parents from opportunity to participate in the IEP process. Finally the students substantive challenges were rejected as the students evaluation, IEP including goals and objectives, and placement were determined to be appropriate. Indeed the teacher noted “slow, steady progress” made by the student.

Disposition: The judgment for the defendant school district is granted. The student received a free and appropriate education, in the least restrictive environment, and the plaintiffs are not entitled to reimbursement for any private obtained education, support, or testing of the student.

Citation: *Travis G. ex rel. Joseph G. v. New Hope-Solebury Sch. Dist.*, 544 F. Supp. 2d 435 (D. E.D. Pa. 2008).

Facts: This case involved an appeal to the District Court from a decision from a special education hearing officer from the Eastern District of Pennsylvania. The case involved a claim pursuant to the IDEA on behalf of Travis G., a student diagnosed with autism against the New Hope Solebury school district. The special education hearing officer held that the school district provided the student with a free and appropriate education as required by the IDEA. The student appealed to the District Court.

Upon appeal to the District Court, the student initially argued that the special education hearing officer erred in finding for the school district. The student further argued that the school district violated the procedural and substantive requirements of the IDEA by providing extended school year services in a school chosen by the school district, not in the least restrictive environment, providing an inadequate amount of applied behavioral analysis therapy, refused compensatory education services, and failed to implement the IEP.

Issue: Whether the District Court erred (1) in upholding the decision of the special education hearing officer, and (2) in finding the alleged procedural and substantive violations of the IEP did not violate the IDEA.

Holding: The District Court did not err in upholding the decision of the special education hearing officer and the District Court did not err in rejecting the alleged procedural and substantive violations of the IDEA.

Reasoning: The District Court initially held that the special education hearing officer did not err in finding for the school district. Following review of the record, the Court concluded that the findings of the special education hearing officer were consistent and supported by the

testimony of experts including school district personnel. The Court rejected the alleged procedural and substantive violations as the Court found that the hearing officer appeared to have properly considered all testimony, and weighed all the evidence presented. The District Court concluded that the record supported the decision of the special education hearing officer upholding the decision that the student was provided with a free and appropriate education in the least restrictive environment.

Disposition: Summary judgment was granted to the defendant and denied to the plaintiff.

Citation: *J.R. ex rel. W.R. v. Sylvan Union Sch. Dist.*, 2008 WL 682595 (D. E.D. Cal. 2008), adopted report and recommendation, 2008 WL 2345103 (D. E.D. Cal. 2008).

Facts: This case involved an appeal to the District Court from the California Office of Administrative Hearing, (OAH) Special Education Division in the Eastern District of California. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of J. R., a student diagnosed with autism against the Sylvan Union school district. The OAH opined a decision which held that the school district had provided the student with a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon appeal to the District Court the student initially argued that the school districts program did not provide the student with applied behavioral analysis services which were previously provided and good progress was demonstrated by the student. The school district adjusted an IEP presented to the student and enrolled the student in a general education class with supported applied behavioral analysis services paid for by the school district. After 1 year, the school district recommended an alternative placement with smaller group instruction and fading of the applied behavioral analysis services. The school district filed a due process hearing to initiate the change of placement. The student retained legal counsel who filed a motion to

dismiss and the OAH granted the dismissal. The District then requested permission for evaluations which the student did not answer. The District then filed for Due Process to review least restrictive environment, and implementation of the previous recommended IEP, further assessment without parental consent.

The student was not represented by legal counsel and in the midst of the hearing; the audio recording on day three was defective. Minimal recordings of witnesses were completed. The administrative law judge upheld the previous decision. The OAH issued an order proposing the decision be vacated and retried and OAH expense. Parent then filed another complaint alleging a substantive appeal of the prior decision, violations of federal and state hearing statutes, violation of Section 504, Title II of the ADA, and declaratory relief against the OAH and Department. Parents assert the following claims: failure to comply with procedural safeguards, failure for student counsel to prepare and provide verbatim recording of third day of hearing, damages and injunctive relief, compensatory education services, costs, attorney fees and other relief deemed just.

Issue: Whether the District Court erred (1) in upholding the decision of the OAH, and (2) in finding the IEP proposed by the school district provided a free and appropriate education in the least restrictive environment for the student.

Holding: The District Court did not err in upholding the decision of the OAH and in vacating and remanding the challenges to the procedural and substantive review of the administrative decision in light of the loss of day three testimony.

Reasoning: The District Court did not err in upholding the decision of the OAH. Following review of the long record of due processes, withdrawals and re-filing of due process, the District Court concluded the decision regarding procedural and substantive requirements of

the IDEA with placement of the student in the least restrictive environment and program proposal must be remanded and retried by the OAH.

Disposition: The judgment for the plaintiff and defendant was granted in part and denied in part.

Citation: *JG v. Douglas County Sch. Dist.*, 552 F.3d 786 (9th Cir. 2008).

Facts: The case involved an appeal to the Ninth Circuit from a decision of the United States District Court of Nevada. The case involved a claim pursuant to the IDEA on behalf of twin boys, diagnosed with autism against the Douglas County school district. The District Court affirmed an earlier state review hearing officers decision finding the school district denied the students a free and appropriate education as required by the IDEA.

Upon appeal to the Ninth Circuit, the students argued that the District abused its discretion by upholding the decision of the hearing officer. The students further argued that the District Court abused its discretion by awarding fifty percent of the cost for private school evaluations. The student finally argued that the delay between the evaluations administered to the students and the date services were implemented was unreasonable.

Issue: Whether the District Court erred (1) in upholding the decision of the state review hearing officer, (2) in finding that the alleged procedural violations of the IEP did not violate the requirements of the IDEA, (3) in finding that the IEP proposed by the school district did not substantively provide a free and appropriate education as there was no behavior analyst on staff and no one to supervise the discrete trial training program and teacher training in discrete trial training.

Holding: The Ninth Circuit did not err in upholding the decision of the District Court and did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The Ninth Circuit initially held that the District Court did not err in upholding the decision of the state review hearing officer. Following review of the record, the Circuit Court concluded that the school district had the resources to provide the students with IEPs that provided the students with free and appropriate education. The procedural and substantive challenges were rejected due to the conclusion that the evaluations were current, considered in proposing and implementing the IEPs and provided meaningful benefit to the students. The Circuit Court affirmed the decision on all other IDEA claims with the exception of increasing the reimbursement of private evaluations from 50% to 100%.

Disposition: The judgment of the Court was affirmed in part, reversed in part; vacated in part and remanded with instructions.

Citation: *R.F. v. Warwick Sch. Dist.*, 2006 WL 3814555 (D. E.D. Pa. 2006).

Facts: The case involved an appeal to the District Court in the Eastern District of Pennsylvania. The case involved a claim pursuant to the IDEA on behalf of N. F., a student diagnosed with autism against the Warwick school district. The Pennsylvania Special Education Appeals Panel found the school district provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court the student initially argued the District Court abused its discretion in upholding the decision of the appeals panel. The student further argued that the District violated the procedural and substantive requirements of the IDEA when ESY services were not provided continuously. Finally the student argued the placement of the student was

inappropriate due to concerns of restraint and abuse toward the student. The offer of a private program was not accepted by the student.

Issue: Whether the District Court erred (1) in upholding the decision of the appeals panel, (2) in finding the alleged procedural violations did not violate the IDEA, (3) in finding the least restrictive environment of the student was in the school district program and later in a private program.

Holding: The District Court did not err in upholding the decision of the appeals panel and the District Court did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA providing the student with a free and appropriate education in the least restrictive environment.

Reasoning: The District Court did not err in upholding the decision of the appeals panel finding for the school district. Following review of the record, the District Court concluded the school district did implement the IEP and did not deny the student a free and appropriate education. The movement to an in home program and the later to and reimbursement for a private placement in a nearby school provided the student with appropriate least restrictive environment. The parents refused to accept the free and appropriate education and home instruction was provided while the student waited for a hospital placement.

Disposition: The judgment of the Special Education State Appeals Panel was upheld and summary judgment was granted to the defendant.

Citation: *J.A.A.H. ex rel. J.H. v. Modesto City Sch.*, 2009 WL 5591 (D. E.D. Cal. 2009).

Facts: This case involved an appeal to the District Court from a decision from an Administrative Law Judge (administrative law judge) for the Eastern District of California. The case involved a claim filed pursuant to the Individuals with Disabilities Education Act (IDEA)

on behalf of J.H. and L.H., twins diagnosed with autism against the Modesto City Schools. The administrative law judge found the school district prevailed on a number of issues and the student prevailed on a number of issues for each twin. The administrative law judge held that the school district provided the students with an educational placement for applied behavioral analysis services for a specified school year and extended school year services. Parents then filed for attorneys' costs and fees.

Upon review of the record, the student argued the school district procedurally violated the IDEA with an inappropriate placement. While no specific substantive violations were argued, the administrative law judge determined the functional behavioral assessments and proposed treatment plans were not appropriate.

Issue: Whether the District Court erred (1) in upholding the decision of the administrative law judge, (2) in finding the alleged procedural violations did not violate the IDEA in part, and (3) the IEP developed by the school district substantively, in part provided the students with free and appropriate education.

Holding: The District Court did not err in upholding the decision of the administrative law judge and that the District Court did not err in finding that the school districts IEPs met the procedural and substantive requirements of the IDEA in part.

Reasoning: The District Court did not err in upholding the decision of the administrative law judge in part and the school districts IEPs met the procedural and substantive requirements of the IDEA in part. The request for attorney fees and costs are awarded to prevailing parties. The school district and the students both prevailed in part, so fees were lowered.

Disposition: The judgment of attorney fees and cost was discounted and lowered for the plaintiff.

Citation: *A.G. ex rel. N.G. v. Frieden*, 2009 WL 806832 (D. S.D. N.Y. 2009).

Facts: The case involved an appeal to the District Court in the Southern District of New York. The case involved a claim pursuant to the IDEA on behalf of N.G. a student diagnosed with autism against the New York City Department of Health and Mental Hygiene. The Administrative Law Judge (administrative law judge) found the student was offered a free and appropriate education as required by the IDEA.

Upon appeal to the District Court the student initially argued that the District Court abused its discretion in upholding the decision of the administrative law judge. The student further argued the school district had procedurally violated the IDEA as the IFSP was predetermined and private evaluations were improperly excluded, parents were denied meaningful participation in the IFSP, gross motor skills and behavior were not evaluated prior to the meeting. The student further argued the school districts IEP substantively violated the IDEA as it failed to provide the adequate amount of applied behavioral analysis therapy.

Issue: Whether the District Court erred (1) in upholding the decision of the administrative law judge, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, and (3) in finding that the IFSP substantially provided the student with meaningful educational benefit.

Holding: The District Court did not err in upholding the decision of the administrative law judge and that Early Interventions IFSP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court did not err in upholding the findings of the administrative law judge. following review of the record, the District Court concluded that the testimony from the experts in the medical and educational community was consistent and supported the findings

of the administrative law judge. The students procedural challenges were also rejected by the District Court due to its conclusion that none of the challenges resulted in educational loss or infringed on the parents rights to participate in the IFSP process. Finally the students substantive challenges that the IFSP failed to provide meaningful benefit was rejected as the IDEA does not require states to provide this level of therapy.

Disposition: The defendant motion for summary judgment was granted.

Citation: *T.Y. ex rel. T.Y. v. New York City Dept. of Education*, Region 4, 584 F.3d 412 (2nd Cir. 2009), cert denied, 2010 WL 784805 (2010).

Facts: The case involved an appeal to the Circuit Court from a District Court in New York City. The case involved a claim pursuant to the Individuals with Disabilities Education Act, (IDEA) on behalf of T. Y. a student diagnosed with autism against the New York City Department of Education. The District Court affirmed an opinion from local and state hearing officers which held that the school district had provided the student with a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon appeal to the Appeals Court the student initially argued that the District Court abused its discretion in upholding the decision of the State hearing officer. The student further argued the school district had procedurally violated the IDEA as the IFSP was predetermined and private evaluations were improperly excluded, parents were denied meaningful participation in the IFSP, gross motor skills and behavior were not evaluated prior to the meeting. The student further argued the school districts IEP substantively violated the IDEA as it failed to provide the adequate amount of applied behavioral analysis therapy. Parents enrolled the student in a private program they approved of and requested reimbursement from the school district.

Issue: Whether the Appeals Court erred (1) in upholding the decision of the District Court, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in finding that the IEP substantively provided meaningful educational benefits, and (4) in finding that the location of the school was not a substantive violation of the IDEA.

Holding: The Second Circuit Appeals held that the lower District Court did not err in upholding the decision of the SRO and that the District Court did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The Second Circuit Appeals initially held that the District Court did not err in upholding the decision of the SRO. Following review of the record, the Second Circuit Appeals concluded that the findings of the District Court were consistent with the evidence presented at the hearing. The NYC Department of Education worked with the parents when they indicated their disagreement to school settings proposed by the school district. The procedural and substantive challenges were rejected due as the SRO and District Court found the parents were given opportunity to participate in all IEP meetings, request parent training, and receive related services. The IEP does not permit the student to request a specific school location.

Disposition: The judgment of the District Court is affirmed.

Citation: *Parenteau ex rel. CP v. Prescott Unified Sch. Dist.*, 2009 WL 536668 (D. Ariz. 2009).

Facts: This case involved an appeal to the District Court from a decision of the Administrative Law Judge (administrative law judge) for the state of Arizona. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of C.P., a student diagnosed with autism against the Prescott Unified school district. The administrative

law judge held in an earlier opinion that the school district has provided C.P. with a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon appeal the District Court, the student alleged that the school district had procedurally violated the IDEA by depriving the student of his educational rights and requested tutoring for 1800 hours for the cost of \$73,500. The administrative law judge found that the 2-year statutory time limitation prevailed for the first years program and therefore the administrative law judge did not rule on any component of the complaint. The administrative law judge affirmed that the school district did provide the student with free and appropriate education for the other alleged years concerns. The student further argued that they were the prevailing parties and thus due attorney costs and fees. The student further added a list of other complaints that were not substantiated.

Issue: Whether the administrative law judge erred (1) in finding that the school district provided the student with free and appropriate education for the IEPs in question, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in finding that the placement and program provided to the student met the substantive requirements of the IDEA in providing the student with meaningful educational progress, (4) in finding that the school district was the prevailing party.

Holding: The District Court held that the administrative law judge did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA and the school district was granted prevailing party status.

Reasoning: The District Court held, following review of the record that the administrative law judge did not err in finding that the school district met the procedural and substantive requirements of the IDEA and provided the student with a free and appropriate

education. Finally the plaintiff was not the prevailing party and due any costs or attorney fees. The District Court granted prevailing party status to the Defendant and awarded attorney fees and costs from the parent.

Disposition: The judgment was held for attorney fees and costs to the defendant school district.

Citation: *Winkelman v. Parma City Sch. Dist. Bd. of Educ.*, 2009 WL 4456297 (D. N.D. Ohio 2009).

Facts: This case involved an appeal to the District Court from a decision of a State Level Review Officer (SLRO) for the state of Ohio. The case involved a claim pursuant to the IIDEA on behalf of Jeffrey Winkelman, a student diagnosed with autism against the Parma City school district Board of Education. The SLRO affirmed an earlier opinion by a local hearing officer which held that the school district had provided the student with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student initially argued that the SLRO abused its discretion in giving due weight to the decision of the local hearing officer. The student further argued that the school district had procedurally violated the IDEA by the lack of an IEP in place for the student at the start of the school year, the denial of the parent in meaningful participation in the IEP process, and the failure to provide transition services to the student. The proposed IEP by the school district violated the substantive requirements of the IDEA with the alleged improper predetermination of program and methodology by the school district. The private program intermittently attended by the student was the program of choice by the parent.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the SLRO, (2) in finding that the alleged procedural violations of the IEP did not violate the IDEA,

(3) in finding that the IEP substantively provided meaningful benefit to the student, and (4) in finding that the school districts chosen methodology and programming was not a substantive violation of the IDEA.

Holding: The District Court did not err in giving due weight to and upholding the decision of the SLRO in finding that the District Court did not err in finding that the school districts IEPs met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court did not err in upholding the decision of the SLRO. Following review of the records, the District Court concluded that the findings of the SLRO were consistent and supported the evidence in the hearing. The school district consistently contacted parents for IEP meetings, draft IEPs were written with parental participation and input if the parents attended the meeting after numerous attempts to include them. The alleged procedural and substantive violations were also rejected by the District Court as the “parents insistence that the student be placed at a private program at public expense exemplified the concept of predetermination.”

Disposition: The judgment of the SLRO was upheld in its entirety for the school district.

Citation: *Seladoki v. Bellaire Local Sch. Dist. Bd. of Educ.*, 2009 WL 3127775 (D. S.D. Ohio 2009).

Facts: This case involved an appeal to the District Court from a decision of the State Level Review Officer (SLRO) for the Southern District of Ohio. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of Christian, a student diagnosed with autism against the Bellaire Local school district Board of Education. The SLRO had affirmed an earlier opinion by an Independent Hearing Officer (IHO) which held that

the school district had provided the student with a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon appeal to the District Court, the student initially argued that the SLRO had abused its discretion by upholding the decision of the IHO. The student further argued that the school district had procedurally violated the IDEA by predetermining his placement, by preparing an IEP that proposed goals, objectives, and services that were not individualized to prepare the student for future education, employment, and independent living, and failing to offer the student a proven educational method based on replicate research, that is applied behavioral analysis . The student finally argued that the principle claim under the IDEA is a substantive attack on the sufficiency of the student's IEP. The IEP was flawed because the school districts program called for contact with untrained peers, the use of Picture Exchange Communication System (PECS) negated the ability to provide free and appropriate education, and finally the IEP lacked a formal behavior intervention plan.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the SLRO, (2) in its finding that the alleged procedural violations of the school district did not violate the IDEA, (3) in finding that the IEP substantively provided meaningful benefits to the student, and (4) in its finding that the use of the school districts methodology including a level of applied behavioral analysis was not a substantive violation of the IDEA.

Holding: The District Court did not err in upholding the decision of the SLRP and that the District Court did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court initially held that the SLRO did not err in upholding the opinion of the IHO. Following review of the record, the District Court concluded that the

findings of the SLRO were consistent with and supported the decision of the hearing officers which stated that the parents showed no inclination to work cooperatively with the school district after attending the initial IEP conference. The IEP goals proposed by the school district were individualized, the proposed methodology was research based applied behavioral analysis instruction, the school district complied with the procedures in the IDEA, the placement was not predetermined, and accordingly the student is not entitled to reimbursement for the cost of private school tuition.

Disposition: The judgment was granted for the Defendant school district.

Citation: *C. S. a minor by and through his natural parents, Wendy and Kenneth Sundberg v. Governing Board of Riverside Unified school district, and Desert Sands Unified school district*, United States Court of Appeals, 9th Circuit, California, 2009.

Facts: This case involved an appeal to the Ninth Circuit from a decision of the United States District Court of California. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of C. S., a student diagnosed with autism against the Riverside Unified school district. The District Court had affirmed an earlier opinion by an Administrative Law Judge (administrative law judge) which held that the school district had provided C. S. with a free and appropriate education (free and appropriate education) as required by the IDEA.

