MARYLAND SPECIAL EDUCATION DUE PROCESS DECISIONS: A CLOSER LOOK AT THE ISSUES AND OUTCOMES

BY

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DISSERTATION

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ABSTRACT

School districts are responsible for providing eligible students with disabilities with a Free Appropriate Public Education (FAPE). Parents of eligible students with disabilities have three complaint mechanisms available when there are disputes with the school district regarding FAPE. One of those complaint mechanisms is the right to a due process hearing. Parents have utilized special education due process hearings over the past three decades; however they have not been that successful. This dissertation investigates how Maryland parents are using the system of due process hearings to participate in the education of their students with disabilities and to obtain desired relief from impartial hearing officers. The purpose of this study is to investigate parents' participation in due process hearings system in Maryland in order to identify the strengths and weaknesses with the system. Furthermore, the purpose is to determine if this system favors one group of parents over others. The study found that the most common issues within the hearings were related to Placement and the IEP. The most common remedies for prevailing parents were tuition reimbursement and private placement. Additionally, the study found that the school district prevailed in the majority of Maryland due process hearings. The parents that did prevail were represented by attorneys at their due process hearings. Additionally, the study found that there is a relationship between the parent's ability to have a successful outcome and the amount of capital a parent possessed. The author presents recommendations for action and areas for future research.

Dedicated to my father and mother, Roy and Margaret Puckett.

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CHAPTER 1

INTRODUCTION

Statement of the Problem

Students with disabilities are a disadvantaged group that is faced daily with societal challenges. These students are a vulnerable population that can face discrimination, unequal access, unequal treatment, and unequal opportunities within the school setting. These students have historically been discriminated against, leading to case law and policy that is supposed to alleviate inequalities. According to the National Center for Education Statistics, it is estimated that there were over six million students with disabilities receiving services under the Individuals with Disabilities Education Act (IDEA) in the United States in 2010 (NCES, 2012), making up over 13% of the student population in the United States (NCES, 2012). IDEA governs and outlines the school districts' special responsibility to eligible students with disabilities, which encompasses eligibility requirements and legal mandates.

School districts are responsible for providing eligible students with disabilities with a Free Appropriate Public Education (FAPE) (IDEA, 20 U.S.C. §1400). The purpose of IDEA is to "ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living" (IDEA, 20 U.S.C. §1400 (d) (1)). Additionally, IDEA ensures the protection of the rights of the students with disabilities and their parents (IDEA, 20 U.S.C. §1400 (d) (1)). The concept of a FAPE does not require that the student receive

the best education, nor maximize the student's potential; it requires that the student receive "educational benefit" from the special education services (Hendrick Hudson Board of Educ. v. Rowley, 458 U.S. 176, 1982). IDEA eligible students receive an Individualized Education Plan (IEP). The student's IEP must include a statement regarding that student's present levels of academic achievement and functional performance (20 U.S.C. §1414 (d) (1) (A)). The IEP should also have measurable annual goals to address present levels of achievement and performance (20 U.S.C. §1414 (d) (1) (A)).

IDEA is centered on the principle of parent participation. If there are disputes, parents are entitled to request a due process hearing based upon issues of identification, evaluation, placement, or the provision of a FAPE (34 C.F.R. §300.507). Special education due process hearings are often heard by an impartial hearing officer who is knowledgeable about special education law and policy (34.CFR. §300.511(c)). Some states hire hearing officers, however others have their state administrative law judges serve as impartial hearing officers to make decisions in special education hearings. Administrative law judges are judges that preside over trials and disputes related to administrative law. Many of these cases are resolved prior to a hearing, however, if litigated they could have serious implications for the school district. All IDEA related litigation is initiated with a due process hearing. The parties must exhaust administrative remedies prior to seeking a court action.

Special education litigation is an active area of litigation (Zirkel & Johnson, 2011) that can cause a huge financial burden on the school district. Pursuant to IDEA, due process administrative hearings are handled in one of two types of systems (20 U.S.C.

§1415(g)), one- or two-tier systems. States that utilize the one-tier system have a pool of impartial hearing officers or administrative law judges to conduct hearings. In two-tier systems, there is a second level of review by an officer before a matter proceeds to a court action. Most states have moved to a one-tier system of due process (Zirkel & Scala, 2010). When a parent files a special education due process hearing request against the school district, the hearing officer is looking to determine if the student is receiving a Free Appropriate Public Education (FAPE). This legal standard requires the inquiry of whether or not student is receiving "meaningful educational benefit" (Hendrick Hudson Board of Educ. v. Rowley, 1982). These decisions must be made based upon substantive grounds when determining if the school district denied the student FAPE (20 U.S.C. §1415(f)(3)(E)) and the party bringing the claim has the burden of proof (Schaffer v. Weast, 2005). However, there are instances where procedural violations can rise to the level of a denial of FAPE (20 U.S.C. §1415(f)(3)(E)).

Studies of special education due process hearings revealed that the placement of students with disabilities is the most prevalent issue disputed during due process hearings (Rickey, 2003; Blackwell & Blackwell, 2015; Sultana, 1997). The IEP is the second most common issue litigated at due process hearings (Sultana, 1997). A 2013 study analyzed a national sampling of due process hearing decisions and court case law to look at frequency of certain special education case outcomes and remedies (Zirkel, 2013). The findings revealed that the most frequent remedies were (1) tuition and related reimbursement, and (2) compensatory education (Zirkel, 2013). Additionally, research has also examined the disability classification of students involved in due process hearings. Over a decade ago, students with learning disabilities were involved in the

greatest amount of disputes (Newcomer & Zirkel, 1999), however now students with autism spectrum disorder (ASD) have increasingly been involved in special education disputes (Mueller & Carranza, 2011). Studies of special education litigation revealed that while the school district typically wins in due process hearings, the margin narrows when there are court appeals. (Newcomer & Zirkel, 1999; Zirkel & D'Angelo, 2002). This was not always the case. Earlier studies show that parents were the prevailing party in a majority of due process hearings (Sultana, 1997; McKinney & Schulz, 1996).

A study by Zirkel & Scala (2010) pointed out that nine states have generated the most activity regarding special education due process hearings; and Maryland is one of those states. This study was designed to take a closer look into Maryland special education due process decisions and its issues and outcomes. More specifically the research is looking to assess the specifics regarding cases that are adjudicated to a full hearing and look at how successful parents are at utilizing this complaint mechanism. Maryland is the focus of this study because it is one the most active jurisdictions for special education hearings (Zirkel & Scala, 2010). The study was inspired by a scholar's call for more empirical research on special education due process hearings (Zirkel, 2014a; Zirkel, 2014b) and by other studies conducted related to the issues within special education due process hearings within other states (Rickey, 2003; Newcomer & Zirkel, 1999; Zirkel & D'Angelo, 2002; Blackwell & Blackwell, 2015; Sultana, 1997; McKinney & Schulz, 1996). It was also inspired by my work experience in special education litigation in the State of Maryland.

Purpose of the Study

The purpose of this study is to investigate parents' participation in due process hearings system in Maryland in order to identify the strengths and weaknesses with the system. Furthermore, the purpose is to determine if this system favors one group of parents over others. This study will look at how Maryland parents are using the system of due process hearings to participation in the education of their students with disabilities and to obtain desired relief from impartial hearing officers. Specific objectives are: 1) outline the characteristics of parents and students who participate in hearings, 2) to determine the most common issues and outcomes of Maryland due process hearings, 3) to determine if there are variables that increase a parent's likelihood of being successful at a due process hearing.

Research Questions

In order to meet the objectives, the following research questions have been developed:

- Who participated in Maryland special education due process hearings during the fiscal school years 2010-2014?
- How successful are Maryland parents at due process hearings?
- Do parents with more capital have better success at due process hearings?

Significance of the Study

This study answers a call for additional empirical research related to special education due process hearings (Zirkel, 2014a; Mueller & Carranza, 2011; Blackwell & Blackwell, 2015). The IDEA procedural safeguard of the right to a due process hearing was designed to promote parent participation in the educational planning of their students

with special needs (20 U.S.C. §1400). This study examined the State of Maryland and the parent's ability to effectively use the due process complaint mechanism as a way to participate in educational planning. "To discover if the outcomes of the hearings—the degree to which parents are able to influence decisions in directions they desire—are related to the effective use of those procedural safeguards which traditionally have been held to support accuracy and fairness, the quality of use must be measured" (Kuriloff, 1985, p. 89). Taking a closer look at the issues within and the outcome of the due process hearings gives the reader a snapshot of how well the system is working or if it is privileging one group of parents and students over another. Although the legislative intent of IDEA was to encourage parents and schools to partner together to provide FAPE to students with disabilities, the participation in this partnership comes with different goals, beliefs, and educational backgrounds. The parents' goal is usually to get the best education for their student, however the law does not require the school to provide the best education.