Upon appeal to the Ninth Circuit, the student initially argued the District Court abused its discretion by giving due weight to the decision of administrative law judge. The student then argued that the school district procedurally violated the IDEA when it allegedly did not fully assess the student. The student finally argued that the school district did not make a formal written offer of placement thus substantively denied the student with free and appropriate

education, and therefore the student is entitled to reimbursement for an Independent Educational Evaluation obtained by the parent, and reimbursement for the private applied behavioral analysis program.

Issue: Whether the Appeals Court erred (1) in giving due weight to the decision of the District Court, (2) in finding that the alleged procedural violations of the school district did not violate the IDEA, (3) in finding that the school district did not offer the student with an IEP because he never received special education and related services from a public school agency, and (4) in finding that the student was not entitled to reimbursement for the private applied behavioral analysis program because the school district was not given the opportunity to make a formal offer of placement.

Holding: The Ninth Circuit held that the lower District Court did not err in upholding the decision of the administrative law judge and that the District Court did not err in finding that the student never attended Riverside Unified school district and did not give the school district an opportunity to develop, propose, and offer an evaluation, and IEP as required by the IDEA.

Reasoning: The Ninth Circuit initially held that the District Court did not err in upholding the opinion of the administrative law judge. Following review, the Ninth Circuit concluded that the the findings of the administrative law judge were consistent and the student was not entitled to reimbursement. The alleged procedural and substantive violations of the IDEA were rejected due to the student never being referred, evaluated, offered placement, receive special education and related services.

Disposition: The judgment of the Appeals Court was affirmed for the school district.

Citation: *Sytsema ex rel. Sytsema v. Acad. Sch. Dis. No. 20*, 2009 WL 3682221 (D. Colo. 2009), remanded from 538 F.3d 1306 (10th Cir. 2008).

Facts: This case involved an appeal to the Appeals Court from a decision of the United States District Court for the state of Colorado. The case involved a claim filed pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of Nicholas Sytsema, a student diagnosed with autism against the Academy school district No.20. The District Court reversed the decision of the Administrative Law Judge (administrative law judge) that found the school district had not provided the student with a free and appropriate education (free and appropriate education) in the first IEP. The Court then found the second IEP did provide the student with free and appropriate education and the parent appealed.

The parents appealed the decision on the second IEP and the school district appealed the free and appropriate education determination of the first IEP and the reimbursement order. Due to the District Courts finding the procedural defect in the first IEP and not going further to determine if a substantive defect existed, the Appeals Court remanded the matter back to the District Court. The District Court then affirmed then denial of reimbursement expenses to the parent for the first IEP. The sole issue of the Appeals Court is to determine if the first IEP substantively met the requirements of the IDEA in providing the student with some educational benefit. The student contends the IDEA required the school district to provide meaningful benefit where the student achieves significant learning. The “some benefit” standard was applied and evaluated at that level. The amount of one-on-one applied behavioral analysis services was the issue in the substantive aspects of the IEP.

Issue: Whether the Appeals Court erred (1) in upholding the decision that the first IEP did violate the procedural requirements of the IDEA, (2) in upholding the denial of reimbursement of the in home program for the student, and (3) in finding that the IEP substantively violated the IDEA by not providing adequate benefit to the student.

Holding: The Appeals Court did not err in upholding the decision of the District Court affirming the denial of free and appropriate education in the first IEP and the District Court did not err in finding the IEP substantively violated the IDEA by not providing the student with the adequate amount of one-on-one applied behavioral analysis services to provide educational benefit and granted reimbursement to the student for in home services.

Reasoning: The Appeals Court initially held that the District Court did not err in reversing the decision of the administrative law judge. Following review of the evidence, the Appeals Court concluded the IEP substantively violated the requirements of the IDEA by the failure of adequate one-on-one applied behavioral analysis services for the student. The alleged substantive violations include: services provided did not utilize proven methodology, contain sufficient hours of services, a personal aide, home instruction, family training and counseling, and the lack of adequate staff training to address the students needs. The Appeals Court found the lack of an adequate amount of one-on-one instruction was required for the student to obtain more than de minimis benefit from the program proposed by the school district.

Disposition: The judgment was for the plaintiffs to reimburse for costs and expenses of the private program for the 2001-2002 school year.

Citation: *E.W. ex rel. C.W. v. Rocklin Unified Sch. Dist.*, 2006 WL 2830172 (D. E.D. Cal. 2006).

Facts: This case involved an appeal to the District Court from a decision from the Special Education Hearing Officer (SEHO) in the Eastern District of California. The case involved a claim pursuant to the Individuals with Disabilities Education Act (IDEA) on behalf of E. W., a student diagnosed with autism against the Rocklin Unified school district. The SEHO affirmed the denial of a free and appropriate education (free and appropriate education) of the

first IEP and the offer of free and appropriate education in the second IEP. The school district then offered a settlement to address the decision regarding the first IEP.

Upon review of the records, the student argued that the District Court abused its discretion in upholding the decision of the SEHO in finding that the second IEP did offer free and appropriate education to the student. The Court finds, although the decision of the SEHO is reviewed, the District Court must make an independent judgment based on the preponderance of evidence. The student further argued that school district had procedurally violated the IDEA because the IEP was developed without meaningful participation by the parent and the “pre-IEP” meeting held by the school district several days prior to the actual meeting confirms predetermination in the development of the IEP. Finally the student argued the IEP substantively violated the IDEA because it was not developed with the students individual needs in mind and not tailored to provide the requisite educational benefit. The crux of the disagreement appears to be the particular goals and objectives as well as the providers best suited to address the students educational requirements.

Issue: Whether the District Court erred (1) in giving due weight to the decision of the SEHO, (2) in finding the alleged procedural violations of the IDEA did not violate the IDEA, (3) in finding the IEP substantively provided the student with meaningful educational benefit, and (4) in finding that the school district’s proposed program was individually developed and included goals and objectives that would substantively meet the requirements of the IDEA with school district personnel qualified to implement the program.

Holding: The District Court did not err in upholding the decision of the SEHO and the District Court did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court initially did not err in upholding the opinion of the SEHO. Following review of the record, the Court concluded that findings of the SEHO were consistent and supported the testimony of experts at the hearing. The refusal of the parents to accept the IEP proposed by the school district does not indicate procedural violation as the parents attended the meetings and provided input. While the decision was not the private applied behavioral analysis program; there was no predetermination made. The SEHO found the school districts witnesses consisting of special education teachers and therapists persuasively testified that the goals and objectives proposed sufficiently targeted the students unique educational needs based on the information provided by the parents providers in the form of assessments, written progress reports, and verbal information provided both prior to and at the time of the IEP meeting. Furthermore, the IEP team recommended fine tuning of the goals and objectives following assessment of the student. Finally, the student argued that the goals and objectives were sufficiently measurable. The proposed service providers were appropriately qualified to provide instruction to the student. Thus, the procedural and substantive requirements of the IDEA were met.

Disposition: The judgment of the SEHO was upheld and the school district was awarded summary judgment.

Citation: *Sanford Sch. Comm. v. Mr. L.*, 2001 WL 103544 (D. Me. 2001).

Facts: This case involved an appeal to the District Court from a decision of the hearing officer in the state of Maine. The case involved a claim pursuant to the IDEA on behalf the Sanford School Committee against K.L., a student diagnosed with autism. The District Court affirmed a decision by the hearing officer that the student was denied a free and appropriate education as required by the IDEA.

Upon review of the records, school district argued that the program offered to the student met the procedural and substantive requirements of the IDEA as the IEP proposed and developed for the student provided applied behavioral analysis therapy in addition to a trained one-on-one educational technician who would administer applied behavioral analysis therapy to the student. While the student was in a center based program for preschool, he made significant improvements in deficit areas including communication with a symbol board, interaction, self care including toileting, and a significant decrease in self stimulatory behaviors. When the student became school age, the school district recommended mainstream kindergarten with a set amount of applied behavioral analysis therapy in the afternoons. The student's progress faltered with his transition into the public school system and the applied behavioral analysis agreed upon in the IEP was lessened to one third of the recommended amount. The student began exhibiting increased disruptive behaviors and was beginning to become aggressive. The record reported the regression during mainstreaming classes was due in large measure to the failure of the school district to provide adequate and consistent levels of applied behavioral analysis and the transfer of placement as the school program is much larger than the center based program as well as a new educational technician. The school district then recommended no mainstreaming due to the lack of progress and to work on applied behavioral analysis in a one-on-one setting with the educational technician. The technician then resigned and the parent provided in home programming while the school district advertised for another technician. Within weeks the District called an IEP meeting and proposed placement at another school setting. The proposed self contained program is managed by a non-profit mental health agency. The program has an autism expert on staff and the program is defined as "eclectic" in nature while there was little

discussion of the students individual needs. The student was then withdrawn from the proposed program and enrolled him in in-home applied behavioral analysis therapy.

Issue: Whether the District erred (1) in finding that the alleged procedural violations by the school district did not violate the IDEA, (2) in finding that the IEP substantively provided the student with adequate educational benefit, (3) in finding that the proposed IEP and the methodology including applied behavioral analysis therapy was not a substantive violation of the IDEA.

Holding: The District Court did not err in upholding the decision of the hearing officer and the District Court did not err in finding that the school districts IEP failed to meet the procedural and substantive requirements of the IDEA.

Reasoning: The District Court reviewed the evidence and the decision of the hearing officer and found the school district did not implement an IEP that provided the student with free and appropriate education. The program offered the school district became inappropriate due to the students increased inappropriate behaviors. Subsequently the school districts personnel providing applied behavioral analysis therapy resigned and the lack of a replacement resulted in the parent withdrawing the student for an in home program. Finally the program offered by the school district appeared to be random without any individualized components for the student. This along with the “eclectic” program offered did not offer any specifics on how the program would be appropriate for the student. For the above reasons the alleged procedural and substantive violations of the IDEA were affirmed and the parent prevailed.

Disposition: The judgment of the hearing officer was upheld for the parent.

Citation: *C.P. and J. D. individually and on behalf of their minor child, M. D. v. State of Hawaii, Department of Education, State of Hawaii, United States District Court, D. Hawaii, 9th Circuit, 2010.*

Facts: This case involved an appeal to the District Court from a decision of the hearing officer for the State of Hawaii. The case involved a claim filed pursuant to the IDEA on behalf of M. D., a student diagnosed with autism against the State of Hawaii Department of Education. The hearing officer opined for the school district that the student was provided with a free and appropriate education as required by the IDEA.

Upon appeal to the District Court, the student initially argued the District Court had abused its discretion by upholding the decision of the hearing officer. The student further argued that the movement of the student into a more restrictive environment was a violation of least restrictive environment. The student further argued that the IEP substantively violated the IDEA due to Speech services and sign language instruction not provided at the level the student sought. The student then filed a second complaint and arguing the in home program did provide free and appropriate education therefore costs and reimbursement is due the student. The hearing officer then found the in home program provided free and appropriate education and costs were awarded to the student. Finally the student argued the procedural requirements of the IDEA were violated by the parents being barred from participation and the procedural protections of record examination, review, an Independent Educational Evaluation (IEE), and the right to present a complaint. The student did not identify which of these protections were violated and the Court concluded the evidence did not support these claims.

Issue: Whether the District Court erred (1) in upholding the decision of the hearing officer, (2) in finding that the alleged procedural and substantive violations did not violate the

IDEA, (3) in finding that proposed IEP provided meaningful benefit to the student in the least restrictive environment, (4) and in finding that the school districts IEP met the substantive requirements of the IDEA with trained personnel, and appropriate related services.

Holding: The District Court did not err in upholding the decision of the hearing officer and the District Court did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court initially held that the hearing officer did not err in finding that the school district provided free and appropriate education to the student. Review of the record indicated that the IEP met the procedural and substantive requirements of the IDEA by providing parental input and attendance at meetings, the movement of the student into a more restrictive environment was temporary and carefully observed with the intent to reintegrate the student into a less restrictive setting as the student was able to handle the environment. Furthermore, the related services of speech language and sign language instruction were appropriately provided by trained personnel.

Disposition: The judgment of the hearing officer was upheld for the school district.

Citation: *M.H. and E. K, individually and collectively on behalf of P.H. v. New York City Department of Education*, United States District Court S. D. New York, 2nd Circuit, 2010.

Facts: This case involved an appeal to the District Court from a decision of the State Review Officer for the Southern District of New York. The case involved a claim filed pursuant to the IDEA on behalf of P.H. a student diagnosed with autism against the New York City Department of Education. The hearing officer opined the DOE did not provide the student with free and appropriate education as required by the IDEA. Upon appeal the State Review Officer (SRO) reversed the decision finding the DOE provided free and appropriate education. The

parent appealed to the District Court. The District Court reversed the decision of the SRO finding the program proposed did not provide the student with free and appropriate education.

Upon appeal to the District Court, the student initially argued that the preschool placement was appropriate with mainstreaming and apparently the parent provided applied behavioral analysis therapy at home although this was unknown by the preschool staff. The preschool teacher stated she did not see success in the Preschool program without constant redirection and prompting. The Department of Education (DOE) recommended a special class with small pupil teacher ratio in a special school that could provide related services. The parents disagreed and stated the student needed 30-40 hours of applied behavioral analysis therapy to maintain the levels currently achieved. The DOE recommended an eclectic program that encompassed both TEACCH and applied behavioral analysis programming. Disagreements continued with related services of Occupational Therapy, Speech and Counseling and finally the failure to conduct a Functional behavior assessment. The IEP team further presented goals in the grade level of first grade, then kindergarten with the expectation of grade-level skills. The parents participated in the IEP programming recommendations and allegedly voiced concerns about the proposed goals with the student performing at a much lower level. The DOE closed the IEP with agreement of the proposed program and notice of final recommendation was sent to the parent.

Following the notice, the parents argue they attempted to locate the specific school and program offered but did not receive any relevant information regarding the actual location. The DOE then invited the parents to meet the teacher at a specific school who indicated the students are often moved into various classes when the program begins based on sorting things out. Upon arrival to the school, the parents noted the student was much higher functioning than the other

students in the class and appeared concerned about the classroom setting. The parent investigated a private autism program nearby and placed a deposit for a slot for the student. The parent then enrolled the student and he attended the program. Progress was noted when the hearing occurred and the hearing officer found the DOE failed to provide the student with free and appropriate education, the private placement was appropriate, and parents were entitled to reimbursement of costs. The DOE appealed to the State Review Officer (SRO) who reversed decision of the hearing officer finding that the DOE offered free and appropriate education. The parent then appealed to the District Court.

Issue: Whether the District Court erred (1) in finding that the alleged procedural violations by the school district violated the IDEA, (2) in finding that the IEP did not substantively provide the student with meaningful benefit, and (3) in finding that the eclectic program offered by the school district was a substantive violation of the IDEA.

Holding: The District Court did not err in reversing the decision of the SRO and the District Court did not err in finding that the school districts IEP failed to meet the procedural and substantive requirements of the IDEA.

Reasoning: The District Court did not err in reversing the decision of the SRO. Following review of the record, the District Court found the methodology discussion brought up by the DOE was reviewed and the hearing officer found the topic was out of the scope for the hearing officer, however the DOE brought up the subject and provided witnesses accordingly. The alleged procedural violations were addressed with improper and generic goals that were immeasurable, failure to conduct a FBA, recommend counseling, Substantive violations included inappropriate goals in the IEP, classroom, and placement.

Disposition: The judgment for the plaintiff parent is granted and denied to the DOE.

Citation: *M. N. and H. N. on behalf of J.N. v. New York City Department of Education*, Region 9, United States District Court, S. D. 2nd Circuit, New York, 2010.

Facts: This case involved an appeal to the District Court from a decision of the State Review Officer (SRO) in the Southern District of New York. The case involved a claim filed pursuant to the IDEA on behalf of J.N. a student diagnosed with autism against the New York City Department of Education (DOE) Region 9. The District Court upheld an earlier decision from a State Hearing Officer which had held that the school district had provided the student with a free and appropriate education as required by the IDEA. The parent appealed.

Upon appeal to the District Court, the student initially argued that the program offered to the student did not recommend a specific school location. The student further argued that the school district had violated the IDEA by the absence of a general education teacher in the IEP meeting impeded the opportunity to participate in the IEP process, which made the parents place the student in the Charter School won by lottery, and the failure to provide a Functional behavioral assessment. The student finally argued that the IEP offered by the school district was substantively inadequate as the Charter School offered to the student did not provide the related services of speech, physical and occupational therapy. Although the Charter program was offered at no cost to the student, reimbursement was sought.

Issue: Whether the District Court erred (1) in upholding the decision of the SRO, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA, (3) in finding that the IEP substantively provided the student with meaningful educational benefits; and (4) in finding that the Charter program embedded all related services thus providing a free and appropriate education.

Holding: The District Court did not err in upholding the decision of the SRO and the District Court did not err in finding that the school districts IEP met the procedural and substantive requirements of the IDEA.

Reasoning: The District Court did not err in upholding the decision of the SRO. Following review of the record, the Court found the minor procedural failures of specific school, absence of general education teacher, and lack of a FBA did not render the IEP procedurally inadequate. The Court also held the IEP was reasonably calculated to enable the student to receive meaningful educational benefit as required by the IDEA. No reimbursement was due as no costs were incurred by the parent.

Disposition: The judgment of the defendant school district was granted.

Citation: *S.H. a minor child, by next friends A. H. and E. H. v Plano Independent school district*, United States District Court E. D. Texas, 5th Circuit, 2010.

Facts: This case involved an appeal to the District Circuit from a decision of the United States District Court for the Eastern District of Texas. The case involved a claim filed pursuant to the IDEA on behalf of S.H. a student diagnosed with autism against the Plano Independent school district. The District Court granted in part for the school district and granted in part for the plaintiff in the decision of free and appropriate education for the student as required by the IDEA.

Upon review of the record, the District Court found the school district procedurally violated the failure to convene the Admission, Review, and Dismissal (ARD) meeting when the student became school age thus denying extended school year services as well as appropriate programming for the first weeks of the school year in question. The ARD team also failed to convene a duly constituted ARD committee denying the student to participate equally in the

ARD process. The student further argued the school district substantively violated the IDEA as it did not provide an IEP that was designed for the student to obtain meaningful educational benefit. Finally the student argued prevailing party status and thus due attorney fees and costs.

Issue: Whether the District Court erred (1) in finding that the alleged procedural violations by the school district did not violate the IDEA in part, (2) in finding that the school districts IEP did not substantively provided meaningful benefit to the student, (3) in finding that the student was not the prevailing party and was not due attorney costs and fees.

Holding: The District Court did err in finding the alleged procedural and substantive violations by the school district did not violate the IDEA and in rejecting the prevailing party status of the student due attorney fees and costs.

Reasoning: The District Court initially held the school districts IEP procedurally and substantively provided the student with free and appropriate education. Upon review of the record, the Court affirmed the decision of the hearing officer in finding the alleged procedural violations of the IEP denied the student with free and appropriate education as required by the IDEA. Furthermore the IEP developed by the school district was substantively inappropriate as it was not likely to produce progress. Finally the student prevailed in part and was awarded attorney fees and costs limited to successful issues.

Disposition: The judgment for summary judgment was granted in part to the school district and granted in part to the student.

Citation: *M.L. a minor student, by K.M.L. as Mother and Next Friend, and v. Bourbonnais school district 53*, United States District Court, C. D. Illinois, 7th Circuit, 2010.

Facts: This case involved an appeal to the District Court from a decision of the United States District Court for the Central District of Illinois. The case involved a claim filed pursuant

to the IDEA on behalf of M.L. a student diagnosed with autism against the Bourbonnais school district 53. The District Court held the student was provided a free and appropriate education, however, the related services of transportation was a significant issue.