There have been recent calls for a reauthorization of IDEA to encompass the lack of equality and fairness within due process hearings (Colker, 2013; Cope-Kasten, 2012; Kaufman & Blewett, 2013; Mueller, 2014; Pasachoff, 2011). One scholar whose research criticizes the due process system recommends a reauthorization of IDEA that would include provisions to (1) provide procedures for resolution meetings that are similar to those of mediation, and (2) require that a legal advocate become a mandatory member of the IEP team (Mueller, 2014). This study provides policymakers a snapshot of how the system is working within the State of Maryland and if parents' usage has been successful. Policy makers' knowledge of the effectiveness of due process hearings as

well as the most common issues, remedies and outcomes will provide them an additional resource to help in the evaluation of existing policies and recommendation of necessary changes. The research can also be used to support additional avenues to help facilitate parent participation.

The findings from this study can be used by school administrators and legal professionals. A major way to avoid special education litigation is to review current program offerings, as well as meeting legal requirements. Knowledge of the frequency of particular issues will allow administrators to evaluate their special education programs, looking specifically for problem areas that are common, to determine if changes need to be made. Additionally, it will allow administrators to provide professional development to school staff and teachers around those issues to help prevent future legal actions.

Research related to education litigation serves to provide stakeholders a more informed assessment when pursuing litigation (Newcomer & Zirkel, 1999). Additionally, literature related to education litigation can help legal professionals provide better legal services to school districts. Legal professionals can use this information to provide legal support and training to school staff and administrators. Legal professionals can also use this information to assist school districts with planning and budgeting for future legal actions and litigation costs.

Limitations of the Study

There are some limitations in the use of frequency data to study due process hearings (Zirkel and Gischlar, 2008). The limitations include (a) no uniformity within the states' reporting of timeframes (Ahearn, 2002), (b) missing data within due process decisions, and (c) different states' interpretation of what is an adjudicated hearing (Zirkel

& Gischlar, 2008). These limitations are minimal in this study since this study is only focusing on the State of Maryland. It is important to point out there were missing data within some of the due process hearing decisions. Within content analysis missing data can be a significant problem in the data sets over long periods of time (Neuman, 2006). The sample includes 119 hearing officer decisions from the State of Maryland from only a five-year time period, fiscal school years 2010 through 2014, therefore the missing data is not a significant limitation. The overall results should provide a good snapshot of the system of due process hearings. However, if the missing data were available, that snapshot would be much better. It is also important to point out that since student information in confidential, some of the decisions redacted information relevant to some of the variables in my coding scheme. Furthermore, it is important to point out that the data might be skewed by Montgomery County Public Schools cases. Montgomery County Public Schools represented 44% of the cases. A future study that has a similar number of cases for each school district would potentially yield a better set of data for purposes of looking at the relationship between outcome and capital.

Organization of the Study

Chapter 1 of this study presents an introduction, the statement of the problem, the research questions, the significance of the study, and the limitations of the study. Chapter 2 of this study provides the theoretical framework and review of the literature. The review of literature covers literature related to special education due process decisions, the issues, the outcomes and the characteristics of students involved in the hearings. It will also provide an overview of data and law related to the State of Maryland. Chapter 3 of this study contains the methodology and procedures used to gather data for the study.

It will also provide an overview of how the data was analyzed. Chapter 4 of this study provides the results and discussion. Finally Chapter 5 delivers the conclusions and recommendations.

CHAPTER 2

LITERATURE REVIEW

This study examines the special education due process decisions from the State of Maryland in order to critique the parents participating in the system, the effectiveness and effects of the system. This chapter positions the theoretical framework, the literature related to the history behind the development of the right to a due process hearing and research related to due process hearing decisions. The roadmap for this chapter is as follows: this chapter presents (a) a historical overview of the disability rights movement and special education law and policy, (b) theoretical framework of critical theory, (c) the research related to the most common issues and outcomes within special education due process hearings, and (d) an overview of the characteristics of public schools and law within the State of Maryland.

Disability Rights Movement and the History of Special Education Law

Approximately 58 million Americans, 18.7% of the population, have some sort of disability (Brault, 2012). For centuries they have fought against assumptions, stereotypes, fears and physical barriers. During the 1700s to the early 1900s, people with disabilities were subjected to cruelty and neglect. Physical and mental disabilities were looked at as divine or satanic messages, evil spirits, etc. which caused inferior treatment, misunderstanding and abuse. During this time period, they were considered dreadful, incompetent, and incapable of contribution to society (Fleischer & Zames, 2001). People with disabilities were marginalized for much of the 1800s. In the 1840s the creation of public institutions for people with disabilities began. Many people, including children with disabilities, were forced into institutions and asylums; the purpose of these

institutions was to train and teach. In the late 1800s, there was a shift in focus to forced segregation and sterilization. In the early 1900s, all states had compulsory education laws and public schools began to offer segregated classrooms to educate students with disabilities. For the first time many students with disabilities were within the same schools as their non-disabled peers. During the 1940s and 1950s, disability issues became very visible as disabled World War II veterans convinced the government to provide them with rehabilitation and vocational training.

In 1954, *Brown v. Board of Education of Topeka, Kansas*, became a catalyst for the Civil Rights Movement. In the *Brown* case (1954) the U.S. Supreme court recognized the importance of education for all children and the state's responsibility for equality. The Court stated:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right, which must be made available to all on equal terms. (*Brown v. Board of Education of Topeka,* 1954, p. 493)

The *Brown* case (1954) also became the catalyst for the Disability Rights Movement (DRM), which was grounded in civil rights perspectives. The DRM inspiration was drawn from the protest culture of the 1960s. People with disabilities joined forces in the fight for equal treatment, equal access and equal opportunity. This was a time for the advocacy of all disadvantaged and disenfranchised groups. Advocates and movements drew their energy and inspiration from the Mississippi Freedom Summer and other civil

rights movements. Disability rights advocates mobilized and demanded national initiatives to address the barriers faced by people with disabilities. "By the 1970s, people from different disability groups began to realize that working together would be more beneficial for everyone than working separately or competitively. Consequently, a new concept emerged: the idea of disability as a social and political force" (Fleischer & Zames, 2001, p. 13). The disability rights community also began to question whether students with disabilities should be in separate classrooms. Parents fought against institutionalization and demanded that their children be placed into schools with their nondisabled peers. This started the course of many studies related to the needs of students with disabilities. After *Brown* (1954), disability rights advocacy led to a series of legislation related to people and students with disabilities.

In the early 1970s two cases, *P.A.R.C. v. Pennsylvania* (1972) and *Mills v. Board of Education of the District of Columbia* (1972) helped the development of special education law and policy. 343 F. Supp. 279 (E.D. Pa. 1972) and, 348 F. Supp. 866 (D.D.C. 1972). These cases developed the basis of rights for students with disabilities and the language that would eventually be added into IDEA. In *P.A.R.C v. Pennsylvania* (1972), the court found that it is the state's obligation to provide a free public education that is appropriate. The current IDEA encompasses this language within its statute and regulation guaranteeing that eligible students with disabilities have a right to a free appropriate public education (FAPE) and requires that students be mainstreamed when possible. *P.A.R.C.* (1972) resulted in a state consent decree that also required school districts in Pennsylvania to provide due process safeguards. *Mills v. Board of Education of the District of Columbia* (1972) involved a class action lawsuit filed on behalf of

approximately 18,000 students with disabilities who were not receiving specialized education. In *Mills* (1972) the court prohibited the exclusion of students with disabilities from public education, and also required the District of Columbia to provide parental procedural safeguards and due process procedures. After these two cases and the publicity surrounding them, the DRM led to success in preparing and passing legislation related to students with disabilities.

Three pieces of legislation were pivotal in mapping out the future of equality for people with disabilities. In 1973 the passage of the Rehabilitation Act of 1973, PL 93-112, was a huge win for the movement. The Rehabilitation Act of 1973 specified that no person with disabilities in the United States shall be excluded from participation in, or denied benefits, or subjected to discrimination in federally funded programs and activities. Two years later, the Education for All Handicapped Children Act, PL 94-142 (1975), paved the way for the rights of students with disabilities. The purpose of PL 94-142 (1975) was:

- to ensure that all children with disabilities have a free appropriate public education with special education services designed to meet their unique needs;
- to ensure that students with disabilities and their parents rights were protected;
- to assist States and local school districts in providing education to students with disabilities; and
- to assess the effectiveness of efforts of the states and local school districts to provide an education to students with disabilities.

The Education for All Handicapped Children Act, renamed the Individuals with Disabilities Education Act (IDEA) in 1990, guaranteed a Free and Appropriate Public

Education (FAPE) to students with disabilities (20 U.S.C. §1400). IDEA also required the inclusion of students with disabilities in mainstream classrooms and laid out very specific due process rights (20 U.S.C. §1400). Table 2-1 illustrates the multiple changes and revisions to PL 94-142.

Table 2-1 - Changes to PL 94-142 (IDEA)

Year	**Title**
1975	Education of All Handicapped Children Act
1986	Handicapped Children's Protection Act of 1986
1986	Education of the Handicapped Amendments of 1986
1990	Individuals with Disabilities Education Act
1997	Individuals with Disabilities Education Act Amendment of 1997
2004	Individuals with Disabilities Education Improvement Act of 2004

During the 1980s, advocates lobbied for one piece of legislation that would ensure the equal treatment and equal access for all persons with disabilities. The American with Disabilities Act (ADA) was passed in 1990. The ADA prohibited discrimination based on disabilities in the areas of employment, public services, transportation, public accommodations and telecommunications. The ADA provided a step toward the empowerment of people with disabilities.

IDEA Procedural Safeguards

Students with disabilities are a vulnerable population that faces discrimination, unequal access, unequal treatment, and unequal opportunities within the school setting.

They can be eligible to receive special education services/modification/accommodations from their local school districts under IDEA or Section 504 of the Rehabilitation Act of 1973. For the purposes of this study, I will be focusing on students with disabilities who are eligible, or may be eligible for services under Part B of IDEA (20 U.S.C. § 1400). In 2012, 750,131 children ages 3 through 5 and 5,823,844 students ages 6 through 21 were served under IDEA, Part B. (U.S. Department of Education, 2014).

IDEA and its regulations require school districts to provide eligible students with a Free Appropriate Public Education (FAPE) through the development of an Individualized Education Program (IEP) and the implementation of that IEP within the least restrictive environment (20 U.S.C. § 1400; 34 C.F.R. § 300). PL 94-142, currently know as IDEA, has been reauthorized four times, in 1986, 1990, 1997, and 2004; there has been discussion of a fifth reauthorization. IDEA explicitly emphasizes the importance of parent participation in the educational planning of students with disabilities. The 1997 Amendment to the IDEA strengthened the role of the parent by requiring parent participation in the decisions regarding eligibility and placement in special education (Yell & Shriner, 1997; The Individuals with Disabilities Education Act Amendments of 1997, PL 105-17).

The 2004 amendments to the IDEA impacted parent complaint mechanisms. The amendments were influenced by NCLB and brought about significant changes to the due process procedure (Yell et al., 2006). First, the 2004 revisions specifically outlined requirements for hearing officers (20 U.S.C. § 1415(f)(3)). The amendment states:

> (3) Limitations on hearing
> (A) Person conducting hearing
> A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—

(i) not be—

(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) possess knowledge of, and the ability to understand, the provisions of this chapter, Federal and State regulations pertaining to this chapter, and legal interpretations of this chapter by Federal and State courts;

(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. (20 U.S.C. § 1415(f)(3)).

Prior versions of the IDEA were not as specific regarding hearing officer requirements.

Second, the amendments required the parties to participate in a resolution session prior to the due process hearing unless the session was waived by all parties (20 U.S.C. § 1415(f)(1)(B)). IDEA specifically states the following about the resolution session:

(B) Resolution session

(i) Preliminary meeting. Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—

(I) within 15 days of receiving notice of the parents' complaint;

(II) which shall include a representative of the agency who has decision-making authority on behalf of such agency;

(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e). (20 U.S.C. § 1415(f)(1)(B)).

Third, the amendments of 2004 required decisions during a due process hearing to be made on substantive grounds (20 U.S.C. § 1415(f)(3)(E), 34 C.F.R. § 300.513(a)). IDEA specifically states:

(E) Decision of hearing officer

(i) In general
Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(ii) Procedural issues
In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

(I) impeded the child's right to a free appropriate public education;
(II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
(III) caused a deprivation of educational benefits. 20 U.S.C. §1415(f)(3)(E),

Pursuant to IDEA and its' regulations, parents of students with disabilities have three formal dispute mechanisms (20 U.S.C. § 1400; 34 C.F.R. § 300). The parents have the option of (1) a State complaint, (2) Mediation, or (3) a Due Process Hearing (20 U.S.C. § 1415; 34 C.F.R. § 300. 506; 34 C.F.R. § 300. 507; 34 C.F.R. § 300.151-153; 34 C.F.R. § 300.511). A due process hearing "is a key dispute resolution feature approved by Congress in accordance with the Individuals with Disabilities Education Act, whose goal is to facilitate resolution and minimize conflict." (Mueller & Carranza, 2011, p. 1) A due process hearing encompasses the concept of parent participation in the educational planning of their child with disabilities. The parent may file for a due process complaint, also known as a hearing request, regarding any matters related to the identification, evaluation, or educational placement of a child with a disability, or the provision of a Free Appropriate Public Education (FAPE) to the child (20 U.S.C. § 1415).[1] IDEA regulations states specifically:

[1] Pursuant to IDEA, both the parent and school district can also file a due process hearing request. (20 U.S.C. § 1415). School districts typically file for due process related to

Filing a due process complaint.

(a) General.

(1) A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—
(1) The parent requests the information; or
(2) The parent or the agency files a due process complaint under this section (34 C.F.R. § 300. 507).

Pursuant to IDEA, due process administrative hearings are handled in a one-tier or two-tier system (20 U.S.C. § 1415(g)). States that utilize the one-tier system have a pool of impartial hearing officers or administrative law judges to conduct hearings and there is no additional review prior to a court appeal of a decision. In two-tier systems, there is a second level of review after the hearing by an officer before the matter proceeds to a court action. Most states have moved to a one-tier system of due process (Zirkel & Scala, 2010).

When a parent files a special education due process hearing request against the school district, the hearing officer/administrative law judge/education professional is looking to determine if the student is receiving a free appropriate public education

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consent to evaluate and when there is a request by the parent for an Independent Education Evaluation. This study involves due process hearing requests that were filed by the school district against the parent.

(FAPE). *Hendrick Hudson Board of Educ. v. Rowley* (1982) contributed to the development of the legal standard requiring the inquiry of whether or not a student is receiving "meaningful educational benefit." Moreover, in *Hendrick Hudson Board of Education v. Rowley* (1982) the Court ruled that decisions must be made based upon substantive grounds (20 U.S.C. Sec. 1415(f)(3)(E)). *Schaffer v. Weast* (2005) laid out the legal standard for burden of proof. The party bringing the claim has the burden of proof (Schaffer v. Weast, 2005). The IDEA regulations state the following regarding hearing decisions:

> Hearing decisions.
>
> (a) Decision of hearing officer on the provision of FAPE.
>
> (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.
>
> (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—
>
> (i) Impeded the child's right to a FAPE;
>
> (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
>
> (iii) Caused a deprivation of educational benefit.
>
> (3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§ 300.500 through 300.536. (34 C.F.R. § 300.513(a)).

The IDEA regulations point out the requirement that decisions be made on a substantive ground.

Special education litigation is an active area of litigation (Zirkel& Gischlar, 2008; Zirkel & Johnson, 2011; Zirkel & D'Angelo, 2002; Zirkel & Newcomer, 1999; Ahearn, 2002; Zirkel, 2014a; 2014b). During the 2011-2012 school year, parents filed 17,118 due process complaints across the United States (U.S. Department of Education, 2014).