Upon appeal to the District Court, the student initially argued that the school district procedurally violated the IDEA by the school districts determination that the student was not a resident. Furthermore, the student argued not providing the requested services of transportation and threats and intimidation prevented the parent from participating in the IEP process. The student further argued that the school district denied free and appropriate education as it did not include all the requested evaluations in the IEP including Assistive Technology and applied behavioral analysis thus the IEP was inadequate and inappropriate.

Issue: Whether the District Court erred (1) giving due weight to the decision of the hearing officer, (2) in finding that the alleged procedural violations by the school district did not violate the IDEA with the exception of transportation, (3) and in finding that the IEP substantively provided adequate and meaningful benefits to the student.

Holding: The District Court did not err in giving upholding the decision of the hearing officer and did not err in finding that the school districts IEP met part of the procedural and substantive requirements of the IDEA. Transportation issues were held for the parent.

Reasoning: The District Court initially held that the hearing officer did not err in finding that the school district met the procedural and substantive requirements of the IDEA. Following review of the record, the Court concluded the transportation issue was rejected by the hearing officer as the student is nonverbal, and mentally challenged that he cannot be independent to arrive at the bus stop and wait alone for the bus. The school district must provide door to door transportation and an aide on the bus for the student. The plaintiff was entitled to summary

judgment over the transportation issue. In the plaintiffs request for attorney fees and costs, the Court concluded that the issue of door to door transportation which was awarded by the hearing officer allows the plaintiff to recover the fees and costs.

Disposition: The motion for summary judgment by the school district was awarded in part and denied in part; the plaintiff's motion for summary judgment was awarded in part and denied in part. Plaintiffs are awarded limited attorney fees and costs.

Analysis of Data

The review of the relevant literature indicated that the various appellate jurisdictions have approached the issues concerned with programming for students with ASD in different ways. Consequently, for the analysis of data represented in this study, the first sorting of data was based upon distinguishing outcomes from the various Circuit Courts of Appeal. The following pages contain Tables 1 through 3 and Figures 1 through 8, which demonstrate the initial and subsequent sorting of data from the case briefs.

Table 1

List of Court Cases by Circuit Issues

Case Name	State	Year	Circuit	Appellate/District Courts	Meaningful Benefit	Adequate Benefit	Meaningful/Adequate Benefits	Free and appropriate education	LRE	Methodology	Attorney's Fees	Private Program Reimbursement	Judgment/Decision	Comments
Andrew S. Margaret S and James S v. The School Committee of the Town of Greenfield, Massachusetts	MA	1999	1	D		yes		X		X	X		SD/P	
TB v. Warwick School Dept	RI	2003	1	D		yes		X		X	X	X	SD	
Sanford School Committee, Plaintiff v. Mr. & Mrs. L, Defendant	ME	2001	1	D		yes		X	X	X		X	P	
District Court SD New York v. Barbara Debuono, Susan Kaplan	NY	2000	2	D	yes			X		X	X	X	P	
SW & MM on behalf of N.W. v. Board of Education of City of New York	NY	2003	2	D	yes			X		X	X		P	
DF on behalf of NF v. Ramapo Central school district	NY	2004	2	D	yes			X	X	X		X	P	
DD by parents, etc. v. NY City Board of Education	NY	2004	2	D	yes			X	X	X			P/SD	
CB and RB for WB v. New York City Department of Education	NY	2005	2	D	yes			X	X	X	X	X	P	
WS and LS on behalf of CS v. Rye City school district	NY	2006	2	D	yes			X	X	X		X	SD	
SW by parents JW, AW, BF, by PF, JF & PF by parents LT & RT v. Sheila Warren District of EI Services for Orange County	NY	2007	2	D	yes			X	X	X	X	X	SD/P	
TP and SP on behalf of SP v. Mamaroneck Union Free school district	NY	2007	2	D	yes			X	X	X	X	X	P	
MM & HM on behalf of AM v. New York City Department of Education	NY	2008	2	D	yes			X	X	X		X	SD	

(table continues)

Case Name	State	Year	Circuit	Appellate/District Courts	Meaningful Benefit	Adequate Benefit	Meaningful/Adequate Benefits		free and appropriate education	LRE	Methodology	Attorney's Fees	Private Program Reimbursement	Judgment/Decision	Comments
AG and LG on behalf of NG plaintiffs v. Thomas R Frieden, New York Department of Health and Mental Hygiene	NY	2009	2	D	yes				X	X	X		X	SD	
TY KY on behalf of TY plaintiffs appellants v. New York City Department of Education Region 4	NY	2009	2	A	yes				X	X	X		X	SD	
M.H. and E.K. on behalf of P.H .v. New York City DOE	NY	2010	2	D	yes				X	X	X		X	P	
M.N. and H.N. on behalf of J.N .v. New York City DOE Region 9	NY	2010	2	D	yes				X	X	X		X	SD	
SK parent of NK v. Parisippany Troy Hills Board of Education	NJ	2008	3	D	yes				X	X	X			SD	
William D by his parents Dennis and Luch D v. Manheim Township school district	PA	2007	3	D	yes				X	X	X	X	X	SD	
SD v. Riverside Delanco school district	NJ	2006	3	D	yes				X	X	X	X	X	P	
Michael J, Deidre J, parents of Patrick J v. Derry Township school district	PA	2006	3	D	yes				X	X	X		X	SD	
WC and SC on behalf od RC v. Summit Board of Education	NJ	2007	3	D	yes				X	X	X	X	X	P	
LJ by parents V ZJ v. Audubon Board of Education	NJ	2007	3	D	yes				X	X	X		X	P	
Nancie Fisher aka Nancie Chasko on behalf of TC v. Stafford City Board of Education	NJ	2008	3	A	yes				X	X	X		X	SD	
DL and KL on behalf of JL v. Springfield Board of Education	NJ	2008	3	D	yes				X	X	X		X	P	med
AY and DY parents of BY v. Cumberland Valley school district	PA	2008	3	D	yes				X	X	X		X		
Travis G by Joseph and Stella G v. New Hope Solebury school district	PA	2008	3	D	yes				X	X	X		X	SD	
RF & JF parents of NF v. Warwick school district	PA	2009	3	D	yes				X	X	X		X	SD	
District Court SD North Carolina, Asheville, ME and PE v. The Board of Education for Buncombe County	NC	1999	4	D	yes				X	X	X		X	SD	

(table continues)

Case Name	State	Year	Circuit	Appellate/District Courts	Meaningful Benefit	Adequate Benefit	Meaningful/Adequate Benefits		free and appropriate education	LRE	Methodology	Attorney's Fees	Private Program Reimbursement	Judgment/Decision	Comments
Bd of Ed of County of Kanawha v. Michael M	WV	2000	4	D	yes				X		X		X	P	
Stefan Jaynes by Parents v. Newport News School Board	VA	2001	4	A	yes				X	X	X		X	P	
CM ex rel JM v Board of Public Education of Henderson County	NC	2002	4	D	yes				X		X		X	SD	
MM, by her parents DM and EM v. school district of Greenville County Public Schools and South Carolina State BOE	SC	2002	4	A	yes				X		X	X	X	SD/P	rem
G ex rel Ssgt RG v. Fort Bragg Dep Schools	NC	2002	4	A	yes				X		X	X	X	SD/P	rem
County School Board of Henrico County VA v. Palkovics	VA	2003	4	D	yes				X	X	X			SD	
Daniel G. Wagner Jr et al v. Board of Education of Montgomery County Maryland	MD	2004	4	D	yes				X	X	X			SD	
County Board of Henrico VA v. ZP RP	VA	2004	4	A	yes				X	X	X		X	SD	
County Board of Henrico VA v. RT ED VA	VA	2006	4	D	yes				X	X	X		X	P	
JP by Karl and Linda Peterson v County School Board of Hanover Virginia	VA	2008	4	A	yes				X	X	X	X	X	?	Vac/Rem
JD by Mark and Tammy Davis v. Kanawha County Board of Education	WV	2007	4	D	yes				X	X	X			SD	SD in part
Samuel Tyler W ex rel Harvey W v. Northwest ISD	TX	2002	5	D	yes				X		X		X	SD	
Clear Creek ISD v. JK	TX	2006	5	D	yes				X	X	X	X	X	SD	
JMC and MEC on behalf of EGC v. Louisiana Board of Education and Secondary Education	LA	2008	5	D	yes				X	X	X		X	P	P in part
S.H. by A.H. and E.H. v. Plano ISD	TX	2010	5	D	yes				X	X	X	X	X	SD/P	
Dong v. Bd of Ed	MI	1999	6	A	yes				X		X			SD	
Renner v. Bd of Ed of Public Schools of City of Ann Arbor	MI	1999	6	A	yes				X		X			SD	

(table continues)

Case Name	State	Year	Circuit	Appellate/District Courts	Meaningful Benefit	Adequate Benefit	Meaningful/Adequate Benefits		free and appropriate education	LRE	Methodology	Attorney's Fees	Private Program Reimbursement	Judgment/Decision	Comments
Burilovich v. Board of Education of Lincoln Consolodated Schools	MI	1999	6	A	yes				X		X		X	SD	
Anita Wikol v. Birmingham Michigan Public Schools Board of Education	MI	2004	6	A	yes				X	X	X	X	X	P	vac/rem
Deal v. Hamilton County Board of Education	TN	2005	6	A	yes				X	X	X	X	X	P	rem
Jeffrey Winkelman et al, plaintiffs v. Parma City school district Board of Education, defendant	OH	2009	6	D	yes				X	X	X		X	SD	
Crystal Seladoki plaintiff v. Bellaire Local school district Board of Education	OH	2009	6	D	yes				X	X	X		X	SD	
TH v. Board of Ed of Palatine Community Consolodated school district	IL	1999	7	D			yes		X		X	X	X	P	
JP ex rel Popson v. West Clark Community Schools	IN	2002	7	D			yes		X		X		X	SD	
ZF by Parents Stephen and Kara Foster v. South Harrison Community School Corporation	IN	2005	7	D			yes		X	X	X			SD/P	
JK by Parents Paul and Heidi Kraft v. Metropolitan school district Southwest Allen County	IN	2006	7	D			yes		X		X	X	X	SD	
Brown v. Bartholomew Consolidated School Corp	IN	2005	7	D			yes		X	X	X	X	X	SD	
M.L. by K.M.L. v. Bourbonnais school district 53	IL	2010	7	D			yes		X		X	X		SD/P	
Alan Gill and Deborah Gill, Parents of Matthew Gill v. Columbia School Dist.	MO	2000	8	A		yes			X	X	X	X	X	SD	
Sara Pachi by Parents Kevin and Susan Pachi v. Alice Seapren Commission of Minnesota DOE and School Board of Independent school district Number 1	MN	2005	8	D		yes			X	X	X		X	SD	

(table continues)

Case Name	State	Year	Circuit	Appellate/District Courts	Meaningful Benefit	Adequate Benefit	Meaningful/Adequate Benefits		free and appropriate education	LRE	Methodology	Attorney's Fees	Private Program Reimbursement	Judgment/Decision	Comments
NJ by JJ & JJ v. Northwest R. school district	MO	2005	8	D		yes			X	X	X	X		SD	
Michael and Anne Belken on behalf of Len Belken v. Sioux City Community school district	IA	2006	8	D		yes			X	X	X		X	SD	
Jonathan & Kristi O'Dell v. Special school district of Saint Louis County	MO	2007	8	D		yes			X	X	X			SD	
VM and KM on behalf of DM v. Brookland school district	AR	2008	8	D		yes			X	X	X	X	X	P	
Mike Astourian v. Blue Springs R IV school district	MO	2008	8	D		yes			X	X	X		X	SD	
Joshua A. v. Rocklin Unified school district	CA	2009	9	A	yes				X		X			SD	
Lucas Adams by Parents v. State of Oregon Douglas County Educational Service District	OR	1999	9	A	yes				X		X		X	SD/P	
AM by and through parents RM and AM v. Fairbanks North Star Borough school district	AK	2006	9	D	yes				X	X	X	X	X	SD	
Leslie Pitchford v. Salem Keizer school district	OR	2001	9	D	yes				X		X	X	X	SD/P	
Amanda J by Annette J v. Clark County school district	NV	2001	9	A	yes				X		X			P	
Choruby ex rel DC v. Northwest Regional Ed Service District	OR	2002	9	D	yes				X		X		X	SD	
Jack P by Jessica P, his Guardian ad Litem v. Auburn Union Elementary school district	CA	2005	9	D	yes				X	X	X		X	SD	
ML by CD and SL parent v. Federal Way school district	WA	2005	9	D	yes				X	X	X	X	X	P	
KS by parents PS and MS v. Fremont Unified school district	CA	2009	9	D	yes				X	X	X	X		SD	
Makiko and Jeffrey D as gaurdians ad litem for Jake D v. State of Hawaii	HI	2007	9	D	yes				X	X	X		X	P	
JC by guardian ad litem v. Vacaville Unified school district	CA	2007	9	D	yes				X		X	X	X	P	

(table continues)

Case Name	State	Year	Circuit	Appellate/District Courts	Meaningful Benefit	Adequate Benefit	Meaningful/Adequate Benefits		free and appropriate education	LRE	Methodology	Attorney's Fees	Private Program Reimbursement	Judgment/Decision	Comments
SB by Dilip B and Anita B v. Pomona Unified school district	CA	2008	9	D	yes				X	X	X		X	P	
Ann Kimball Wiles and Stanley Bond son, Bryan Wiles Bond v. Department of Education	HI	2008	9	D	yes				X	X	X		X	P	
JR by WR, NR v. Sylvan Union school district	CA	2008	9	D	yes				X	X	X	X	X	SD/P	vac/rem
JG, NG, RG, SG, plaintiffs-appellants v. Douglas County school district defendant	NV	2008	9	A	yes				X	X	X		X	SD/P	
JAAH and JRH both of JH and LH v. Modesto City Schools	CA	2009	9	D	yes				X	X	X	X	X	SD/P	
Raymond Parenteau and Jolene Parenteau, on behalf of their son, v. Prescott USD John Does I-V, Jane Does I-V, and Black and White Corporations, I-X Defendants	AZ	2009	9	D	yes				X	X	X	X	X	SD	
CS by his natural parents Wendy and Kenneth Sundberg, v. Governing Board of Riverside Unified school district	CA	2009	9	A	yes				X	X	X		X	SD	
E. W. ex rel CW.,his guardian Ad Litem. Plaintiff, v. Rocklin Unified school district	CA	2006	9	D	yes				X	X	X		X	SD	
C.P. and J.D. on behalf of M.D. v. State of Hawaii DOE	HI	2010	9	D	yes				X	X	X	X	X	SD	
Ben Johnson by Parents v. Olathe Kansas District Schools Unified school district No. 233	KS	2003	10	D		yes			X	X	X	X		SD	
LB v. Nebo school district	UT	2004	10	A		yes			X	X	X	X	X	SD/P	rem
Sytsema v. Academy school district #20	COL	2009	10	A		yes			X	X	X	X	X	P	
School Board of Martin County v. AS	FL	1999	11	D		yes			X	X	X	X	X	SD	
DeKalb County school district v. JWM and SM as parents of WM	GA	2006	11	D		yes			X	X	X	X	X	P/SD	

(table continues)

Case Name	State	Year	Circuit	Appellate/District Courts	Meaningful Benefit	Adequate Benefit	Meaningful/Adequate Benefits		free and appropriate education	LRE	Methodology	Attorney's Fees	Private Program Reimbursement	Judgment/Decision	Comments
LMP on behalf of EP, DP, and KP, and all others situated disabled children v. School Board of Broward County	FL	2007	11	D		yes			X	X	X		X	SD/P	in part
MW by parents Shuzhou Wang and Wuxue Gao v. Clark County school district	GA	2008	11	D		yes			X	X	X		X	SD	
Liberata Diatta v. District of Columbia	DC	2004	DC	D	yes				X	X	X		X	P	
Anna Schoenbach v. District of Columbia	DC	2006	DC	D	yes				X	X	X		X	SD	

Table 2

List of States that are Involved with Autism and Applied Behavioral Analysis Cases within U.S. District Level Courts between 1999 and May 2010

<u>Circuit</u>	<u>Number of cases</u>	<u>Number of States</u>	<u>List of States</u>
1	3	3	MA ME RI
2	13	1	NY
3	11	2	NJ PA
4	12	5	MD NC SC VA WV
5	4	2	LA TX
6	7	3	MI OH TN
7	6	2	IL IN
8	7	4	AR IA MN MO
9	20	7	AK AZ CA HI NV OR WA
10	3	3	CO KS UT
11	4	2	FL GA
DC	2		DC
total	92	34	

Table 2 provides the list of states pertinent to the research study. Thirty-four states identified below made up the 92 cases where litigation was filed regarding autism and applied behavioral analysis methodology between 1999 and May 2010.

Table 3

List of States that are Not involved with Autism and Applied Behavioral Analysis Cases within U.S. District Level Courts between 1999 and May 2010

<u>Circuit</u>	<u>Number of cases</u>	<u>Number of States</u>	<u>List of States</u>
1	0	1	NH
2	0	2	CT VT
3	0	1	DE
4	0	0	
5	0	1	MS
6	0	1	KY
7	0	1	WI
8	0	3	NE ND SD
9	0	2	ID MT
10	0	3	NM OK WY
11	0	1	AL
DC	0		
total	0	16	

Table 3 provides the list of the 16 states where no litigation was filed regarding autism and applied behavioral analysis methodology between 1999 and May 2010.

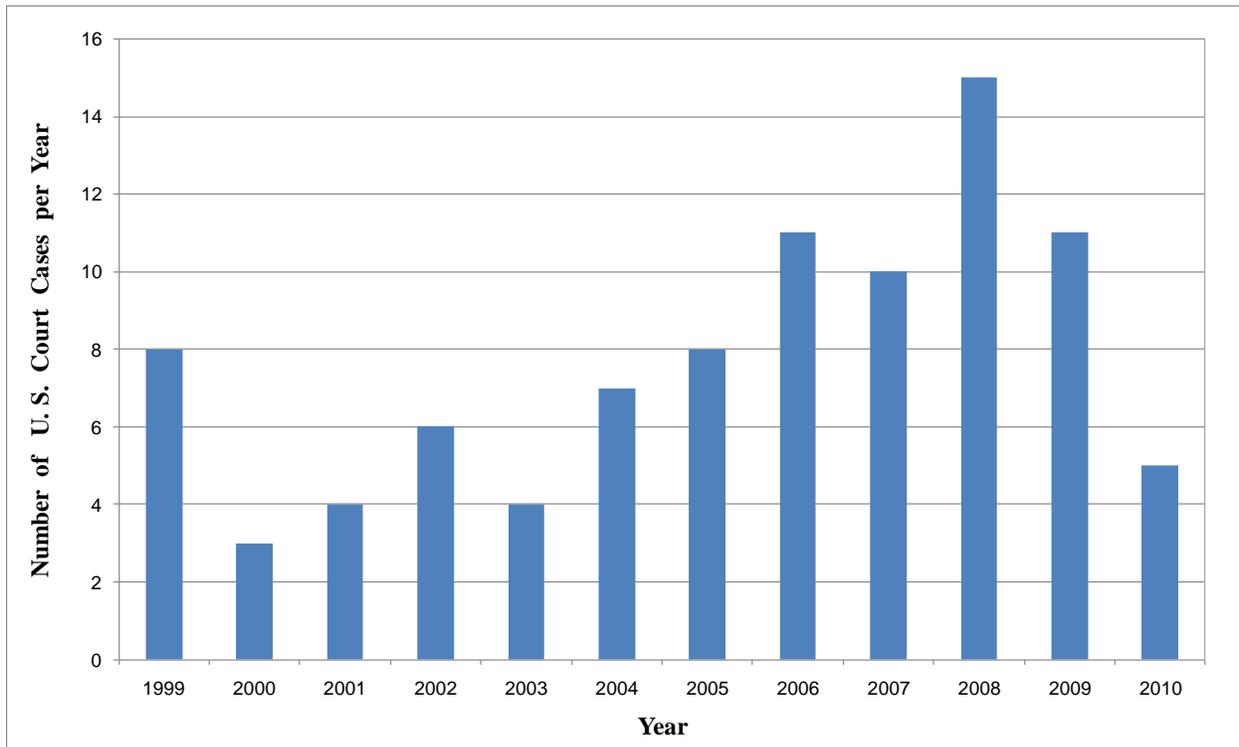


Figure 1. Summary of autism and applied behavioral analysis cases that went to either the U.S. district level or appellate level courts between 1999 and May 2010.

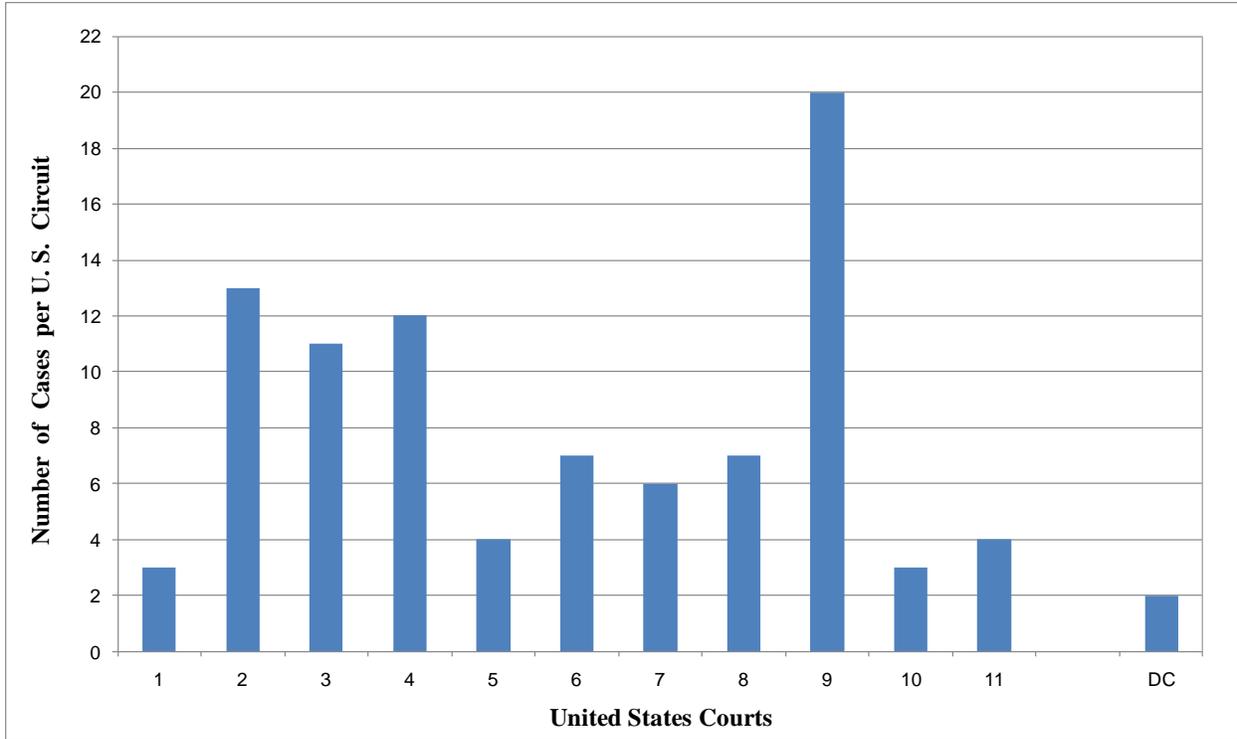


Figure 2. Summary of autism and applied behavioral analysis cases that went to either the U.S. district level or appellate level courts between 1999 and May 2010.

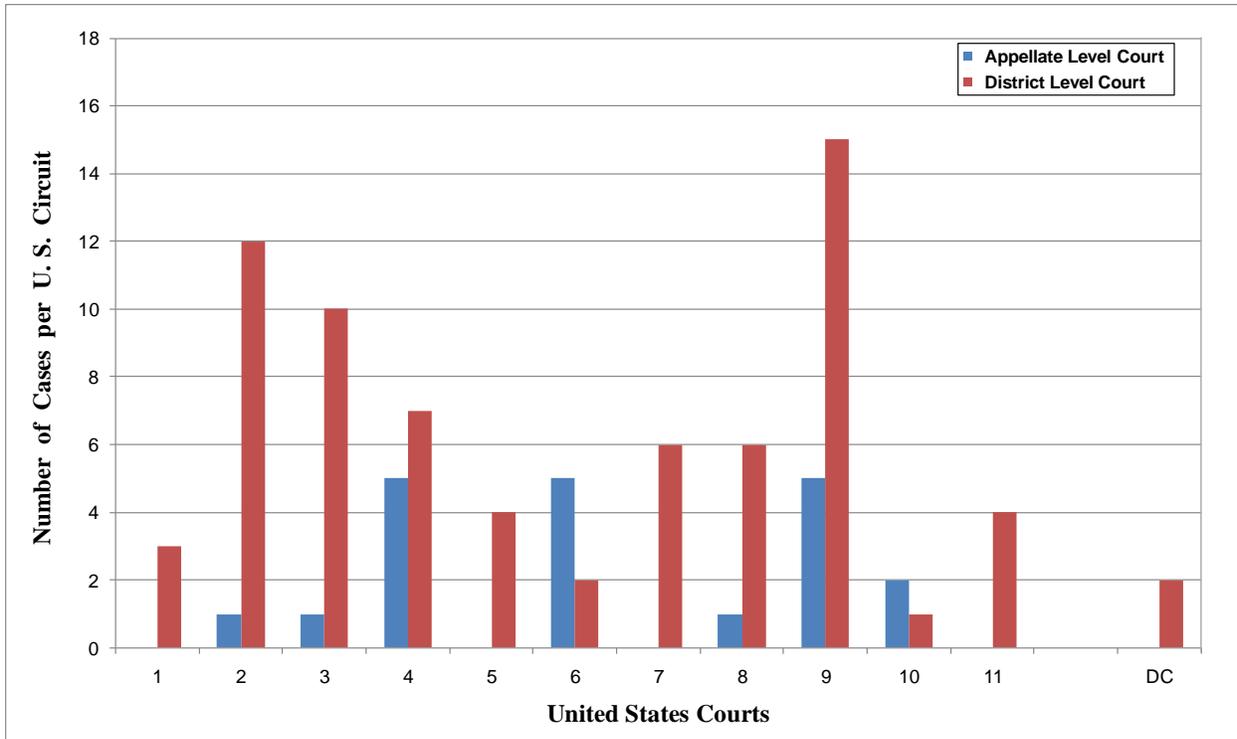


Figure 3. Comparison of studied autism and applied behavioral analysis cases tried within either the U.S. appellate level or the district level courts between 1999 and May 2010.

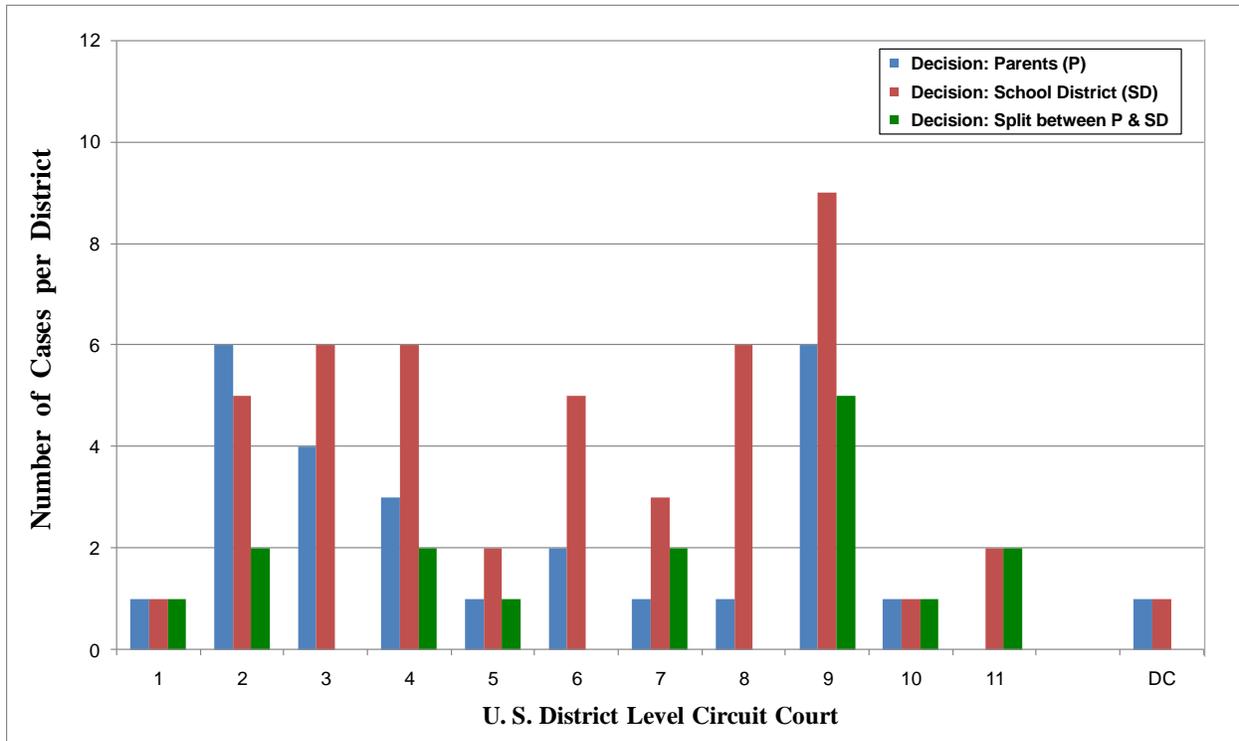


Figure 4. Comparison of studied autism and applied behavioral analysis case decisions between parents and the school districts held within the U.S. district level courts between 1999 and May, 2010.

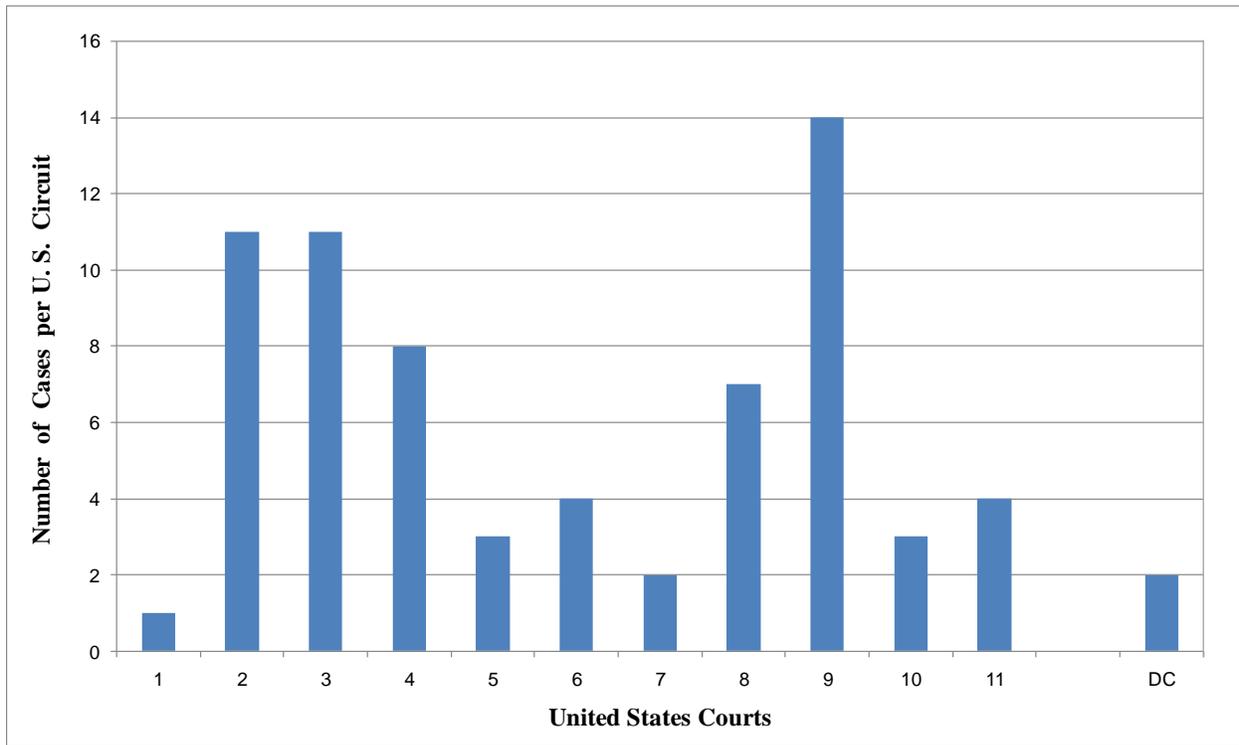


Figure 5. Comparison of studied autism and applied behavior analysis cases tried within the U.S. courts between 1999 and May, 2010, where the least restrictive environment was a factor.

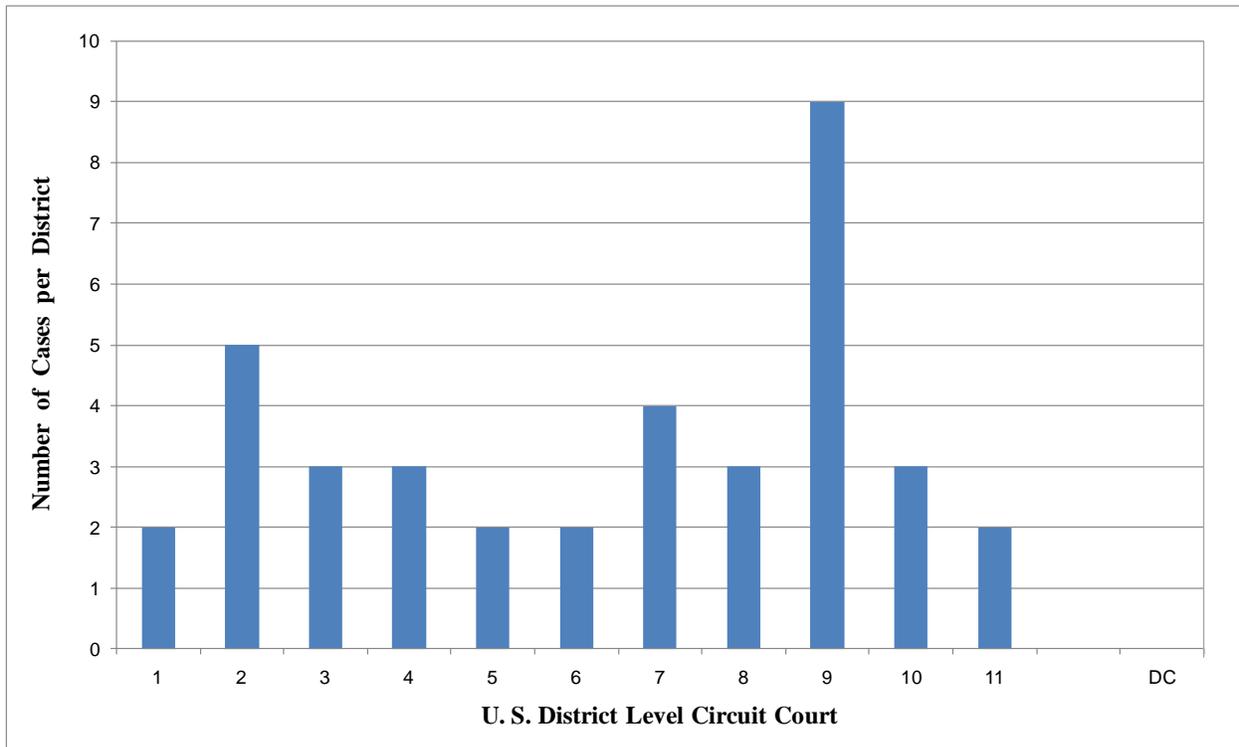


Figure 6. Comparison of studied autism and applied behavior analysis cases tried within the U.S. district courts between 1999 and May, 2010, that had attorney fees as a factor.

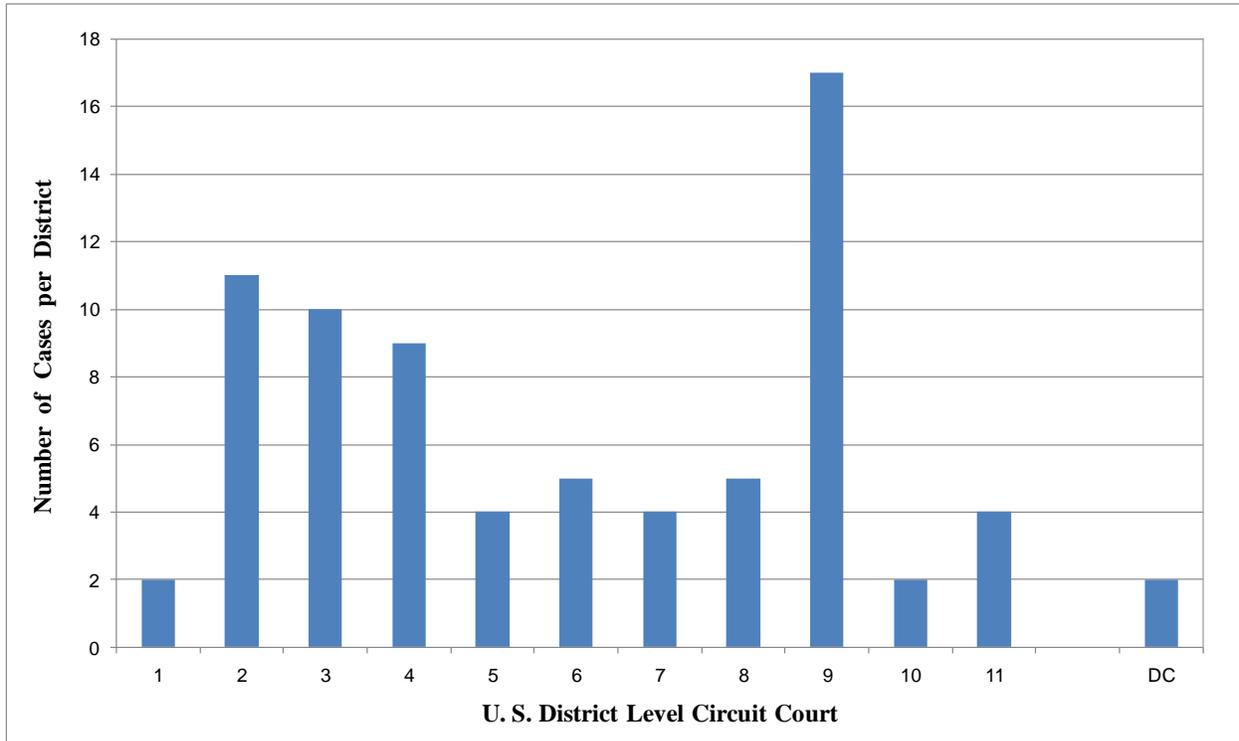


Figure 7. Comparison of studied autism and applied behavior analysis cases tried within the U.S. district level courts between 1999 and May, 2010, that had private program reimbursement/compensatory education as a factor.