Within those complaints, 12,777 (74.6 %) of them were resolved without a hearing; 2,262 (13.2 %) resulted in a hearing with a written decision; and 2,079 (12.1 %) were still pending at the end of the school year (U.S. Department of Education, 2014). Ten jurisdictions lead the U. S. in the number of adjudicated hearings: Puerto Rico, District of Columbia, New York, California, Pennsylvania, New Jersey, Hawaii, Illinois, Maryland and Massachusetts (Zirkel & Gischlar, 2008; Zirkel, 2014a). Scholars have called for further evaluation of the due process system to understand its effectiveness, the issues disputed and the outcomes/remedies (Mueller & Carranza, 2011; Zirkel, 2014a).

Some advocate for the development of a less adversarial process (Mueller & Carranza, 2011), arguing that due process hearings are expensive and unfair to parents (Mueller, 2014). Some researchers of due process hearings have argued that the complaint mechanism is unfair and there need to be changes to the system (Coker, 2013; Kaufman & Blewett, 2012; Mueller, 2014; Pasachoff, 2011; Pudelski, 2013). Recommendations for changes to the due process hearing system include calls for various provisions to be added to the system, including but not limited to: low-cost attorney services, interim hearing procedures, shifting the burden of proof, and strengthening notice (Chopp, 2012; Coker, 2013; Hyman et al, 2011; Weber, 2014). One scholar argues that "with some modest improvements, the due process hearing systems could be even more effective at guaranteeing that children receive the education owed them under law" (Weber, 2014, p. 530).

In 2013, the American Association of School Administrators released a report criticizing the fairness of due process hearings (Pudelski, 2013). The report was a result of a survey of 200 school superintendents from across the United States related to their

experiences with due process hearings and special education litigation (Pudelski, 2013). The report questions the efficacy of the current system and finds it to be flawed (Pudelski, 2013). The report notes there is no evidence that due process hearings lead to improvements of the education of students with disabilities. Parents and students are dissatisfied with the system "and the cost and complexity of a due process hearing hinder low- and middle-income parents from exercising the procedural protection provisions to which they are entitled" (Pudelski, 2013, p. 7). The American Association of School Administrators hopes that the Pudelski (2013) report sparks a conversation between the education and disability communities about the need to improve the due process system. Recently, the U.S. Department of Education (2015) addressed concerns regarding the improper use of due process. The Office of Special Education and Rehabilitative Services warned school districts not to force parents into due process, specifically stating:

> "It has come to our attention that some public agencies may be filing due process complaints concerning the same issue that is the subject of an ongoing State complaint resolution, ostensibly to delay the State complaint process and force parents to participate in, or ignore at considerable risk, due process complaints and hearings. Increased costs and a potentially more adversarial and lengthy dispute resolution process are not in the best interest of children with disabilities and their families." (U. S. Department of Education, 2015, p. 1).

Theoretical Framework

Prior research in this area illustrates possible problems with the due process system overall, therefore a closer look and critique of the State of Maryland might contribute to defining the problems in hopes of making or supporting recommendations for changes to the system in total. The theoretical framework for this study is critical theory. This study employed the lens of critical theory to critique the whole system of Maryland due process hearings. Critical theory focuses on critiquing in order to change

society (Horkheimer, 1972). The aim of critical theory is to diagnose the problems of modern society and to identify the nature of the social changes necessary to produce a just and democratic society (Layder, 1994). Critical theory allows for an examination of the differences and problems in society in order to promote change (Horkheimer, 1972). This study focused on the demographic differences of the parties involved in due process complaints, including the differences of capital.

Critical Theory is an opportunity "to perceive and challenge dominant ideology, unmask power, contest hegemony, overcome alienation, pursue liberation, reclaim reason, and practice democracy" (Brookfield, 2005, p. 2). A critical analysis recognizes the power and authority of the due process hearing system. The system provides hearing officers with the power and authority to make a decision regarding the fate of students with disabilities. Impartial hearing officers have the power and authority to overturn a decision made by the school, or to grant eligibility and special education services. A critical approach will allow the questioning of the use of that power and how the results could privilege or alienate others. Participation in education requires cultural, social and economic capital (Bourdieu, 1974; Bourdieu, 1986). The amount of capital can leverage power (Bourdieu, 1974; Bourdieu, 1986). The critical approach will also point out if there is a relationship between the decisions of the hearing officers and the capital of the parents. For the purposes of this study, I focused on economic, cultural and social capital. This study examined the capital of the participants in an aim to determine if the system of due process hearings is problematic for parents with less capital in order identify the social changes necessary to produce a just and democratic society. All three forms of capital can be used to produce or reproduce inequality (Bourdieu, 1974;

Bourdieu, 1986). Capital can situate an individual to gain access to powerful positions (Bourdieu, 1974; Bourdieu, 1986).

Economic capital involves financial assets and cash. The amount of economic capital an individual has can lead to the other forms of capital. Pierre Bourdieu (1986) stated the following about economic capital:

> So it has to be posited simultaneously that economic capital is at the root of all the other types of capital and that these transformed, disguised forms of economic capital, never entirely reducible to that definition, produce their most specific effects only to the extent that they conceal (not least from their possessors) the fact that economic capital is at their root, in other words – but only in the last analysis – at the root of their effects (p.250).

The representation of an attorney at the due process hearing illustrates that the parent had the financial means to hire an attorney. Hiring a special education attorney is expensive (NOLO, 2015) and could cost anywhere from $200 to $500 an hour (Tudisco, 2014). Some parents in Maryland live within the boundaries of towns with more household and personal income. Additionally, the type of school, public or private, the student is currently attending can provide information regarding the parents' economic capital. Parents who have parentally placed their students in private schools have the economic capital available to employ that option.

Social capital is defined as "the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition" (Bourdieu, 1986, p. 249). Social capital refers to the relationships, networks and memberships an individual might have. Social capital can sometimes increase economic capital (Bourdieu, 1986). Cultural capital involves non-financial assets that promote social mobility, including knowledge that presents status or power (Bourdieu, 1986). The ability of the parent to present

witnesses and exhibits at the hearing can provide assumptions about the parents' relationships and networks. It can also provide information about the parents' education and knowledgeable background regarding due process hearings.

Research Related to Special Education Litigation

Research related to education litigation serves two purposes; (1) it provides potential litigants information that will allow them to make an informed assessment regarding whether or not to pursue litigation and (2) it informs policy (Newcomer & Zirkel, 1999). The current research related to special education litigation is scarce and scholars are calling for more empirical research on due process hearings and the outcomes of the hearings (Zirkel, 2014a; Mueller & Carranza, 2011; Blackwell & Blackwell, 2015). The majority of the comprehensive studies on due process hearings were conducted prior to the 2004 amendment to the IDEA.

Most common issues

To have a firm grasp of special education litigation, it is important to obtain a better understanding of the complaints and concerns within the disputes. Looking at the issues filed within special education litigation can provide some clarity, however, over the past decades there has been a limited amount of research dedicated to that purpose. Overall studies have shown that the most common issues within special education litigation are placement and issues related to the student's IEP (Kammerlohr et al., 1983; Mueller & Carranza, 2011; Rickey, 2003; Newcomer & Zirkel, 1999; Blackwell & Blackwell, 2015; Cope-Kasten, 2013). The IDEA regulations state the following about placement:

> In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—
>
> (a) The placement decision—
>
> (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
>
> (2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;
>
> (b) The child's placement—
>
> (1) Is determined at least annually;
>
> (2) Is based on the child's IEP; and
>
> (3) Is as close as possible to the child's home;
>
> (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
>
> (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
>
> (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. §300.116).

According the U.S. Department of Education during the fall of 2012, most students, 61%, served under IDEA were in educational placements inside the regular education classroom 80% or more a day (U.S. Department of Education, 2014). During that same time period, 5.2% of the students were serviced in other environments outside of the regular classroom (U.S. Department of Education, 2014).

Studies indicate that placement issues have been around for some time. A study of the due process hearing decisions from a southeastern state from 1994 to 1997 found that the most common issue for that state during that time period was placement. The study analyzed 31 due process hearing decisions. 61% of the hearing issues were related to placement (Sultana, 1997). A study of Illinois due process hearings from 1978 to 1980 found that 67% of the cases involved the issue of placement (Kammerlohr et al., 1983).