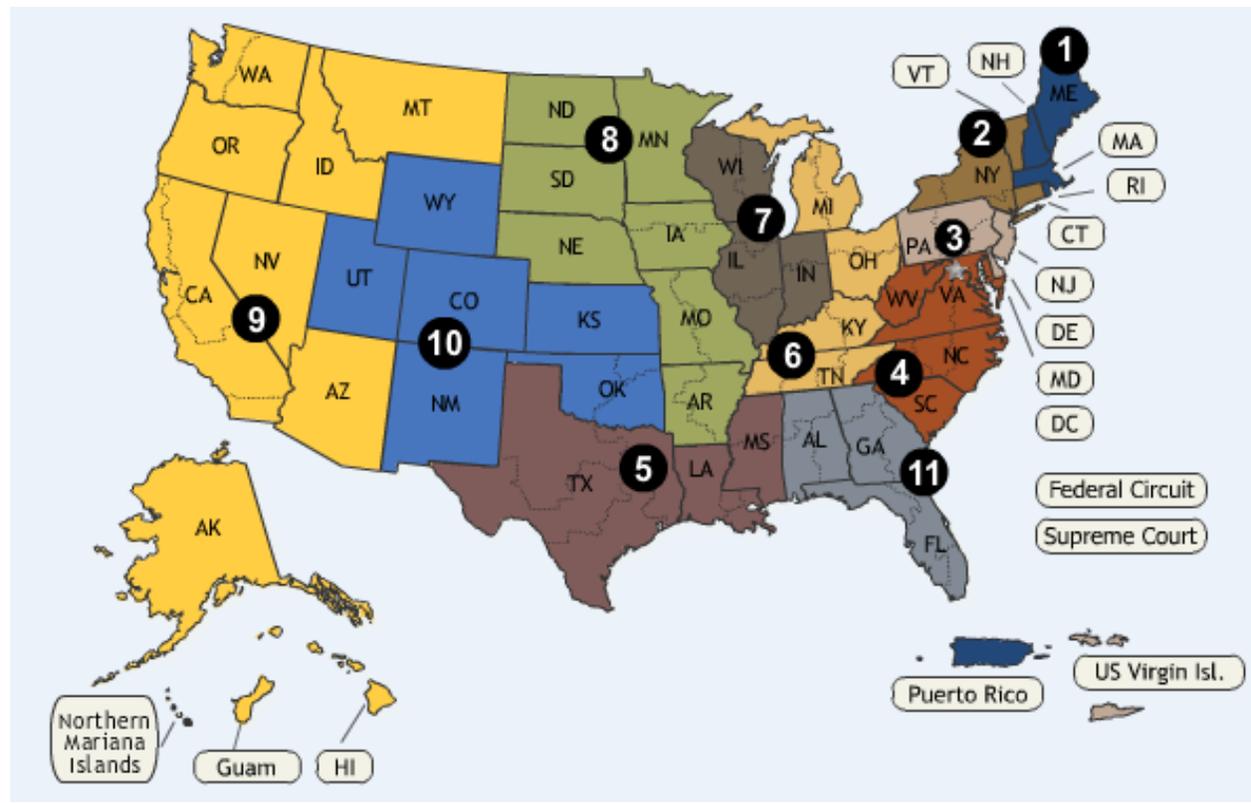


Figure 8. Map of all U.S. states and territories by circuit.

Issues by Circuit

In the First Circuit Court of Appeals, the sample consisted of three cases. All occurred in the early years of the time span for this study. The cases were all heard at the district level. Both cases involved the subject of request for attorney fees and costs.

In the Second Circuit, all 13 cases were filed in New York. Long waiting lists for preschool student services below age 5 necessitated private applied behavioral analysis programs received in Early Intervention (EI) to be continued by parents, as no services were immediately available. This, along with the lack of quantity of service providers needed caused a class action suit along with Department of Education personnel to be sued in their private and professional capacity as part of the due process hearing request. The number of students in preschool and public school students requiring special education services is a daunting task. The increase in children diagnosed with autism exacerbated the problem.

In the Third Circuit, private program reimbursement was demanded in the majority of the 11 cases. Decisions were evenly split for parents and school districts while attorney fees and costs were not as prevalent.

The Fourth Circuit found most parents again requesting private program reimbursement. Of the 12 Fourth Circuit cases, 25% were filed by school districts against parents. Forty-five percent of the cases in the Fourth Circuit, went to the appellate level with decisions evenly split between parents, school district, or partial awards, with some remanded.

All Fifth Circuit cases were filed at the district level, and all requested private program reimbursement. Fifty percent of the cases filed for attorney fees and most judgments were held for the school district.

The Sixth Circuit contained seven cases. Five were decided at the Appeals level and most held for the school district. The Deal case was widely addressed across jurisdictions as one that examines predetermination of services denying applied behavioral analysis demanded by the parents.

The six Seventh Circuit cases were all decided at the district level, with a majority of judgments for the school district. Private Program Reimbursement/Compensatory Education was demanded in most cases.

The Eighth Circuit cases included seven cases. A majority of the cases filed at the district level found for the school district in most of the cases, with private program reimbursement/compensatory education as the dominant subject.

The Ninth Circuit contained the largest sample in the study with 20 cases. Of the cases, 20% were filed at the appellate level, with most judgments for the school district. Most cases included private program reimbursement/compensatory education, and 45% included attorney fees and costs in their demands. Most cases were filed in California.

In the Tenth Circuit, only three cases were found for the study. The judgments were split evenly, with one decision for the school district, one for the parent, and one split decision. All cases requested Attorney Fees and Costs.

In the Eleventh Circuit, four cases were filed at the district level and all requested private program reimbursement/compensatory education. Decisions were found for the school district 50%, and 50% were split decision.

In the District of Columbia, the two cases in the study requested private program reimbursement/compensatory education. Judgment was evenly split with the school district winning in one and the parent winning the others.

In the sample, the year with the most litigation was 2008, with 15 of the cases. The least litigation occurred in 2000 with three cases for the study. The Ninth Circuit was the most litigated circuit with 20 cases. The Second Circuit contained 13 cases, and the Fourth Circuit had 12 cases.

The least litigated circuits were the District of Columbia with 2 cases and the First and Tenth circuits contained 3 cases each.

The analysis of the autism cases involving the applied behavioral analysis provided the framework for trends, themes, and patterns. In order to determine patterns and trends of these court decisions, the cases were categorized by key facts and court reasoning based on the requirements of the IDEA: free and appropriate education, least restrictive environment, benefit-meaningful, adequate and both meaningful and adequate, attorney fees and costs, as well as private program reimbursement.

Free and appropriate education, according to federal regulations, includes related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the State Education Agency, including an appropriate preschool, elementary school, or secondary school education in the state, and are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR § 320 through 34 CFR § 300.324.

Least restrictive environment requires that as much as possible, children with disabilities must be educated with children without disabilities 34 CFR § 300.16. The education philosophy is to move children with special needs as close as possible to the normal setting as appropriate.

Determination of a free and appropriate education is cited in *Board of Education v. Rowley*, the U. S. Supreme Court defined free and appropriate education as a two part test: first,

has the state followed the procedural requirements in the IDEA, and second, is the individualized educational program reasonably calculated to enable the child to receive educational benefit? If these two requirements are met, the state has complied with the obligations set forth by Congress and the courts.

In defining the *Rowley* standard, the following circuits appear to strictly enforce the meaningful benefit standard: the Second, Third, Fourth, Sixth, and Ninth Circuit Courts. The meaningful benefit standard provides for more than minimal benefit and provides the student with an appropriate level of progress based on cognitive levels. The First, Eighth, Tenth, Eleventh, and D.C. Circuit Courts enforce the adequate benefit standard. The adequate benefit standard provides for adequate or minimal benefit. The Seventh Circuit Court enforces the meaningful and adequate benefit standard

When examining cases involving methodology the courts often defer to the school districts as the educational experts. When programming is weak or non-existent, the system is left non-defensible to defend their program to provide free and appropriate education. Some states require the maximum potential clause to the law.

Of the research sample, 34 states litigated autism and applied behavioral analysis along with the District of Columbia (Table 2). Seventeen states did not produce any litigation. Of the 92 cases, 20 were filed at the Appeals level and 72 were decided at the District Court level. The Appeals Court consisted of Circuits 2, 3, 4, 6, 8, 9, and 10. District Courts made up all circuits including the District of Columbia. The most litigated circuits were the Ninth and Second. The most litigated states were New York and California.

The cases are summarized according to the themes developed from the IDEA and programming for students with disabilities. Tables and figures depict the court cases by Circuit

Court and address whether filed at the District or Appeal level. Selected cases were listed in chronological order according to the themes obtained in case review (Figure 3).

In review of the selected cases, the following themes were observed: training; procedural requirements of predetermination, parental input, program duration, IEP team membership; substantive requirements included extended school year services, related services, Functional Behavior Assessments, behavior intervention plans, transition plans, parent training, in-home training, sign language, eclectic programming, and Treatment and Education of Autistic and Communication related handicapped Children (TEACCH). TEACCH is an evidence-based treatment program for individuals with ASDs. It provides the student with structured activities that are provided in a specific sequence with the student completing each subset and moving to the next.

All cases found the lack of a free and appropriate education (free and appropriate education) and all cases contained the methodology of applied behavioral analysis. When litigation was filed, parents disagreed with the program of free and appropriate education that was offered to the student. When parents requested the specific methodology of applied behavioral analysis and the school district's program was not pure applied behavioral analysis services provided with one-on-one for up to 40 hours weekly, the litigation addressed free and appropriate education and methodology as the issues.

While the courts grant school districts leeway in choosing educational methods, free and appropriate education must be provided that results in adequate and meaningful educational benefit to the student and have educational data to support the student is progressing in the program.

The dilemma for courts is to determine is “what exactly is meaningful or adequate benefit”? In order to discern this, they hear evidence from school and parent witnesses who discuss the progress or lack of progress, observational data including behavior, transition, and social skills in addition and academics. The following section examines themes observed by Circuit Court.

Least Restrictive Environment

First Circuit

The *Sanford School Committee v. Mr. and Mrs. L.* (1st Circuit, 2001) case addressed a school district’s inability to provide applied behavioral analysis services by a trained paraprofessional as previously done in a preschool program. When the student became school age, the system trained one individual to deliver applied behavioral analysis services. When the person resigned, there was no back-up plan and therefore no program. The parent then removed the student to provide applied behavioral analysis at home. The court held that the school district failed to provide the student with free and appropriate education. Compounding the problem the school system then wrote a new program in a new least restrictive environment for the student based on no new evaluative data. When the parent won the case at the hearing officer level the school district filed to the District Court. The issue of least restrictive environment was compounded by the “stay-put” clause in the IDEA as the student’s placement was at home per the parent program. The court referred to *Rowley*, 458 US at 206-207, in examining the two-prong test. First, has the State complied with the procedures set forth in the Act? Second, is the IEP developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefit?

Opinions in this circuit at this time indicate that compliance with the second part of Rowley in essence nullifies any violation in the first prong. Essentially then, compliance with the substantive requirements of the IDEA guarantees the procedural requirements have been met. The District Court found the school district did not provide the student with free and appropriate education and the procedural violations occurred due to the programming recommended bore no resemblance to the student's need as there was no data to support any new programming. The Court found the program to be borne from administrative convenience, and thus a substantive violation of the IDEA, and therefore, the school district lost at the district level as well.

Second Circuit

In the Second Circuit case, *D.D. by parents, etc, v. New York City Board of Education* (2nd Circuit, 2004), the children were denied free and appropriate education based on the waiting list for preschool services. Under both federal and state law (U.S.C. § 1414 (d) (1) (B); N. Y. Educ. Law § 4410(3)), IEPs for preschool children are developed by a Committee on Preschool Education (CPSE). After the evaluations are completed and the student found eligible, the placements are ranked in the following order for determining least restrictive environment: (1) related services only, (2) special education itinerant services only, (3) related services in combination with special education itinerant services, (4) half-day program, and (5) full-day program. IEP implementation is usually 30 days after eligibility is determined.

This case involved a delay of services for preschool services for three children: D. D., A.C., and B.T. New York City serves approximately 23,000 preschool children with disabilities including related services, special education itinerant services, and special education provider placements. According to NYC Department of Education data for the last several years, the

number of students seeking preschool services has increased by approximately 1,000 cases per year. With this trend, the city can often see a waiting list of over 500 preschool children not receiving full services required by their IEPs.

DD's parent filed due process for the lack of services provided and the hearing officer held the NYCDOE failed to provide services listed in the IEP with applied behavioral analysis services and failed to provide compensatory services. When provided, the student attended for a short time and then moved out of the country.

A.C., (the second child plaintiff) was provided with a full evaluation at parental request and the NYCDOE again had a wait list for services. The parent filed due process and the child was offered services when the parent moved to another district. The hearing officer found for the parent and the school district was ordered to provide compensatory education services. The parent then requested applied behavioral analysis services and the system offered the program.

B. T., (the third child plaintiff) was evaluated and deemed to have significant developmental disabilities. An IEP was developed and again there were no services available. Interim placements of related services were offered and partial services were accepted for the student.

As a result of these delays, the parents of all three students filed a motion for Class Certification. When reviewed, the court granted Class Certification and the extrinsic factors of growth, numbers, including initiatives and collaborating with Early Intervention and the State Department of Health to better evaluate the number of children who will transition to preschool must be addressed immediately.

In *C. S. v. Rye City School District* (2006), the court found the school district denied the student free and appropriate education. In reviewing administrative decisions the federal courts

must give “due weight” to the administrative proceedings remaining “mindful that the judiciary generally lacks the specialized knowledge and experience necessary to resolve persistent and difficult questions of educational policy”. (*Walczak v. Florida Union Sch. Dist.*, 142 F.3d 119, 129 (2nd Cir. 1998).) When a federal court reviews the challenged IEP, it should consider whether the challenged IEP was “reasonably calculated to enable the child to receive educational benefits” (*Board of Educ. v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982).) This case involved a home applied behavioral analysis program supplementing the school-based program due to the severity of the child’s disability.

The key questions before the court follow were: whether the IEPs reasonably calculated to ensure “meaningful” rather than “trivial” access to education, and if the opportunities for education were not meaningful then should a supplemental home instruction program be mandated? Documentation from oral arguments indicated all personnel who worked with the student stated a home program was needed. The court found the student was denied free and appropriate education due to the lack of a home based program. The oral evidence articulated under the standards of *Rowley* substantiated the denial of free and appropriate education for the student.

The same argument arose in *C. S. v. Rye City School District* (2006) regarding review of decisions of hearing officers. Federal courts may not simply rubber stamp administrative decisions, as judges lack the specialized knowledge and experience required to resolve persistent and difficult questions of educational policy.

Reimbursement for a unilateral parental placement requires the school system to pay for services if (1) the services offered by the school district were inadequate or inappropriate, (2) the services selected by the parent were appropriate, and (3) equitable considerations support the

parents' claim. Educational data supported appropriate educational programming and progress on goals and objectives.

In *S.P. v. Mamaroneck Union Free School District* (2007), the 2nd Circuit found the school system's evaluations and IEP did not provide the student with the necessary components to make progress. Procedural violations in lack of parental input in the IEP was cited and the IEP was essentially a "done deal" when parents entered the room. The court determined that the program offered to the student did not provide free and appropriate education and the parents and school district settled. The program offered in the settlement was quite extensive and offered much more applied behavioral analysis and related services than previously held. When the school system moved forward with the next IEP the parents continued their home based program. Both parents and school district evaluated the student. An IEP was developed and presented to the parents at the meeting.

The courts found that the procedural violations of predetermination of the child's IEP deprived the parents of meaningful participation with other procedural defects caused substantial harm and deprived the student of a free and appropriate education.

Along with the private services of applied behavioral analysis and speech provided by the parent which were deemed appropriate for the child, the court awarded reimbursement.

Third Circuit

In *S.A. et. al., v Riverside Delanco school district*, (3d Cir, 2008), the administrative law judge found the school district failed to provide a free and appropriate education for the student as school staff were not trained in applied behavioral analysis and discrete trial training. The school district evaluated the student and found a number of challenging behaviors, including disrobing, fecal smearing, stuffing his mouth with food, eloping, biting, obsessive conduct, and

no use of verbal language. When the school district offered a half day preschool program, speech, O. T. and a one-to-one shadow aide, the parents disagreed and filed a due process. They stated their physicians indicated the student needed a full day program and applied behavioral analysis and discrete trial training.

The court rejected the testimony of the expert witnesses. The school expert did not observe the student and did not have experience in preschool. The judge therefore relied on the minimal testimony of both experts in recommending the applied behavioral analysis discrete trial training program for the student. The court agreed with the administrative law judge that the more compelling testimony came from the expert witnesses, who stated that the student required applied behavioral analysis methodology and discrete trial training techniques.

Although the court agreed with the administrative law judge's decision, it is not without problem. The decision did not distinguish between applied behavioral analysis and discrete trial training and while the Rowley standard does not obligate schools to provide "the optimal level of services." The dilemma here is the school district's IEP did not contain any aspects of applied behavioral analysis or discrete trial training and the staff was not trained in either methodology, nor was there any training planned for the staff.

In *N. K. v. Parsippany-Troy Hills Board of Education* (3rd. Cir. 2008), the administrative law judge found the program offered to the student provided free and appropriate education while the mainstream program the student currently attended did not. The school district proposed a more restrictive self-contained placement to include applied behavioral analysis and discrete trial training services. The testimony of the witnesses for the school district was able to affirm the lack of progress in the mainstream class, the plans to reevaluate, and optimally envision a mainstream program in the future. The school district also implemented programming

in applied behavioral analysis classrooms and planned to increase this program in the future. Though the IDEA favors mainstreaming where possible, there are limits. The student's experience with the current mainstream placement demonstrated that it has not been successful in educating him. Three years' worth of data indicating minimal progress persuaded the court to challenge the proposed placement of the student in a self-contained class as "reasonably calculated to enable the child to receive educational benefits." The school district's request for the proposed IEP to be the "stay put" placement was denied by the court.

In *Z. J. v. Audubon Board of Education* (3rd Cir. 2007), the court found the school district did not provide the student with a free and appropriate education as it did not implement the decisions of the hearing officer requiring employment of qualified staff to implement school and home applied behavioral analysis services, as well as develop and implement an effective behavior intervention plan. A request for a preliminary injunction order to comply with the decision of the administrative law judge (administrative law judge) as well as a request to hold the school district in contempt was made by the plaintiff. The IDEA "provides a procedure that allows disabled children and their parent to enforce this guarantee."

The state court does not expressly provide a means for children and parents who prevail at the administrative hearing to enforce the favorable administrative decision in state or federal court. However, the court referenced in its decision an observation made in the *Jeremy H.* case: "whether or not an IDEA decision of a state hearing officer or appellate body is enforceable under IDEA directly, such a decision would seem to be enforceable under section 1983." *Jeremy H.*, 95 F.3d at 279.

In the Fourth Circuit, *RG v. Fort Bragg Dependent Schools* (2002) involved incorporating applied behavioral analysis services into the school district's program. The

District Court and Appeals Board (within the DOD dependent schools affirmed an earlier decision and the Court of Appeals found substantive violations in the IEP and therefore the parent prevailed in some areas for partial prevailing party status and awarding of partial attorney fees. Fort Bragg Dependent School District is a Department of Defense school and not part of the North Carolina state school system.

Fourth Circuit

In *C. E. v. The Board of Education for Buncombe County* (4th Cir. 1999), the parent requested the school district to implement a Lovaas program of applied behavioral analysis therapy in the school district. The district chose to implement the TEACCH methodology and made minor changes to the proposed IEP based on the Lovaas report. After the parents were apprised of the procedural requirements of the IDEA, they did not initiate the due process proceedings within the 60 day statute of limitations prescribed by the North Carolina Administrative Procedure Act, N.C. Gen.Stat.] 150B-23. The parents then filed an administrative appeal and the State Review Officer (SRO) affirmed the administrative law judge's decision. The parent then filed with the District Court pursuant to the IDEA 20 U.S.C. § 1415(e) (2). The parties found that no hearing was necessary and that the matter could be determined by motions. The court employed the *Rowley* standard: (1) whether the state complied with the IDEA's procedural requirements in developing and implementing the IEP for the student at issue, and (2) whether the IEP is "reasonably calculated" to enable the child to receive educational benefits. 458 U.S. 176, 206-7. The Court must also make an independent decision based on the evidence. The Fourth Circuit also addressed *Doyle v. Arlington County Sch. Bd.*, 953 F.2d 100 (4th Cir. 1991) in finding that the administrative law judge's decision and

hearing officer's decision in IDEA cases "are entitled to be considered prima facie correct, akin to the traditional sense of permitting a result to be based on such fact finding, but not requiring it." 953 F.2d at 105. After reviewing affidavits and statements, the courts must decide if the 60 day timeline for request for impartial due process was met. The parents of the student stated the reference to the right to file a due process at any time allows any timeframe to be considered appropriate. The school board attorney stated the actual written request determines how to address the complaint.

The Fourth Circuit stated the absence of specific time limitations in the IDEA does not mean no limitations apply to the IDEA. Furthermore when the federal law provides no statute of limitation period for a cause of action to occur, the state borrowed and applied the federal claim providing that the state statute would not be inconsistent with underlying federal policies. After lengthy discussion and attempts to move forward with the claim the court found for the school district, awarded summary judgment to them and dismissed the case.

In *Wagner v. Board of Education of Montgomery County Maryland*, (4th Cir. 2004), the parent claimed denial of free and appropriate education through violation of procedural and substantive requirements. The parents filed for an impartial due process hearing and requested "stay put" in the current preschool program with applied behavioral analysis in the school and home setting. The administrative law judge held that the "stay put" request would be honored and the next day the request was denied. The parents then unilaterally enrolled the student in a private autism placement which made the "stay put" request moot. Then the parents withdrew from the private placement and the "stay put" provision was back for reconsideration.

When the due process was filed the school district revised the proposed IEP and included more applied behavioral analysis therapy, as requested by the parents, along with mainstreaming

in a regular classroom with a one-on-one assistant. The plan was again rejected and the parents then moved to district court for relief. The court reviewed the decision of the administrative law judge. The court followed language in another case: “if the administrative findings were made in a regular manner and have evidentiary support, they are to be considered prima facie correct” (*Cavanaugh*, 75 F.Supp.2d at 457). The court then employed the *Rowley* court questions of procedural and substantive requirements of the IDEA. The parent stated that the loss of programming and transition from the preschool setting to school setting denied the student from a free and appropriate education and the lack of an agreed upon IEP in place further substantiated the need for “stay put” with preschool and home services continuing. According to *Rowley*, the loss of services of a particular provider, or educational environment, number or quantity of therapy hours, a particular part of mainstreaming, or ESY may be regrettable but the IDEA does not demand that any particular set or level of services be maintained for a student merely because they were previously provided for the student. The IDEA rather, demands only that the services provided constitute “meaningful educational benefit.” The proposed IEP by the school district did provide for services to continue, therapy hours were enhanced and the mainstreaming component with a one-on-one aide further offered a free and appropriate education to the student. When examining the alleged procedural violations, the offer of the school program while not accepted by the parent did not constitute a procedural issue as the proposed IEP would provide free and appropriate education and any procedural violation did not occur that would have resulted in interference with the program.

In *J.P. v. County School Board of Hanover County Virginia* (4th Cir. 2006), the Court reversed the decision of the hearing officer, after additional evidence presented proved to the Court that the student did not receive a free and appropriate education and the private school for

Autistic children was the appropriate placement. The first complaint was settled and the school district and parents then developed a new IEP in another public school in Hanover County. After enrollment in the new setting, the parents requested a specific test be administered to indicate the student's progress. The school district agreed and progress was noted minimally by the school district. The parents filed for due process as the student had not received more than minimal benefit from the school program and requested reimbursement for a private school placement for Autistic children. Data collection by the school district was sporadic and the parents further argued there was no way to prove any benefit without appropriate records keeping. Specific achievement pre and post tests indicated minimal progress and loss of skills in some areas. Expert testimony further proved the lack of continuity and inability to show educational benefit and little more than minimal results.

Since *Rowley*, the Fourth Circuit has elaborated on the *Rowley* "educational benefit" standard. *Hall* found that the *Rowley* standard must be tailored to meet the student's individual capabilities and, while minimal benefits might be appropriate in cases of the most severely disabled students, it would be insufficient in other cases. Congress did not intend that a school system could provide a program that produces some minimal academic advancement, no matter how trivial.

In *Conklin v Anne Arundel Board of Education* (1991), the Fourth Circuit wrote that the IDEA was passed to address the necessity of providing disabled students with some form of meaningful education. In essence, the Fourth Circuit is defining "educational benefit" according to *Rowley* as more than "trivial" or "minimal academic advancement." *Rowley* further offered that the benefits obtainable by children at one end of the disability spectrum will differ from the other end with variations in between.

The question of least restrictive environment was examined within the context of the specific IEP, which was determined not to provide educational benefit. Therefore the least restrictive environment component of IDEA, which requires school districts to educate disabled children with non-disabled children to the maximum extent possible, was not addressed, and the school district's placement in the IEP at hand was clearly not appropriate. Assessment of whether the child is placed in the least restrictive environment is ultimately a goal subordinate to the requirement that disabled children receive educational benefit.

The court retrieved from *Bd. of Education of Kanawha v. Michael M.* (2000) the observation that reimbursement for private school placement occurs only if the court finds that "the public school placement violated the IDEA and that the private school placement was proper under the Act." 510 U.S. at 15, 114 S.Ct. 361. Thus the court determined that the parents recommended private school placement was appropriate for the student for the specific year examined and that it provided the student with educational benefit. When the court found the public placement was inappropriate, and that a unilateral private placement was appropriate, the court may order the LEA to reimburse parents for the costs of the private placement.

Fifth Circuit

In *S.H. v. Plano Independent School District* (2010), the parents dually enrolled the student in a private applied behavioral analysis and public school setting. When issues occurred regarding the initial programming offered, the parents filed for due process, due to lack of educational progress and benefit incurred by the student. The hearing officer found in part for the parent and in part for the school district. The parent disagreed and filed in the District Court. The hearing officer's decisions were rejected as the parent challenged the IEPs as written and the

student's lack of progress, indeed undoing progress that had been made in the private school setting. Procedural violations included the lack of the private school teacher in the school district's IEP meetings, and a regular education teacher was missing from the meeting. While procedural defects do not often rise to the level of a violation, unless there is a loss of educational opportunity, the court found the lack of appropriate members of the IEP team at the initial meeting resulted in no offer of ESY services, and the incorrect initial placement recommendation of a mainstream classroom. The court found the school district did not provide an appropriate initial IEP and did not offer ESY services. The IEP was corrected and the newly proposed IEP for the following school year provided the student with free and appropriate education by providing "meaningful educational benefit". The IDEA guarantees a basic floor of opportunity and the school district is only bound to provide access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

The *S.H.* case also addressed the issue of attorney fees. Since the parent prevailed in certain areas, attorney fees and costs were requested. The Fifth Circuit "has specifically held that in IDEA cases, a prevailing party is one that attains a remedy that both (1) alters the legal relationship between the school district and the handicapped child and (2) fosters the purposes of the IDEA." *Jason D. W. v. Houston Independent school district* 158 F.3d 205,209 (5th Cir, 1998). "A litigant must attain some judicial imprimatur on a material alteration of the legal relationship in order to be a prevailing party" (*El Paso Indep. School District v. Richard R.*, 2009). The court found that the parent met the requirements of prevailing party status with respect to the claims on which they were successful. Costs and fees were limited to those incurred for the issues where the parent prevailed.

Clear Creek Independent School District v. J.K. (2005) involved an appeal by the school district against J.K. The hearing officer initially found the school district failed to provide the student with a free and appropriate education. Lacking was in-home training, thus causing lack of progress and regression. Parents also challenged inappropriate assistive technology, and failure to provide appropriate community-based instruction.

The court found the hearing officer erred in sanctioning the school district's failure in this case. First, the court found the lack of in-home training was not the issue, but the appropriateness of the IEP with the in-home training component. The lack of follow through by the parent in usage of the assistive technology resulted in loss of self care goals previously attained. The failure of the in-home training component must have resulted in a denial of free and appropriate education for the parents to prevail. Parents must prove the in-home training provided minimal educational benefit to the student. When further examined, the lack of parental understanding of the aspects of using an assistive technology device was the problem. Other issues of ESY were addressed and found to be adequate. The lack of progress or regression on one single goal or objective in the IEP does not indicate a denial of a free and appropriate education. The guarantee of the achievement of a specific goal such as toileting cannot be assured.

Sixth Circuit

Deal v. Hamilton County Board of Education (2005) addressed the issue of applied behavioral analysis methodology, under auspices of the Center for Autism and Related Disorders (CARD) program provided and paid for by the parents. When the school district was asked to pay for CARD services over a summer and provide year round speech therapy, the system

refused. The parents filed a minority report and later refused the IEPs presented by the school district, and enrolled their child in a private preschool program. They then filed for a due process hearing. The district continued to offer IEPs with mainstreaming, various teaching strategies including discrete trial teaching and a classroom assistant. The parents sent the child part-time to the school program and kept the private program and again requested private program reimbursement for their home applied behavioral analysis program.

The hearing officer found for the parent. Alleged procedural violations included predetermining to consider Lovaas-style applied behavioral analysis, thus the school district's program was inappropriate for the student. Failure to have a regular education teacher at the IEP meetings, failure to provide a proven or desirable methodology for educating children with autism, and failure to provide ESY services proved fatal to the program. Reimbursement was due the parents, as they were the prevailing party.

Upon appeal to the District Court, the trial court stated there were no procedural and substantive violations and the parents was not entitled to reimbursement, as they were not the prevailing party. The district court held that the administrative law judge erred in finding the Deal's preferred methodology above other appropriate methods. The appeal followed.

Upon appeal the court found the alleged procedural and substantive violations denied the student with free and appropriate education. Further examination of testimony of expert witnesses and contradictory statements affirmed the decision at the district court level. The review of predetermination of programming indicated through communication with the parents and school district personnel that school district personnel had pre-decided not to offer the intensive applied behavioral analysis services regardless of any evidence of the effectiveness of the private program. This predetermination resulted in a procedural violation of the IDEA.

Statements made by school district personnel suggested the desire to provide the services but they were not allowed. This is defined as predetermination of services and thus a procedural violation.

The administrative law judge did not address the alleged procedural violation of the absence of a regular education teacher in attendance for IEP meetings. This is tied closely to least restrictive environment, as considering the extent to which the student can be integrated into regular education classes is an important question to which a regular educator can provide insight. This alleged violation could have had a real impact on the mainstreaming decision.

Alleged substantive violations are difficult to gauge when defining meaningful educational benefit. Clearly the Rowley court has stated the school district is not responsible for the best services, however, measurement of meaningful benefit must be examined on a case-by-case basis. The administrative law judge presumably examined all evidence, without knowledge of the additional expert witnesses, and found the school district's program provided the student with a free and appropriate education. Upon review the appeals court reversed the decision of the district court and remanded to allow the court to determine whether the school district provided the student with a meaningful educational benefit. The decision regarding reimbursement was reversed and the case was remanded for future determination of specific fees and costs.

Seventh Circuit

In *Foster v. South Harrison Community School Corporation* (2005), the court found the parent demands for applied behavioral analysis therapy resulted in the school district transitioning the student from a preschool program. Although the local and state hearing officers

found for the school district, the lack of the full-time aide as prescribed in the IEP was a substantive violation of the IEP. Thus, the parent prevailed in part.

In another 2005 case, *Brown vs. Bartholomew Consolidated School Corporation*, the parents filed two separate due process hearings, with the student in “stay put” for years and with his age increasing, the student had not been in the public school setting. The parent argued, among other alleged violations, the violation of least restrictive environment by the school district’s proposed IEP, which proposed a full time aide. The court found the mainstreaming complaint improper as the parent claimed the mainstreaming to the maximum extent appropriate was exceeded by recommending the student to a regular education class for part of the school day. The court found, as the local and state hearing officers did, for the school district. Due to the amount of time in “stay put” and the student’s current age at the time of 8 years, it will never be known if this decision by the parents was a good one or not. How the child will be reentered into the public setting is a dilemma. The parent did not prevail in any part of the complaint so no attorney fees and costs were awarded.

Eighth Circuit

Lev Belken v. Sioux City Community School District (2006) addressed pivotal response training (PRT). This is a component of behavioral training similar to applied behavioral analysis and uses procedures that are positive, self-enforcing, and family-centered. The program is housed in Santa Barbara, California, under the direction of Drs. Lynn and Robert Koegel. The Koegels trained under Dr. Lovaas and the programming is similar in nature, as it requires children to have a one-on-one aide trained in PRT who assists in the student attending to tasks in the school and home setting.

The mother of the student was hired as the aide as the student entered the public school setting. Problems arose between the teacher and aide (mother). The school district recommended removal of the aide to another setting and the parents filed retaliation over the removal. The hearing officer did not find for the parent's complaint under the Rehabilitation Act, but the hearing officer did find that the school district had denied the student a free and appropriate education by failing to monitor and enforce the provisions of his IEP concerning intervention techniques and supports in the classroom. The parents then amended the complaint and the mother went back to work as the student's aide.

Mike Astourian v. Blue Springs R-IV School District (2008) found the school district provided the student with a free and appropriate education. The parent filed for due process over the lack of the applied behavioral analysis program the parent demanded. The school district provided the student with an IEP with all related therapies and a full time paraprofessional with autism experience. The unilateral withdrawal of the student from the public school setting without prior notice when the school district's IEP provided a free and appropriate education negated the awarding of attorney fees and costs to the parents. The court affirmed the decision of the hearing officer for the school district.

Ninth Circuit

In *M.L. v. Federal Way School District* (2005), the District Court held for the school district and the parents appealed. The Court of Appeals vacated and remanded back to the district court to determine attorney's fees and parents as the prevailing parties. The court found the procedural violations of the IEP were not harmless thus the parents were denied meaningful participation in the IEP. The settlement offer included reimbursement for up to 216 hours of one-

on-one in applied behavioral analysis therapy, in an agreed-upon setting required by the student. The District Court found the parents as the prevailing parties and the initial offer of settlement was considered. The Court found the requested fees and costs were reasonable and thus awarded. *Buckhannon* defined the “prevailing party” status as the finding of a “material alteration of the legal relationship between parties” (374 F.3d at 864-65, 532U.S. at Buckhannon, 604, 121 S.Ct. 1835).

E. W. v. Rocklin Unified School District (2006) found the parents received Lovaas applied behavioral analysis therapy in preschool and demanded it when the student turned age 3. When the due process was filed, stay put occurred and the home applied behavioral analysis program continued. A second IEP meeting produced an IEP with a combination of both private and public applied behavioral analysis and other therapies. The parents declined to accept the services, instead maintaining their previous programming of private applied behavioral analysis therapy along with other related therapies currently furnished to the student. The court upheld the decision of the hearing officer for the school district and awarded summary judgment.

Addressing severe behavior and sign language needs, *M.D. v. State of Hawaii, Dept of Education* (2010) found the school district provided the student with a free and appropriate education as a result of removal into a more restrictive environment. This situation was very problematic because the safety of the student and other special education students as well as adults who were injured by the student necessitated a more restrictive environment of applied behavioral analysis services within a self-contained setting. Parents unilaterally removed the student to a private placement thought to be less restrictive. The Ninth Circuit had earlier adopted a four-factor balancing test to determine whether a district’s placement offers education in the least restrictive environment: (1) educational benefits of placement full time in regular

education class; (2) the nonacademic benefits of the placement; (3) the effect the student has on the teacher and other students in the class; and (4) the cost of mainstreaming the student.

Sacramento CUSD v. Rachel H., 14 F.3d 1398, 1404 (9th Cir. 1994).

The Court found the current placement of the student in a more restrictive setting was appropriate and the IEP team had already started reintegration into a less restrictive setting for socialization skills. The court found the services offered to the student provided a free and appropriate education and since the student was still engaging in inappropriate behaviors, a firm timeframe to reintegrate the student fully would be inappropriate. The court upheld the decision of the hearing officer finding for the school district.

Tenth Circuit

In *K. B. v. Nebo School District Board of Education* (2004), the Court of Appeals found the school district did not provide the student with a free and appropriate education. In examining the program for the student, the parent provided a home applied behavioral analysis program and a regular preschool class with a supplementary aide who worked on social, behavioral, and linguistic problems. The hearing officer and District Court found for the student, however the Appeals Court held that the student's least restrictive environment was violated. The Third Circuit adopted the two-part *Daniel R. R.* test, in which the court determines (1) whether education placement in the regular education classroom can be satisfactorily achieved with the use of supplemental aids and services, and (2) if not, then it determines if the school district has mainstreamed the child to the maximum extent appropriate. *Daniel R. R. v. Bd of Educ.*, 1989). This test was also adopted by the Third Circuit in *Oberti v. Bd of Ed.* (1993).

The factors determining whether the first part of *Daniel R. R.* has been met included (1) steps the district has taken to accommodate the child into the regular education classroom including a continuum of placement and support services (2) comparison of services in both regular and special education classrooms, (3) the overall experience in the regular classroom including non-academic benefits, and (4) the effect of the child's presence in that classroom.

Eleventh Circuit

The Court in *K. B. v Nebo School District* also looked at decisions in other circuits. The Eleventh Circuit considers the costs of supplementary aides and services necessary to maintain the student in the regular education setting. The Seventh Circuit considers the costs of maintaining mainstreaming as relevant. The Fourth, Sixth, and Eighth Circuits apply the *Roncker* test, which states that when the segregated facility is considered superior, the court should determine whether the services could be feasibly provided in a non-segregated setting. The Tenth Circuit had not yet adopted a specific standard in determining least restrictive environment. In addressing the first prong of *Daniel R. R.* (whether the education in the regular classroom with supplementary aides and services can be achieved) the court indicated the proposed preschool setting was not the student's least restrictive environment. The violation of the least restrictive environment requirement of the IDEA should have found for the parents at the District Court level. This in addition to the issue of applied behavioral analysis costs, found the parent the prevailing party and thus they were due private program reimbursement, and attorney fees and costs.