A 2011 study of 41 states also showed that the most common issues at due process hearings were placement and IEP (Mueller & Carranza, 2011). A study of Iowa

due process hearings from 1989 to 2001, revealed that placement was the most commonly disputed issue (Rickey, 2003). The study analyzed 50 due process hearings. Placement was identified as an issue 25 times (Rickey, 2003). Evaluation was the second most common issue in the Iowa hearings (Rickey, 2003). The least common issue cited was graduation (Rickey, 2003). In a study that analyzed 575 due process hearing decisions from 2005-2006, 25% of the cases related to placement and 24% of the cases involved the appropriateness of the IEP (Mueller & Carranza, 2011). A very recent study of Massachusetts due process hearings revealed that issues related to IEP and placement were the most common issues there as well (Blackwell & Blackwell, 2015). The study examined 258 due process hearings that were held between 2006 and 2013. 30.4% of the cases were related to placement and 34.3% of the cases were related to IEP Development and Implementation (Blackwell & Blackwell, 2015).

Placement was also the primary issue in many of the court cases from the administrative due process hearings appeals. In a study of 414 published court decisions from January 1975 to March 1995, the primary issue was placement (Newcomer & Zirkel, 1999). Placement represented 67% of the court cases (Newcomer & Zirkel, 1999). Parents were seeking more restrictive placements in 76% of the placement court cases (Newcomer & Zirkel, 1999). The finding was very interesting considering that Iowa research of due process hearing placement issues showed that parents were seeking to have their student placed in a lesser restrictive environment in the majority of the hearings (Rickey, 2003).

The most prevalent issue within special education litigation can vary based on other demographics. Rickey (2003) revealed a variation of issues based on grade level in

Iowa due process hearings. The most frequent issues for students in elementary school were evaluation and placement (Rickey, 2003). For middle school students the most frequent issues were suspension/expulsion and procedural safeguards and for high school students it was placement (Rickey, 2003).

Most common remedies

Parents who pursue special education litigation do so seeking various remedies. Their options can include the following: an evaluation, compensatory education, tuition reimbursement, a revision of the student's IEP, another placement, a private school or placement. Whether or not the parent is granted that remedy will depend on whether the parent prevails on the issues disputed. Over the past decades, there has been very little research related to the most common remedies granted in hearing officer decisions, however there are some studies that show that tuition reimbursement is one of the most common remedies awarded to prevailing parents in special education litigation (Mayes & Zirkel, 2001). Researchers examined 210 due process hearings conducted in the states of Minnesota and Wisconsin between 2000 and 2011 in an effort to understand outcomes and fairness within due process hearings (Cope-Kasten, 2013). The authors of this study also interviewed the administrative law judges responsible for the decisions (Cope-Kasten, 2013). Research revealed that when parents prevailed, there was one of four remedies: compensatory education, reversed manifestation determination, change of placement, or a specific course of action (Cope-Kasten, 2013).

Disability classification

Student with disabilities can become eligible for special education under IDEA based on one of 13 disability classifications. Those classifications are: Specific Learning

Disabilities, Speech and Language Impairments, Intellectual Disabilities, Emotional Disability, Multiple Disabilities, Hearing Impairments, Orthopedic Impairments, Other Health Impairments, Visual Impairments, Autism, Deaf-Blindness, Traumatic Brain Injury, and Developmental Delay (34 C.F.R. § 300.8). Early literature indicates that students with specific learning disabilities (SLD) made up the largest percentage of special education disputes. A study of a random sampling of court decisions from 1975 to 1996 showed that students with learning disabilities made up 24% of the cases (Newcomers & Zirkel, 1999). This finding is not surprising considering the numbers of students with learning disabilities that made up the special education population during that time period (U.S. Department of Education, 2000). During the 1998-1999 school year, there were 2,817,148 students with SLD between the ages of 6 and 21 served under IDEA in the U. S. (U.S. Department of Education, 2000). This number accounted for 50.8% of all of the students with disabilities between the ages of 6 and 21 (U.S. Department of Education, 2000). Currently, SLD is still the largest disability classification for students, however students with Autism Spectrum Disorder (ASD) are on the rise (U.S. Department of Education, 2014). Recent research shows that special education litigation involving students with Autism Spectrum Disorder is indeed increasing (Mueller & Carranza, 2011; Zirkel 2011b; Zirkel, 2002).

Some studies found different common disability classifications as the largest percentage of special education disputes. A study of Massachusetts due process hearings found that multiple disabilities was the most common disability classification and made up 29.1% of the hearings over the 8 year period from 2005-2013 (Blackwell & Blackwell, 2015). This was followed by SLD, which made up 23.6% of the hearings

(Blackwell & Blackwell, 2015). The authors did not point out the most common disabilities within the multiple disabilities classification, which might have included SLD and ASD. The authors pointed out that the number of students with multiple disabilities that filed for due process increased over the past 4 years, leading to the belief that there is increased disagreement regarding the education of students with more complex education needs (Blackwell & Blackwell, 2015).

At the beginning of 2012- 2013 school year, there were 442,612 students with ASD between the ages 6 through 21 served under IDEA, Part B in the United States (U.S. Department of Education, 2014). These students made up 7.6% of the students being served (U.S. Department of Education, 2014). This is a significant increase from the earlier findings. During the 1998-1999 school years there were only 53,576 students with ASD between the ages of 6 and 21 being served by IDEA; making up only 1% of the population (U.S. Department of Education, 2000).

The number of students with Autism Spectrum Disorder (ASD) serviced under IDEA is increasing (U.S. Department of Education, 2014); and legal disputes filed on behalf of students with ASD are one of the fastest growing areas of special education litigation (Zirkel, 2011b; Mueller & Carranza, 2011). Although there is an increase in the number of students with ASD serviced by school districts, there appears to be a disconnect between what the school is providing and parent satisfaction (White, 2014). In a 2002 study of 290 published due process decisions and court decisions revealed that autism litigation has significantly increased (Zirkel, 2002). This increase has created an overrepresentation of students with ASD within special education litigation (Zirkel, 2011b). In a study of 575 due process hearing decisions from across 41 states, 20% of

the hearings involved students with ASD (Mueller & Carranza, 2011). A Tennessee study revealed that students with ASD made up 4.54% of the special education population, however they accounted for 18.8% of the due process hearings (Shuran & Roblyer, 2012).

Scholars are attempting to get a better understanding of this disproportionality. One study examined the special education state complaints of a Midwest state over a five-year period to examine alleged procedural violations of school districts and gain insight about parent dissatisfaction (White, 2014). A content analysis of 97 summaries of complaint investigations from January 2004 to January 2009 revealed that the most common complaint for students with ASD was related to the IEP. Overall, the findings indicated that parent dissatisfaction centered around (1) the IEP content and implementation, (2) parent participation in the IEP process, (3) evaluations and IEP team problems, and (4) behavior/disciplinary procedures (White, 2014). The findings are not a surprise considering that there is evidence that school districts have struggled with the development of IEPs for students with ASD. The research showed that IEPs for students with ASD lack measureable goals and objectives (Ruble et al., 2000). White (2014) also examined factors that lead to decisions in favor of schools. It found that in cases where the school prevailed, the investigator's finding typically indicated that (1) the parent misunderstood or there was a disagreement about IEP and Services, (2) the parent was unfamiliar with the legal and educational procedures, or (3) there was documentation of compliance provided.

In an examination of due process hearings and court cases of students with ASD challenging the school district's educational programing and procedural violations the

parents were successful in 76% of the cases (Yell & Drasgow, 2000). The school district was unsuccessful in many of these cases due to procedural and substantive violations (Yell & Drasgow, 2000). Many of the procedural violations were so severe that there was there was no need for the hearing officers or judges to address whether or not the student IEP was inadequate (Yell & Drasgow, 2000). In cases that the school district did win, there were no significant procedural violations, there were qualified staff and experts, they used effective research based programs and they collected meaningful data to look at student progress and program effectiveness (Yell & Drasgow, 2000). The school district was more likely to win if they used experts (Yell & Drasgow, 2000).