In *Sytsema v. Academy School District No. 20* (2009), the administrative law judge found the school district denied the student with a free and appropriate education, the school district

appealed and the district court found the parent was entitled to reimbursement for 1 academic year private program costs and both parties appealed. The Appeals Court found the IEP did not substantively harm the student and the student was not denied a free and appropriate education. The reimbursement of private program costs was reversed on one IEP, but remanded for the following year's IEP. Parents disagreed with the proposed educational placement in an integrated class and the amount of one-on-one programming. The district offered more one-on-one services and the parents continued their home program at their own expense. This continued into the next school year with the addition of a private preschool program also at parental expense. The parents filed due process, alleging that the lack of a final IEP denied the student with a free and appropriate education. The Appeals court reversed the District Court's decision in the same manner as the Fourth Circuit in *M.M. ex rel D.M.*, which had analyzed reimbursement for private home program based upon two factors: (1) the IEP process conducted by the school district and (2) the apparent lack of parental willingness to accept the IEP based on parental "lack of cooperation." "Lack of cooperation" was indicated when parents refused to discuss any option other than their residential placement at a private school. It was concluded the lack of a final IEP did not substantively harm the student. The district court's finding of a procedural defect did not go forward to examine the substantive nature of the IEP. Finally, the parents argued that the method of errorless learning was previously implemented and not successful, therefore the proposed IEP and placement were inappropriate. The second argument alleged lack of generalization plans denied the student with a free and appropriate education. This generalization component was not convincing to the court as well as the methodology of errorless learning. The court found the student would receive some educational benefit,

therefore reimbursement for the home and private program least restrictive environment was denied.

School Board of Martin County Florida v. A.S. (1999) found the administrative law judge incorrectly requiring a school district to provide a specific amount of applied behavioral analysis services, as demanded by the parent. The court observed that further substantiated educational benefits must be meaningful; however there is no requirement to maximize each child's potential. Parents were not entitled to private program reimbursement, they were not prevailing parties, and thus they were not entitled to attorney fees and costs.

In *M.W. v. Clarke County School District*, parents alleged the existence of an inappropriate least restrictive environment and the denial of a free and appropriate education for the student. The court examined placement options and the decision to place the student in a more restrictive, self-contained setting. The parents requested a strong language program and the need to address socialization, so a self-contained program was agreed upon by all IEP members. The placement of the student in the less restrictive setting and the demand for reimbursement was denied as the courts found the less restrictive placement could not offer the specific programming in applied behavioral analysis and discrete trial training as well as personnel in the less restrictive program lacked training in applied behavioral analysis and autism. Finally the alleged procedural errors concerning necessary parties to the IEP, parental participation in the IEP process, and language evaluations in the child's native language were dismissed. Substantive violations alleged by the parents included lack of consideration of individual unique needs, inadequate parent training, home behavioral intervention plan, failure to evaluate for OT, and failure to consider the student's limited English proficiency needs. The student's IEP did indicate progress on some goals. The request for parental training and home

behavioral program was required to the extent that it is necessary for progress in the child's classroom. The court then inferred that generalization across settings is not required to show an educational benefit. This applied to the request for the other related service of Occupational Therapy as well.

District of Columbia

In *Liberata Diatta v. District of Columbia et al.* (2004), the Court found the student was denied a free and appropriate education as there was no program in place that met all of the student's needs. The program offered speech even with a confirmed diagnosis of autism. The school district did not implement a behavior plan when the student exhibited behaviors symptomatic of autism which led to the initial diagnosis. The lack of an appropriate program, the substantiated lack of progress for the past 3 years, and the failure of a behavior management program which further exacerbated the student's interfering behaviors were enough for the hearing officer to find for the parent. The parents filed in District Court to address compensatory education claims and the need for intensive applied behavioral analysis. The court found for the parents in entirety and awarded the compensatory education claim for applied behavioral analysis. The court found the lack of any program for a student with severe autism inexcusable and the plaintiff's motion for summary judgment was granted.

In *Anna Schoenbach v. District of Columbia et al.* (2006), the parents requested the student move to a small specialized setting for services. The school district proposed a placement in a special education program at a specific high school with a newly implemented program for children with the student's needs which contained a small pupil teacher ratio, and two teacher assistants. The parents disagreed, placed the student in a private school, and filed for due

process. The hearing officer found for the school district as the student would derive educational benefit in the school setting and it was thus an appropriate placement. The parents appealed and also requested tuition reimbursement. The parents alleged procedural violations and lack of meaningful input in the IEP process. They alleged predetermination of the student's placement in the new setting. Alleged substantive violations included the best placement for the student was in the private school setting. The parents argued that the placement proposed by the school district was not the best placement for the student. Citing *Rowley*, the court found the school districts must provide an appropriate education. The IDEA establishes a "basic floor of opportunity"; it does not require that a school provide the very best educational experience. The court awarded summary judgment for the school district.

Attorney Fees

Awarding of attorney fees and costs is at the discretion of the judge. Parents are awarded fees and costs based on full or partial prevailing party status. According to Weatherly (2010), while judges hold this discretion, they often review cases and examine settlement offers made prior to the case in court. If parties have come to agreements and legal costs are the only area to litigate, judges often award little or no attorney fees.

Attorney Fees Cases

In *Andrew S. v. The School Committee of the Town of Greenfield, Massachusetts* (1st Cir. 1999), the state hearing officer opined that the school district proposed IEPs that provided the student with a free and appropriate education, but the actual program implementation was

hindered by the lack of training on the part of the school officials. The judge held for the school district in part and the parent in part, awarding partial attorney fees.

In *N. B. v. Warwick School District* (2003), the court found for the school district, by reversing a decision by a hearing officer that the district denied the student with a free and appropriate education. In reversing the decision, the court found the issue in the case involved methodology which is the discretion of the school district, and therefore held for the school district and dismissed the claim for attorney fees by the parent.

N.W. v. Board of Education of New York (2003) found the school district denied a free and appropriate education to the student. The decision of the administrative hearing was not questioned, but the attorney fees and cost were excessive and exceeded the prevailing rate. The Court found the costs were too high and the billing was excessive for one associate. The court modified the fees awarded to the parent.

In the Third Circuit, *William D. v. Mannheim Township School District* (2007), the Court found the student did not qualify for extended school year services. The school district employed the Pennsylvania regulations to determine that the student did not qualify for ESY services, as no regression was noted within two school years including summer. Parents disagreed and filed an appeal for compensatory education costs and attorney fees and costs. The District Court found upon review of information from the school staff that the student did not regress when he returned to school and thus the ESY criteria was not met.

In the Fourth Circuit, *RG v. Fort Bragg Dependent Schools* (2002) involved incorporating applied behavioral analysis services into the school district's program. The District Court and Appeals Board (within the DOD dependent schools affirmed an earlier decision and the Court of Appeals found substantive violations in the IEP and therefore the

parent prevailed in some areas for partial prevailing party status and awarded partial attorney fees.

In *J.P. v. County School Board of Hanover County Virginia* (2008), the Appeals Court found the District Court erred in giving no weight to the decision of the hearing officer and held the hearing officer to a standard not dictated by statute or case law. The case was vacated and remanded for consideration.

In *S.H. v. Plano Independent School District* (2010), the parents dually enrolled the student in a private applied behavioral analysis and public school setting. While issues occurred regarding initial programming offered, the parents filed for due process, due to lack of educational progress and benefit incurred by the student. The hearing officer found in part for the parent and in part for the school district. The parent disagreed and filed in the District Court. The hearing officer's decisions were rejected as the parent challenged the IEPs written and the student's lack of progress, indeed undoing progress that had been made in the private school setting. Procedural violations included the lack of the private school teacher in the school district's IEP meetings, and a regular education teacher was missing from the meeting. While procedural defects do not often rise to the level of a violation, unless there is a loss of educational opportunity, the court found the lack of appropriate members of the IEP team at the initial meeting resulted in no offer of ESY services, and the incorrect initial placement recommendation of a mainstream classroom. The court found the school district did not provide an appropriate initial IEP and did not offer ESY services. The IEP was corrected and the newly-proposed IEP for the following school year provided the student with free and appropriate education by providing "meaningful educational benefit," as required by *Rowley*. The IDEA guarantees a basic floor of opportunity, and the school district is only bound to provide access to

specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

Because the parent prevailed in certain areas, attorney fees and costs were requested. The Fifth Circuit had specifically held in *Jason D. W. v. Houston Independent School District* (1998) that in IDEA cases, a prevailing party is one that attains a remedy that both (1) alters the legal relationship between the school district and the handicapped child and (2) fosters the purposes of the IDEA. A litigant must attain some judicial imprimatur on a material alteration of the legal relationship in order to be a prevailing party. The court found the parent met the requirements of the prevailing party with respect to the claims on which they were successful. Costs and fees were limited to those incurred for the issues where the parent prevailed.

Deal v. Hamilton County Board of Education (2005) addressed the issue of applied behavioral analysis methodology, under auspices of the Center for Autism and Related Disorders (CARD) program provided and paid for by the parents. The school district was asked to pay for CARD services over a summer and provide year round speech therapy. When the system refused, the parents filed a minority report and later refused the IEPs presented, and then enrolled their child in a private preschool program and filed for a due process hearing. The district continued to offer IEPs with mainstreaming, various teaching strategies including discrete trial teaching and a classroom assistant. The parents sent the child part-time to the school program and kept the private program and again requested private program reimbursement for their home applied behavioral analysis program.

The hearing officer found for the parent. Alleged procedural violations included predetermining to consider “Lovaas style applied behavioral analysis” thus the school district’s program was not appropriate for the student. Failure to have a regular education teacher at the

IEP meetings, failure to provide a proven or desirable methodology for educating children with autism, and failure to provide ESY services contributed to the awarding of reimbursement to the parents, who were the prevailing party.

Upon appeal to the District Court, the ruling stated there were no procedural and substantive violations and the parents were not entitled to reimbursement, as they were not the prevailing party. The district court held that the administrative law judge erred in finding the Deal's preferred methodology above other appropriate methods. The appeal followed. Upon appeal the appellate court found the alleged procedural and substantive violations denied the student with free and appropriate education. Further examination of testimony of expert witnesses and contradictory statements affirmed the decision at the district court level. The review of predetermination of programming indicated through communication with the parents and school district personnel that school district personnel had pre-decided not to offer the intensive applied behavioral analysis services regardless of any evidence of the effectiveness of the private program. This predetermination resulted in a procedural violation of the IDEA. This is a similar outcome to *Knable ex rel. Knable v. Bexley School Dist.* (2001). The leading case on predetermination is *Spielberg ex rel. Spielberg v. Henrico County Public Schools* (1988). Statements made by school district personnel suggested the desire to provide the services but they were not allowed. This is defined as predetermination of services and thus a procedural violation.

The administrative law judge did not address the alleged procedural violation of the absence of a regular education teacher in attendance for IEP meetings. This is tied closely to least restrictive environment as considering the extent to which the student can be integrated into

regular education classes. This alleged violation could have had a real impact on the mainstreaming decision.

Alleged substantive violations are difficult to gauge when defining meaningful educational benefit. Clearly the *Rowley* court has stated the school district is not responsible for the best services, however, measurement of meaningful benefit must be examined on a case by case basis. The administrative law judge presumably examined all evidence, without hearing from the additional expert witnesses, and found the school district's program provided the student with a free and appropriate education. Upon review the appeals court reversed the decision of the district court and remanded to allow the court to determine whether the school district provided the student with a meaningful educational benefit. The decision regarding reimbursement was reversed and the case was remanded for future determination of specific fees and costs.

In the Seventh Circuit, *T. H. v. Board of Education of Palatine Community School* (1999), the hearing officer at levels I and II found the school district did not provide a free and appropriate education to the student. The District Court agreed and found reimbursement of the parent's program and attorney fees to the parents.

M.L. v. Bourbonnais School District 53 (2010) found the IEP was appropriate but transportation was an issue as the student required door to door bus service due to his functioning levels. The Court found free and appropriate education was provided but the transportation issue was enough to award partial summary judgment to the school district and the parent. Parents also were awarded partial prevailing party status and thus partial attorney fees and costs.

In *D.M. v. Brookland School District* (2008), the Eighth Circuit found a settlement offer made before the hearing negates prevailing party status for the parents. This reversed the

decision of the District Court, which had found the parents did prevail and were awarded attorney fees and costs. This apparently refuted the District Court and (earlier) the hearing officer, which had held that the settlement agreement must be submitted to the State Department of Education (SDE) for compliance with the interruption of fee award.

In *Gill v. Columbia School District* (2000), a District Court found a preschool student was not denied free and appropriate education when the parents did not report an autism diagnosis and did not reimburse the parents for their home Lovaas therapy (applied behavioral analysis) program. When the parents appealed further, the Appeals Court affirmed the decision of the District Court, holding the school district provided a free and appropriate education to the student. The parents then filed under the Rehabilitation Act and requested attorney fees. Both were denied and the school district prevailed.

Parenteau v. Prescott U.S.D. (2009) found the school district provided a free and appropriate education when the parent requested reimbursement for tutoring. A 2-year statute of limitations time limitation prevailed. The decision of the hearing officer was affirmed by the District Court and the school district was awarded attorney fees and costs.

In *K.S. v. Fremont Unified School District* (2009), the District Court found the reimbursement request for fees and costs remanded as to determine whether the student received free and appropriate education. The cognitive level of the student and the ability to assess cognitive capacity and thus programming effectiveness was at question.

J. C. v. Vacaville U.S.D. (2009) found the IEP appropriate for 2 of the 5 years examined. The parent prevailed in partial areas and prevailing party status was examined due to rates and fees presented. Using the Lodestar and Kerr approaches, the fees were awarded to the parent.

Eleventh Circuit

The *School Board of Martin County Florida v. A.S.* found the administrative law judge incorrectly requiring a school district to provide a specific amount of applied behavioral analysis services as demanded by the parent. Citing *Rowley* and *J.S.K. v Hendry Count School District* (1991), and *Doe v. Alabama State Dept. of Educ.* (1990) further substantiated educational benefits must be meaningful; however there is no requirement to maximize each child's potential (*Rowley*). Parents were not entitled to private program reimbursement, not prevailing parties and thus not entitled to attorney fees and costs.

In *DeKalb County School District v. W.M.* (2006), the Court found the claim for compensatory education and costs and fees were time barred and dismissed. The parent claims the school district restrained the student and deprived him of food, which deprived him of and violated his rights under the Eighth and Fourteenth Amendments. The court held that the request for attorney fees and costs can be filed after the disposition of the substantive claims in this case.

Private Program Reimbursement/Compensatory Education

The *Sanford School Committee v. Mr. and Mrs. L.* (2001) case addressed a school district's inability to provide applied behavioral analysis services by a trained paraprofessional as previously done in a preschool program. When the student became school age, the system trained one individual to deliver applied behavioral analysis services. When the person resigned, there was no back-up plan and therefore no program. The parent then removed the student to provide applied behavioral analysis at home. The court held that the school district failed to provide the student with free and appropriate education. Compounding the problem the school system then wrote a new program in a new least restrictive environment for the student based on

no new evaluative data. When the parent won the case at the hearing officer level the school district filed to the District Court. The issue of least restrictive environment was compounded by the “stay-put” clause in the IDEA as the student’s placement was at home per the parent program. Compensatory education services were sought and won by the parent. The Court found the amount of applied behavioral analysis services withheld from the student while in school substantiated and affirmed the compensatory services.

In *N. B. v. Warwick School District* (2003), the court found for the school district, by reversing a decision by a hearing officer that the district denied the student with a free and appropriate education. In reversing the decision, the court found the issue in the case involved methodology which is the discretion of the school district, and therefore held for the school district and dismissed the claim for attorney fees by the parent and reimbursement/ compensatory education services.

In *C. S. v. Rye City School District* (2006) the court found the school district denied the student with free and appropriate education. When a federal court reviewed the challenged IEP, it considered whether the challenged IEP was appropriate. Documentation from oral arguments indicated all personnel who worked with the student stated the home program was needed. The court found the student was denied free and appropriate education due to the lack of a home-based program. Reimbursement for a unilateral parental placement requires the school system to pay for services if (1) the services offered by the school district were inadequate or inappropriate, (2) the services selected by the parent were appropriate, and (3) equitable considerations support the parents’ claim.

In the *S.P. v. Mamaroneck Union Free School District* (2007), found the school system’s evaluations and IEP did not provide the student with the necessary components to make

progress. Procedural violations in lack of parental input in the IEP was cited and the IEP was essentially a “done deal” when parents entered the room. The court determined that the program offered to the student did not provide free and appropriate education and the parents and school district settled. The program offered in the settlement was quite extensive and offered much more applied behavioral analysis and related services than previously held. When the school system moved forward with the next IEP the parents continued their home-based program. Both parents and school district evaluated the student. An IEP was developed and presented to the parents at the meeting. The courts found procedural violations of predetermination of the child’s IEP deprived the parents of meaningful participation, and with other procedural defects, caused substantial harm and deprived the student of a free and appropriate education. Along with the private services of applied behavioral analysis and speech provided by the parent which were deemed appropriate for the child, the court awarded reimbursement.

In *S.A. et. al. v. Riverside Delanco School District* (2008), the administrative law judge found the school district failed to provide a free and appropriate education for the student, as school staff were not trained in applied behavioral analysis and discrete trial training. When the school district offered a half-day preschool program, speech, O. T. and a one-to-one shadow aide, the parents disagreed and filed a due process. The school district did not have a program in place grounded in applied behavioral analysis and discrete trial training techniques. The lack of any evidence based programming and an estimated training and new program start-up would take at least 2 months. The Circuit Court found for the parents and reimbursement and legal fees were awarded to the parent.

In *William D. v. Mannheim Township School District* (2007), the Court found the student did not qualify for extended school year services. The school district employed the Pennsylvania

regulations and determined the student did not qualify for extended school year services, as no regression was noted within 2 school years, including summer. Parents disagreed and filed an appeal for compensatory education costs and attorney fees and costs. The District Court found upon review of information from the school staff that the student did not regress when he returned to school and thus the extended school year criteria was not met. The Circuit Court found for the school district and denied compensatory education costs.

RG v. Fort Bragg Dependent Schools (2002) involved incorporating applied behavioral analysis services into the school district's program. The District Court and Appeals Board within the DOD dependent schools affirmed an earlier decision and the Court of Appeals found substantive violations in the IEP and therefore the parent prevailed in some areas for partial prevailing party status and awarding of partial attorney fees and partial compensatory education costs.

Board of Education v. Michael M. (2000) involved a student attending both home applied behavioral analysis and school district programs. The extensive programming offered in the home setting was found to be more intensive, and although it was difficult to know which program provided meaningful benefit, the administrative law judge found for the parent's home program at the local level. The school district appealed the decision of the administrative law judge. The District Court found the parent's home-based program extensive and held the program proposed by the school district was not appropriate. The Court awarded compensatory education costs to the parent.