Considering the increase in autism litigation (Zirkel 2011b), scholars have provided very specific recommendations to minimize legal disputes related to students with ASD. "The primary message from the ASD litigation, therefore, is that school personnel need to (a) understand and follow the procedures in IDEA, (b) develop educational programs based on empirically proven practices, and (c) monitor students' progress in their instructional programs by collecting data" (Yell et al., 2003, p. 187). The increase in autism litigation is likely due to school districts' limited success in effectively addressing this complex disability (Zirkel, 2011b). School districts need to pay particular attention to providing evidence-based interventions and programs for children with autism (Zirkel, 2011b). Furthermore, school districts need to work on establishing effective communication with the parents of students that are autistic (Zirkel, 2011b). A study that analyzed 150 cases that involved the educational programming of students under the age of 8 with ASD found that there was a mistrust issue among the schools and families. Without trust between all parties, the litigation will rage on

(Mandlawitz, 2002). As a result of the increase in due process hearing requests related to students with ASD, states have begin to change their polices related to programing for students with ASD (Mandlawitz, 2002). The author recommended that (1) school districts design programs with the legal standards in mind (2) that programs be developed to fit the unique needs of a student (3) that programs ensure that the student is making appropriate progress educationally and socially (4) that the parents and schools have open and honest communication, using due process as a last resort (Mandlawitz, 2002). Future research should analyze the relationship between the parent's characteristics and the nature and outcome of the cases (White, 2014).

Gender

There is limited research related to the student's gender and special education litigation. An early study of Pennsylvania due process hearings found that there was no correlation between the gender of the student and the outcome of the due process hearing (Kuriloff, 1985). There is research that analyzes gender and participation in a due process hearing. A study of Iowa due process hearings revealed that males were involved more often in due process than females (Rickey, 2003). A study of Tennessee due process hearing revealed that males represent 65.2 % of the due process hearings (Shuran & Roblyer, 2012). This data should not be surprising as males made up the majority of the special education population in Tennessee. Males accounted for 67.44% of the special education population in Tennessee (Shuran & Roblyer, 2012). A study of court decisions from the appeals of due process hearings from 1975 to 1995 revealed that males represented nearly double the number of females (Newcomer & Zirkel, 1999).

Prevailing Party

Overall, research shows that school districts prevail in special education litigation more often than the parent. Some believe that the due process system is unfair and highly skewed in favor of school districts (Cope-Kasten, 2013). An analysis of 575 due process hearings that were conducted in 41 states from 2005 to 2006, found that school districts won in 59% of the cases (Mueller & Carranza, 2011). Other studies had similar findings (Archer, 2002; Newcomer & Zirkel, 1999; Menacker, 1992, Maloney 1995, Blackwell & Blackwell 2015, Mckinney & Schultz, 1996; Cope-Kasten, 2013; Kuriloff, 1985; Chambers et al, 2003; Rickey, 2003). In Massachusetts, the school district prevailed in 62.5% of the cases (Blackwell & Blackwell, 2015). In Iowa, the school district prevailed in 62.7% of their cases (Rickey, 2003). An analysis of 168 due process hearings in Pennsylvania revealed that parents fully or partially prevailed in only 35% of the hearings (Kuriloff, 1985). In Tennessee, the school district prevailed in 64.3% of the hearings. In a study that examined 6,763 due process hearings from 1998-1999, 56% of the litigated due process hearings went in favor of the school district and 34% for the parent (Chambers et al., 2003).

It appears that most of the research is consistent in finding that the majority of hearings are ruled in favor of the school district; however there is also state specific research that shows that the parents were more likely to win than the school district (Sultana, 1997; Mckinney & Schultz, 1996). A study of Kentucky due process hearing decisions found that the parents prevailed in the majority of the cases (Sultana, 1997). Although most studies of special education litigation reveal that school districts typically

win in due process hearings, the margin narrows when there are court appeals. (Newcomer & Zirkel, 1999; Zirkel & D'Angelo, 2002). A study of 200 court decisions from 1975 to 1995 found that although the parents only prevailed in 39% of the cases at the due process hearing level, the parents prevailed in 41% of the court decisions (Newcomer & Zirkel, 1999).

Some research has examined the outcomes based on the issues being litigated. Research shows that parents are more likely to prevail in hearings involving certain issues. In a study of Iowa due process hearings, the parents were more likely to prevail in hearings involving issues of graduation and suspension/expulsion (Rickey, 2003). In the same study, the school district prevailed in every case involving issues of methodology and identification (Rickey, 2003). In Massachusetts, the parents had a higher chance of winning in cases where the parents had unilaterally placed the student in a private school prior to the hearing (Blackwell & Blackwell, 2015).

A study that examined 227 special education hearings from a Midwest state revealed that when placement was the primary issue, the parent and the school were less likely to reach a prehearing settlement and the school district was more likely to prevail at hearing (Schultz & McKinney, 2000). A study that examined 314 special education due process hearings in the State of Illinois from 1978 to 1980 found that in cases where placement was disputed, the school prevailed in 59% of the cases (Kammerlohr et al., 1983). This finding is different from a Pennsylvania study of special education cases that found that when the primary issue was placement, the parents prevailed at a higher rate than non-placement cases (Newcomer & Zirkel, 1999). In a study of 510 cases that involved tuition reimbursement, the school district prevailed in the majority of the cases

(Mayes & Zirkel, 1999). And in cases involving residential placements, the parents prevailed slightly more than the school district (Gorn, 1996).

Attorney representation appears to have a correlation with whether or not a parent prevails in a case. A study of the 210 due process hearings conducted in the states of Minnesota and Wisconsin between 2000 and 2011 found that the school districts prevailed in 98% of the cases when the parent did not have an attorney representative (Cope-Kasten, 2013). The school district prevailed in only 67% of the cases when the parent was represented by an attorney at the due process hearing (Cope-Kasten, 2013). In a Massachusetts study, parents with attorneys prevailed in 30.8% of their cases, versus parents without attorneys or advocates who only prevailed in 10.7% of their cases (Blackwell & Blackwell, 2015). It should be noted that parents with advocates had a higher prevailing rate (20.5%) than parents without advocates (10.7%) (Blackwell & Blackwell, 2015). An Illinois study of due process hearings found that when a parent was represented by an attorney it increased their likelihood of prevailing at the hearing (Archer, 2002).

In a study of early Pennsylvania due process hearings, it was found that the parents prevailed at a higher rate when the case involved disputes over the content and quality of the program (Kuriloff, 1985). Students that were in more restrictive placements tended to win hearings more than students in less restrictive settings and ones that had never been in a special education setting (Kuriloff, 1985). This study also found that there was a moderate correlation between the parent's chances of winning the hearing and the following variables: (1) parent having a lawyer (2) closing the hearing to the public (3) number of witnesses called (4) and number of exhibits presented (5) quality

of questions and (6) quality of the presentation (Kuriloff, 1985). In a study that analyzed 210 due process hearings conducted in the states of Minnesota and Wisconsin between 2000 and 2011, the school district prevailed in the majority of the cases (Cope-Kasten, 2013). The authors of this study also interviewed the administrative law judges responsible for the decisions (Cope-Kasten, 2013). One of the administrative law judges interviewed in this study indicated that it is difficult for parents to win these cases because of the way the law is set up (Cope-Kasten, 2013).

It is clear that the school district prevails in the majority of due process hearings. Some argue that this is unfair (Cope-Kasten, 2013; Blackwell & Blackwell, 2015). Authors of the Massachusetts study attributed the unbalanced results to unequal access to attorneys and legal advice (Blackwell & Blackwell, 2015). Authors noted that there is the possibility that parents might not have adequate advice when deciding whether or not to file for due process (Blackwell & Blackwell, 2015). In fact, school districts have better access to effective legal representation (Blackwell & Blackwell, 2015). The findings above do not come without arguments that the hearing officers are not being impartial, however beliefs that prevail rates should be 50/50 are flawed (Zirkel, 2012). Scholars believe that it is political and if the parents are looking for a level playing field during litigation, policy-making is the more appropriate forum (Zirkel, 2012). There have been recommendations for government initiatives to create pro bono attorney programs to give parents a more equal chance (Blackwell & Blackwell, 2015). Others have recommended that parents utilize mediation instead of due process stating "relationships between parents and districts that are fractured by the adversarial system

bode ill for a successful team approach, over a period of years, to educate a student with disabilities." (Newcomer & Zirkel, 1999, p. 479).

Locale/City/State

In a study of the due process hearings for the 2008-2009 school year, findings show that there were 2,033 adjudicated hearings during that time and 10 jurisdictions accounted for 91% of the hearings (Zirkel & Scala, 2010). Those jurisdictions were: Puerto Rico, District of Columbia, New York, California, Pennsylvania, and New Jersey, Hawaii, Illinois, Maryland and Massachusetts (Zirkel & Scala, 2010). An updated study shows that those states still account for a large percentage of the due process hearings (Zirkel, 2014a; 2014b).