In *S.H. v. Plano Independent School District* (2010), the parents dually enrolled the student in a private applied behavioral analysis and public school setting. While issues occurred regarding initially programming offered, the parents filed for due process due to lack of

educational progress and benefit incurred by the student. The hearing officer found in part for the parent and in part for the school district. The parent disagreed and filed in the District Court. The hearing officer's decisions were rejected as the parent challenged the IEPs written and the student's lack of progress, indeed undoing progress that had been made in the private school setting. The court found the school district did not provide an appropriate IEP and did not offer ESY services. The IEP was corrected and the newly proposed IEP for the following school year provided the student with free and appropriate education by providing meaningful educational benefit. Since the parent prevailed in certain areas, attorney fees and compensatory education costs were awarded accordingly.

In *Burilovich v. Board of Lincoln Consolidated Schools* (2000), the local hearing officer found for the parent in that the school district did not provide the student with a free and appropriate education and ordered reimbursement for the home program provided by the parents. The State Hearing Officer reversed the decision finding the district provided the student with a free and appropriate education allowing for maximum potential. The District Court upheld the decision of the State Hearing Officer and the Court of Appeals concurred, thus the school district's program provided a free and appropriate education, and denied the parents reimbursement claim for their applied behavioral analysis program.

CHAPTER V
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this study was to examine federal and state court cases concerning autism and the methodology of applied behavioral analysis. The analysis of court cases between 1999- and May 2010 summarized in chapter IV provided current knowledge and guidelines to school administrators when developing and implementing programs for children with autism.

This chapter summarizes answers to the research questions regarding autism case law. Conclusions were based upon analysis of case law, and data derived from case briefs reduced from the case documents.

Summary

The following questions guided the research and analysis:

1. What fact patterns led to the federal and state court cases regarding ASD and applied behavioral analysis between 1999 and May 2010?

By the timeframe of this study, there had been an increase in the number of children diagnosed with ASD. Early intervention and special education personnel from birth to age 3 programs and programs for children in Grades Preschool through 12 developed various programs and related services to meet the individual needs of the students. Parents of children who were previously placed in early intervention or school age programs

receiving applied behavioral analysis therapy demanded that the school districts continue, replicate, or implement the same programming, which the parents deemed appropriate.

A common fact pattern in the cases in this study indicated parents request for applied behavioral analysis after medical recommendation and after they were given knowledge of the therapy. For some New York City preschool students, applied behavioral analysis was often the methodology of choice when programming was developed and implemented for ages 0-3. In the Second Circuit, parents cited further knowledge of applied behavioral analysis through pediatrician visits, conferences, support groups, and the internet. When applied behavioral analysis programming was employed, parents requested that the services continue into school year programs. While the courts will defer to school districts for specific methodology determination, knowledge and implementation of appropriate programs is essential in developing an appropriate IEP to meet the student's individualized needs. Lack of training in various methodologies for school district personnel found the parents as the prevailing party. Additionally, failure to maintain data to demonstrate program progress also caused school districts to fail in defense of their programs.

2. What issues arose in federal and district court cases regarding ASD and applied behavioral analysis in federal and state courts between 1999-May 2010?

According to the research in this study, the issues of free and appropriate education, methodology, least restrictive environment, attorney fees and costs, and private program reimbursement/compensatory education were addressed and reviewed by the court decisions. Additionally, the courts examined meaningful and adequate benefit in all cases. Various states defined meaningful and adequate benefit when examining student programs; while not always clear, some states also require maximum potential consideration when developing IEPs.

Least Restrictive Environment/Free and Appropriate Education/Methodology

All 92 cases found the issues of least restrictive environment, free and appropriate education, and methodology as intertwined issues. When cases involved least restrictive environment, requests for private program reimbursement were also requested. When examining least restrictive environment, the courts looked for school districts to provide various methodologies as noted in the First Circuit in *Sanford* (2001). The program provided by the school district must be determined to be in the least restrictive environment.

The previous applied behavioral analysis or home applied behavioral analysis program is often at the core of the legal disagreement. Programs provided prior to the one developed by the school district are often pure applied behavioral analysis and provide up to 40 hours of one-on-one training for the individual student. Therefore, the school district's IEP must address individual student needs and applied behavioral analysis must be integrated into school district programs. Training of personnel in program methodologies including applied behavioral analysis is the responsibility of the school district and training at least two persons is best practice in case of emergencies or personnel changes. The court expects various programming options for students based on individual needs and not a predetermined or one size fits all programs.

The Second Circuit in New York City cases found long waiting lists for preschool students at age three to receive school district provided preschool services. Early intervention services (EIS), for ages 0-3, provided home applied behavioral analysis programs that parents often continued while waiting for school services.

In the Third Circuit, the courts found school districts did not provide training in various methodologies, provide expertise in all methodologies or offer programs to address significant individualized student needs.

The Fourth Circuit also examined meaningful and trivial benefit and methodology choice. The court found if the school district chose the methodology and followed procedural requirements thus providing an IEP that provided adequate progress that was substantively appropriate, then it provided the student with a free and appropriate education. When the IEP indicated trivial or minimal progress, the court found a denial of a free and appropriate education and found the parent the prevailing party. The Fourth Circuit further defined educational benefit as it applied to the individual student's needs. If the student was significantly disabled, then minimal benefit might be sufficient.

In *Deal* (2005), the Sixth Circuit held that the school district had a policy of not providing or even considering applied behavioral analysis services, thus predetermining placement and programming. The court also found the private applied behavioral analysis programming appropriate when the school district did not have a plan to integrate the student into regular classes without input from a regular education teacher thus limiting integration into the regular educational environment.

The Seventh Circuit found an array of issues including a lack of transition plans for students moving from preschool to school age programs as well as the lack of an agreed upon aide. Confidentiality issues also arose when school district personnel discussed the case in the school environment.

The Eighth Circuit cases included another form of applied behavioral analysis therapy called Pivotal Response Training (PRT). Training staff in this form of programming was

requested as another research based program for children with autism. In *Belken v. Sioux City* (2006), the parent (mother) was the PRT aide and lack of training of other personnel surfaced when the mother (aide) and teacher could not work together. School districts must plan for back up personnel to provide services if personnel trained are no longer available.

The Ninth Circuit employed a four-prong test for least restrictive environment: (1) educational benefit of full time regular class placement, (2) nonacademic benefits of the regular class placement, (3) effects of the student's placement in the regular class, and (4) the cost of mainstreaming the student into the less restrictive environment. In a Ninth Circuit State of Hawaii case, the school district's removal of a dangerous student into a more restrictive environment caused the parents to unilaterally enroll the student into a private placement thought to be less restrictive. The court found the more restrictive setting appropriate when the school district had already started reintegration into a less restrictive setting for socialization skills.

The Tenth Circuit employed a two-prong test for least restrictive environment similarly used in the Third and Fifth circuits. In *Nebo* (2004) the court followed the two-prong test in *Daniel R. R.* when the court determined (1) whether the educational placement in the regular class can be satisfactorily achieved with the use of supplemental aids and services and (2) if not, then it determines if the school district has mainstreamed the child to the maximum extent possible. The factors that would determine if the first part of the *Daniel R.R.* test was appropriate met by (1) the continuum of supports in the placement, (2) the difference between the regular and special education classroom, (3) regular educational experience with non-academic benefits, and (4) the effects of the child's attendance in the regular classroom.

The Eleventh Circuit found the parents requested applied behavioral analysis therapy for students entering the public school setting as it had been provided in preschool programs. The

court held the school district was not required to provide applied behavioral analysis services when the program proposed by the school district would provide the students with a free and appropriate education. The court further found, according to *Rowley*, there is no requirement to maximize the child's potential.

The District of Columbia Circuit Court found the school district did not provide the student with any appropriate program beyond speech even with an autism diagnosis in *Diatta* (2004). In *Schoenbach* (2006), the court found the program offered to the student considered the individual needs of the student and thus provided a free and appropriate education in the least restrictive environment.

Attorney Fees and Costs

Payment of attorney fees and costs often accompany claims in due process hearing requests. Prevailing party status determines the award of attorney fees and costs. Court decisions can hold in part for plaintiff and defendant with an award of partial attorney fees. This is detrimental to school districts when the attorney fees and costs of defending the program in the due process hearing are costly enough without adding parent attorney fees.

As previously stated, to defend any special education program, procedural and substantive requirements of the IDEA must be followed and school districts must provide evidence to support the appropriateness of the individualized programming proposed and implemented. When school districts provide defensible programs with training in research-based methodologies, personnel can provide data to support individualized instruction, and programming is calculated to provide educational benefit the substantive requirements of the

IDEA are met. Procedural requirements include notice, appropriate IEP team composition, and program placement determined by the IEP team.

The First Circuit found lack of training of school officials in *Sanford* (2001) hindered the program implementation and therefore parents were awarded partial attorney fees. When methodology was questioned, the court found the school district had discretion and the claim for attorney fees was dismissed.

The Second Circuit New York City court found the denial of a free and appropriate education for the preschool students as the waiting list was excessively long and students were placed in home-based programs.

The Third Circuit found the school personnel were not trained in applied behavioral analysis and discrete trial training therefore the student was denied a free and appropriate education.

The Fourth Circuit found in *Fort Bragg* (2002) that the IEP had substantive violations when it did not contain any applied behavioral analysis or discrete trial training.

The Fifth Circuit court found parents challenged the IEP due to lack of progress with dual enrollment of private and public school programs. The court found procedural violations of private school teacher missing from the IEP meetings did violate the IDEA as no ESY services were offered; therefore the placement was determined to be inappropriate.

The Sixth Circuit found a procedural violation of the absence of a regular education teacher which was not addressed by the hearing officer. The alleged substantive violations were more difficult to define regarding meaningful educational benefit. The court remanded this decision for determination of costs and fees.

The Seventh Circuit found the school district prevailed in *Bourbonnais* (2010) but awarded partial attorney fees and costs to the parent as the lack of appropriate transportation was a substantive violation of the IEP. Related services such as special transportation must be considered and addressed by the IEP team.

The Eighth Circuit found in *Gill* (2000) the student was provided a free and appropriate education even when the autism diagnosis was not shared with the school district. The home applied behavioral analysis program was considered more superior by the parent than the eclectic program the school district provided. Parents then filed under the Missouri law requiring school district to “maximize the capabilities” of eligible children.

The Ninth Circuit found the school district provided the student with a free and appropriate education and was the prevailing party in *Parenteau* (2009). The school district provided the student with a free and appropriate education when parents filed complaints for tutoring, procedural violations of meaningful participation, and lack of applied behavioral analysis therapy.

In the Tenth Circuit, *Sytsema v. Academy* (2009) found the question of substantive violations with two IEPs. The court reversed the decision of the administrative law judge on the first IEP and remanded the second IEP. Upon remand the court found the parent’s refusal to discuss any other option of least restrictive environment was predetermination on their part and therefore the court found the school district had provided the student with a free and appropriate education.

In the Eleventh Circuit case of *The School Board of Martin County v. A.S.* (1999), the court considered meaningful benefit to the student and did not require the school district to

maximize the student's potential. Therefore costs and prevailing party status were not awarded to the parents.

Private Program Reimbursement/Compensatory Education

Private program reimbursement is awarded when the program proposed or implemented by the school district does not meet the procedural and substantive requirements of the IDEA. Private programs are found to be superior to school district programs when school district programs are not based on individualized needs, contain little or no data to support progress and are predetermined without participation by all members of the IEP team.

The decision by parents to place students in private applied behavioral analysis programs necessitates the school district to defend their program and provide hearing officers and courts with data related to progress, training of school district personnel in research-based methodologies and practices. When school district programs contain components of various methodologies, train personnel in all programs and methodologies, collect data and provide the data to support the appropriateness of the program and yield meaningful educational benefit, the student is provided with a free and appropriate education.

In the First Circuit the court found in *Sanford* (2001) the lack of applied behavioral analysis integrated into the student's program and lack of trained personnel to implement applied behavioral analysis made the parent's home based program appropriate and thus reimbursement was awarded to the parent.

The Second Circuit reimbursed parents for home-based programs when wait lists prevented the students from programming within the legal timeline.

The Third Circuit found parents prevailed in *Riverside Delanco* (2006) when the proposed program the school district would develop would take months to implement and school district staff planned to attend training. These issues questioned the meaningful benefit the student would obtain in a newly developed program.

The Fourth Circuit found in *Fort Bragg* (2002) the school district's proposed IEP did not contain the research-based applied behavioral analysis programming the parents sought. The court found the placement inappropriate and found in part for the parent and school district.

The Fifth Circuit in *Clear Creek* (2006) found the lack of related services did not rise to the level of a violation and therefore the school district was not obligated to provide every service and provide the very best education the parents desired for the student.

The Sixth Circuit in *Winkelman* (2009) found the parental demand for private program reimbursement exemplified the concept of predetermination. The court found the school district's program provided the student with a free and appropriate education.

In *Deal* (2005), the court found the school district's alleged policy of not considering or providing applied behavioral analysis therapy was a violation of the IDEA.

The Eighth Circuit found the PRT program the school district implemented was appropriate, with the parent (mother) as the aide. The lack of a back-up aide when the relationship between the mother and aide did not work out was not a violation of the IEP, as the personnel later worked out differences

The Ninth Circuit found the lack of an appropriate program for children with autism requiring sign language a substantive violation of the IDEA and the State of Hawaii Department of Education then contracted with personnel in the mainland to provide those services.

In the Tenth Circuit, *Sytsema* found the IEP proposed by the school district did not provide the student with a free and appropriate education. The court found the IEP did not offer the student with the appropriate amount of applied behavioral analysis therapy and the lack of more than minimal benefit.

In the *School Board of Martin County v. A. S.* (1999), the Eleventh Circuit found the applied behavioral analysis therapy not offered by the school district after the students' program of applied behavioral analysis in preschool did not necessitate the school district to provide it. The program proposed by the school district was determined to provide a free and appropriate education therefore reimbursement was not awarded to the parent.

In the District of Columbia Circuit Court, the *Diatta* (2004) case found for reimbursement as the lack of a discernable program beyond speech necessitated the school district to provide compensatory educational services.

3. What was the outcome for federal and state court cases regarding ASD and applied behavioral analysis between 1999 and May 2010?

When school districts adhered to procedural and substantive requirements of the IDEA and implemented programs that included various programming options such as applied behavioral analysis, TEACCH, PRT, interactive approaches such as Floor Time, Developmental Theory-Denver model, or Life Skills and Education for Students with Autism and other Pervasive Behavioral Challenges (LEAP), and were able to provide data to support their effectiveness or growth of the student, the courts found that free and appropriate education was provided.

When children receive applied behavioral analysis therapy in early intervention programs and transfer to school age programs, the school districts must timely evaluate and implement

appropriate programming that addresses individualized needs and is calculated to provide progress.

4. What administrative guidelines can be discerned from federal and state court cases involving ASD and applied behavioral analysis between 1999 and May 2010?

Based on the issues addressed in this study of free and appropriate education, methodology, least restrictive environment, Attorney Fees and Costs, and Private Program Reimbursement/Compensatory Education, the following recommendations are made for public school administrators to best meet the needs of students with autism:

1. School administrators must train staff on the procedural and substantive requirements of the IDEA (*Jaynes ex. rel. Jaynes v. Newport News School Board*, 2001).

2. School administrators must include para-professionals and parents in training for student IEPs and programming (*Sanford School Committee v. Mr. L*, 2001).

3. School administrators must train teachers on all methodologies including applied behavioral analysis, TEACCH, Discrete Trial Training, and Pivotal Response Training, provide data to track effectiveness (*Belken ex. rel. Belken v. Sioux City Community School District*, 2006).

4. School administrators must train paraprofessionals and related services personnel including bus drivers on various methodologies (*M.L. by K.M.L. v. Bourbonnais School District* 53, 2010).

5. School administrators must provide training regarding confidentiality to special education and general education personnel (*Z. F. ex. rel. Foster v. South Harrison Community School*, 2005).

6. School administrators must provide training and have services available for Extended School Year services (*T. H. ex. rel. L. H. v. Board of Education of Palatine Community Consolidated School District*, 1999).

7. School administrators must provide training by legal experts to stay current on case law at the state and national level (*Renner v. Board of Education of Public Schools of Ann Arbor*, 1999).

8. School administrators must train personnel--both general education and special education--on the difference between accommodations and modifications and inclusive practices (*C. P. and J. D. on behalf of M.D. v. State of Hawaii Department of Education*, 2010).

9. School administrators must teach special education personnel how to write appropriate IEPs (*J.P. by Karl and Linda Peterson v. County School Board of Hanover County Virginia*, 2007).

10. School administrators must teach and train on the importance of tracking data collection and progress to demonstrate growth (*T.P. ex. rel. S.P. v Mamaroneck Union Free School District*, 2007).

11. School administrators must examine private programs in the area to define differences, and develop communication with the program (*Board of Education of the County of Kanawha v. Michael M.*, 2000).

12. School administrators must include contract personnel in training to include occupational, physical, and speech therapists, teachers of the Hearing Impaired, Visually Impaired, and other appropriate auxiliary personnel (*S. A. v. Riverside Delanco School District Board of Education*, 2006).

13. School administrators must train staff on writing Functional Behavioral Assessments and Behavior Intervention Plans (*L.J. ex. rel. V.J. v. Audubon Board of Education*, 2010).
14. School administrators must train the staff on all 13 disability areas (*Gill v. Columbia 93 School District*, 1999).
15. School administrators must define and explain the rate of diagnosis of ASD identification (*Burilovich v. Board of Education of the Lincoln Consolidated Schools*, 2000).
16. School administrators must employ state and national approved personnel for training (*Deal v. Hamilton County Board of Education*, 2006).
17. School administrators must evaluate students upon enrollment and within annual IEP due dates (*County School Board of Henrico County Virginia v. Z.P. ex. rel. R. P.*, 2005)
18. School administrators must keep abreast of current assessments and programming for individualized programming (*Amanda J. ex. rel. Annette J. v. Clark County School District*, 2001).
19. School administrators must be open to and consider parental input in all meetings (*Deal v. Hamilton County Board of Education*, 2006).
20. School administrators must offer at least 25 hours per week of preschool program services with a range of services (*D.D. ex. rel. V. D. v. New York City Board of Education*, 2004).
21. School administrators must write IEPs that substantively meet the individualized needs of the student (*Joshua A. ex. rel. Jorge A. v. Rocklin Unified School District*, 2009).
22. School administrators must examine legal specifics of settlement offers and employ a special education savvy attorney (*J. C. ex. rel. J. C. v. Vacaville Unified School District*, 2007).

23. School administrators must demand IEP teams always contain the correct membership with all members in attendance for the duration of the meeting unless agreed upon by all members (*T. B. ex. rel. N. B. v. Warwick School Community*, 2003).

24. School administrators must have a structured defensible program with personnel that can define, state, and articulate clearly how the program is effective and appropriate (*Dong ex. rel. Dong v. Board of Education of the Rochester Community School*, 1999).

Recommendations for Further Study

As a result of this study, the following studies should be examined:

In light of the significant increase of children diagnosed with ASD, further study of methodology and successful techniques should be reviewed including university programs, private programs, and special schools for children with ASD.

An examination of school district statistical data by district and state would provide administrators with knowledge of successful programs without litigation.

A further area for study should take place in the area of early intervention programs and their progress.

An issue that has recently surfaced is response to intervention (RTI) or tiered instruction prior to special education referral and placement. An examination of RTI programs and their effect on special education placements and program would provide school administrators with knowledge of curricular needs for all students without an immediate referral for special education services.

A study should examine programming provided by early intervention services.

Finally, research should look for studies and data to support progress in programs provided to children including applied behavioral analysis.

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