Some research shows that higher income school districts are more likely to file for a due process hearing. The Center for Special Education Finance conducted a survey of 247 school districts and found that parents in higher income districts were more than four times as likely to have a due process hearing than the lower income districts (Chambers et al., 2003). For purposes of that study, the researchers defined higher income school districts by looking at the median household income and separating districts by lowest income, middle income and highest income (Chambers et al., 2003).

Maryland and Public Schools

Maryland is a Mid-Atlantic state and has approximately 5,976,407 residents (U.S. Census Bureau, 2014). In 2013, the national median household income was $52,250 (Noss, 2014). The State of Maryland had the highest median household income at $72,483 (Noss, 2013). The median household and personal income of the residents of

Maryland varies by county. The table 2-2 illustrates the median household income and per capita personal income by county.

Table 2-2

Maryland Counties Median Household Income and Per Capital Personal Income (2014)

	Total Population, 2014	Median Household Income ($ Dollars)	Per Capita Personal Income ($ Dollars)
Allegany County	72,952	39,808	35,943
Anne Arundel County	560,133	86,654	59,574
Baltimore City	622,793	41,895	42,428
Baltimore County	826,925	67,766	53,949
Calvert County	90,613	92,446	53,566
Caroline County	32,538	49,573	41,065
Carroll County	167,830	84,500	53,200
Cecil County	102,383	62,198	41,632
Charles County	154,747	86,703	50,582
Dorchester County	32,578	42,279	39,974
Frederick County	243,675	83,698	52,554
Garrett County	29,679	47,441	42,936
Harford County	250,105	79,403	50,817
Howard County	309,284	106,871	67,605
Kent County	19,820	53,288	50,419
Montgomery County	1,030,447	97,279	73,483
Prince George's County	904,430	71,904	44,465
Queen Anne's County	48,804	80,650	53,705
St. Mary's County	110,382	84,686	50,234
Somerset County	25,859	38,376	29,389
Talbot County	37,643	54,836	63,111
Washington County	149,573	54,606	39,887
Wicomico County	101,539	51,927	37,187
Worcester County	51,675	55,691	49,592

Source: Maryland Department of Commerce – Data Explorer

As seen in the table 2-2, 17 of the 24 counties have a median household income that is above the national median. And 10 of the 24 counties have a median household income above the state median. In Maryland, the local school districts are county-wide. There are currently 24 counties in the state of Maryland, therefore there are 24 school districts.

During the 2013-2014 school year, the State of Maryland had over 866,000 public school students, with 89,533 of those students receiving special education (Maryland State Department of Education, 2014). The state and school districts within have an obligation to provide a free and appropriate public education to students with disabilities (Md. Education Code Ann. § 8-403). The State of Maryland public schools categorize students that are eligible for special education under IDEA based upon 13 disability classifications and have accepted an additional category of developmental delay (Md. Education Code Ann. § 8-403). Specific categories include: Autism, Deaf-Blindness, Deafness, Emotional Disability, Hearing Impairment, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech/Language Impairment, Traumatic Brain Injury, Visual Impairment and Developmental Delay. The most common disability category for the State of Maryland is specific learning disability with 30,876 students, followed by speech and language disability for 18,342 students (Maryland State Department of Education, 2014). According to the 2011-2012 U.S. Department of Education Office of Civil Rights (2014) data, 68% of the students receiving special education services under IDEA were male and 31.7% were female.

The majority of students who receive special education in Maryland are receiving it in the regular education classroom 80% or more of the school day. Table 2-3 represents the location of services for students with disabilities in the Maryland.

Table 2-3

Students Receiving Special Education Services by Location: 2013-2014

	Total number of students receiving special education	Percentage of students receiving special education
General Education Classroom 80% or more	62,006	69.25%
General Education Classroom 40 to 79%	9,001	10.05%
General Education Classroom Under 40%	12,020	13.43%
Public Day School	2,652	2.96%
Private Day School	3,552	3.97%
Public Residential	6	0.01%
Residential Private	100	0.11%
Home	196	0.22%

Source: Maryland State Department of Education, 2014

During the 2013-2014 school year the state, local and federal resources for elementary and secondary schooling in Maryland were over $12 billion (Maryland State Department of Education, 2014). Of the $12 billion, 45.63% of the funds came from the local government and 47.45% from the state. Almost 1.5 billion dollars (12.22%) of the $12 billion was spent on special education (Maryland State Department of Education, 2014).

Maryland school districts are required by federal law to provide students with disabilities a free appropriate public education (FAPE). Maryland law defines FAPE as:

> (3) "Free appropriate public education" means special education and related services that:
>
> (i) Are provided at public expense, under public supervision and direction, at no cost to the parents;

(ii) Meet the standards of the State Board regulations and the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(iii) Includes preschool, elementary, and secondary education; and

(iv) Are provided in conformance with the requirements of the child's individualized education program. (Md. Education Code Ann. § 8-401, 2015).

Maryland statutes are not that specific regarding the rights of students with disabilities; Maryland statutes refer back to IDEA. Section 8-407 of the Maryland statutes indicates that "all proceedings held and decisions made pursuant to this subtitle shall be in conformance with applicable federal law" (Md. Education Code Ann., 2015). The Maryland State Board of Education regulations are more specific regarding due process rights. Parents of Maryland students with disabilities have the right to utilize multiple complaint mechanisms. The parents can request a state complaint, mediation or a due process hearing (COMAR 13A.05.01.15). The regulations state the following about due process hearings:

C. Due Process Complaint.

(1) A parent or a public agency may file a due process complaint on any matter related to the identification, evaluation, or educational placement, or the provision of FAPE to a student with a disability, in accordance with 34 CFR §300.507 and Education Article, §8-413, Annotated Code of Maryland.

(2) A party's due process complaint shall be made in writing to the other party and the Office of Administrative Hearings.

(3) The content of a due process complaint, as described in §C(2) of this regulation, shall be consistent with 34 CFR §300.508.

(4) A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements specified in 34 CFR §300.508(b).

(5) When a party files a due process complaint, the public agency responsible for the student's education shall:

(a) Inform the parent of free or low cost legal and other relevant services available;

(b) Provide the parent with a copy of the procedural safeguards, in accordance with Regulation .11A(2)(e) of this chapter; and

(c) Inform the parent of the availability of mediation as described in §B of this regulation.

(6) The due process complaint described in §C(3) of this regulation shall be considered sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the content of the due process complaint does not meet the requirements specified in 34 CFR §300.508.

(7) In accordance with 34 CFR §300.508, a party may only amend its due process complaint if the:

(a) Other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to 34 CFR §300.510; or

(b) Hearing officer grants permission at any time not later than 5 days before the due process hearing begins.

(8) If a party files an amended due process complaint, the timeline for the resolution meeting and the time period to resolve the complaint described in 34 CFR §300.510 begins again with the filing of the amended due process complaint.

(9) When a parent files a due process complaint, the public agency shall respond in a manner consistent with 34 CFR 300.508(e).

(10) The time line for filing a due process complaint described in 34 CFR §300.508 does not apply if the parent was prevented from filing a due process complaint because the public agency:

(a) Made specific misrepresentations that the problem forming the basis of the due process complaint was resolved; or

(b) Withheld information from the parent that the public agency is required to provide the parent under this chapter. (COMAR 13A.05.01.15 (C)).

When a parent or school district requests a due process hearing, the Maryland Office of Administrative Hearings (OAH) facilitates the hearings and assigns an administrative law judge (ALJ) to serve as the impartial hearing officer (COMAR 13A.05.01.15 (C)(12)). OAH has a group of approximately 55 Administrative Law

Judges (ALJ) to decide appeals of administrative agency decisions throughout the State of Maryland (Office of Administrative Hearings, 2016). These appeals include special education due process hearing requests from Maryland school districts. The administrative law judges were seasoned lawyers prior to their appointments as Administrative Law Judges (Office of Administrative Hearings, 2016).

The hearing officer is looking to determine whether the student has been denied a Free Appropriate Public Education (FAPE). This legal standard requires the inquiry of whether or not student is receiving "meaningful educational benefit" (Hendrick Hudson Board of Educ. v. Rowley). These decisions must be made based upon substantive grounds (20 U.S.C. Sec. 1415(f)(3)(E); 34 C.F.R 300.513) and the party bringing the claim has the burden of proof (Schaffer v. Weast, 2005). IDEA regulations specifically state that in matters that are alleging procedural violations, a hearing officer's determination may find a denial of FAPE if the violations "(i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit (34 C.F.R 300.513)." The decisions of the hearing officers are available to the public on the Maryland State Department of Education website. Maryland hearing officers decisions are published based upon the fiscal school year in which the decision was rendered.

CHAPTER 3

METHODOLOGY

Frequency studies and outcome analysis are the most frequently used forms of empirical education law research (Newcomer & Zirkel, 1999). In order to critique the system of Maryland due process hearings, I conducted a content analysis of the decisions of the hearing officers that conducted the hearings. There are numerous other methods to analyze text data, including grounded theory, ethnography, historical research, and phenomenology, however content analysis focuses on the contextual meaning of the text (Hsieh & Shannon, 2005) and therefore it was appropriate. Additionally, the content analysis allowed me to conduct a frequency study and outcome analysis. A content analysis allowed me to scrutinize the decisions to identify the strengths and weaknesses within the system in order to point out any potential problems or concerns with the current system..

Research Questions

The study addressed the following research questions:

- Who participated in Maryland special education due process hearings during the fiscal school years 2010-2014?
- How successful are Maryland parents at due process hearings?
- Do parents with more capital have better success at due process hearings?

Content Analysis

I conducted a content analysis of Maryland special education due process hearing decisions. Content analysis is a research methodology that is well suited to analyze

written material (Borg & Gall, 1989; Krippendorff, 2004). It can be both quantitative and qualitative in nature (Krippendorff, 2004). "Content analysis is a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the context of their use" (Krippendorff, 2004, p. 18). The methodology's attempts to meet the scientific method distinguishes it from other qualitative or interpretive analyses (Bird, 2006; Klee, 1997; Neuendorf, 2002). Other scholars have defined content analysis differently (Neuendorf, 2002). "Content analysis is a summarizing, quantitative analysis of messages that relies on the scientific method (including attention to objectivity-inter-subjectivity, a priori design, reliability, validity, generalizability, replicability, and hypothesis testing) and is not limited as to the types of variables that may be measured or the context in which the messages are created or presented" (Neuendorf, 2002). When looking at educational materials, content analysis can provide a consideration of the values, attitudes and politics of society (Krippendorff, 2004). The historical applications of content analysis lay with journalism and mass communication (Stone et al., 1968), however this methodology is increasingly being used for legal and political studies (Krippendorff, 2004). Some scholars have explained content analysis in terms of communication between the senders and the receivers, allowing that the primary purposes of a content analysis are to: describe the characteristics of the communication, to make inferences about the antecedents of communication and to make inferences about the consequences of communication (Holsti, 1969; Krippendorff, 2004).

There are three approaches to content analysis: conventional, directed, and summative (Hsieh & Shannon, 2005). The conventional approach to content analysis involves designing the study to explain a phenomenon (Hsieh & Shannon, 2005).

Typically very little literature and theory are available to explain that phenomenon (Hsieh & Shannon, 2005). The directed approach to content analysis is appropriate when there is some literature or theory related to the phenomenon, however further description is needed (Hsieh & Shannon, 2005). Sometimes, existing theory or prior research exists about a phenomenon that is incomplete or would benefit from further description. The summative approach to content analysis involves identifying and measuring particular content within the text for the purpose of understanding the appropriate use of the content (Hsieh & Shannon, 2005). It goes beyond counting the usage of the word, it explores the meaning of usage of the word (Hsieh & Shannon, 2005).

This study utilized the directed approach to content analysis. "The goal of a directed approach to content analysis is to validate or extend conceptually a theoretical framework or theory. Existing theory or research can help focus the research question. It can provide predictions about the variables of interest or about the relationships among variables, thus helping to determine the initial coding scheme or relationships between codes (Hsieh & Shannon, 2005, p.1283)." Theory and prior research guided the research questions and the variables within the study. Prior research also guided the coding scheme of this study.

Sample

This study focused on special education due process decisions from the State of Maryland. These decisions are the written results from hearings conducted by Maryland's impartial hearing officers.[2] Pursuant to the IDEA, the parents of students with disabilities are entitled to request a due process hearing based upon issues of

[2] The State of Maryland utilizes its Office of Administrative Hearings for special education due process hearings. Administrative law judges serve as impartial hearing officers as required by IDEA and its regulations.

[3] Pursuant to IDEA regulations 34 C.F.R Part 300.502 the parent of a student with a disability has

identification, evaluation, placement, or the provision of a free appropriate education (34 C.F.R. § 300.507). Once decisions are made, they are redacted and published on the Maryland State Department of Education (MSBE) website located at www.marylandpublicschools.org. This study analyzed the decisions of hearing officers for 5 fiscal school years, specifically focusing on the school years: 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014. The website referenced 123 hearings held during Fiscal Years 2010 through 2014, however only published 119 decisions. Four of the cases listed on Maryland's website had no decision attached as they could not be sufficiently redacted to obscure the identity of the students involved in the cases. The MSBE website published 119 decisions during that time period. The 119 decisions included due process decisions from hearing requests filed by school districts. Table 3-1 reflects the number of hearing decisions from each fiscal school year.

Table 3-1 - Number of special education decisions published on the MSDE website

Fiscal Year	Number of Special Education Decisions Published
2010	26
2011	31
2012	24
2013	20
2014	18

The 119 published decisions had all personally identifiable information redacted.

Data Collection and Analysis

The Maryland special education hearing decisions are currently public information on the MSBE website. Each decision was downloaded from the website into a database for further analysis. The decisions were also printed. Printed decisions were placed in file folders and organized by fiscal school year. The content analysis methodology requires that the coding scheme be objective and reliable (Neuendorf, 2002). "When possible, use a coding system that has already been developed in previous research" Borg & Gall, 1989, p. 525). The coding scheme for this study was informed by previously published research (Cope-Kasten, 2013; Blackwell & Blackwell, 2014; Mueller & Carranza, 2011; Newcomer & Zirkel, 1999; Rickey, 2003; Zirkel, 2013) and my experience as an attorney in Maryland. The coding scheme provided a list of relevant variables that would need to be analyzed. Information sheets that included the various variables allowed for an organized collection of data. See Appendix A. The data from each decision was recorded on the information sheets. The data within the information sheets was then transferred into an Excel spreadsheet in order to manage the data, coding and analysis. Excel is commonly used to organize data for further analysis. It also provides basic statistical tools to develop descriptive statistics.

Within content analysis, the coder must have the necessary cognitive abilities and appropriate background (Krippendorff, 2004). The coder must be familiar with the phenomena that are being researched (Krippendorff, 2004). As an attorney that formerly represented school districts, I am very familiar with the language used in hearing decisions, as well as special education law. My past legal experience includes over eight

years of special education litigation; three of those years in a school district in the state of Maryland.

Demographic information

This study analyzed many different variables that are related to the demographics of the hearing participants, as well as other variables relevant to the interworking of due process hearings. The demographic variables are similar to variables used in previous studies (Blackwell & Blackwell, 2015; Kuriloff, 1985; Kuriloff, Kirp, & Buss 1979; Newcomer & Zirkel, 1999; Mayes & Zirkel, 2001; Newcomber et al., 1998; Rhen, 1989; Rickey 2003; Tarola, 1991; Zirkel, 1997). The coding scheme included the following variables: age of the student, gender of student, disability classification of the student, grade of the student, type of school, school district, type of placement/LRE, hearing officer, fiscal year, parent representation, party requesting hearing, the number of witnesses testifying for the parent, number of exhibits submitted by the parent, the number of witnesses testifying for the school district, and number of exhibits submitted by the school district. The variables in the coding scheme provided the demographics of the parties that participated in due process hearing. Additionally, they allowed an examination of the most common issues and remedies in Maryland special education litigation. Literature reveals that there is a moderate correlation between the parent's chances of winning the hearing and the following variables: (1) parent having a lawyer (2) closing the hearing to the public (3) number of witnesses called (4) and number of exhibits presented (5) quality of questions and (6) quality of the presentation (Kuriloff, 1985). This study was particularly interested in those variables that could be used as a proxy for economic, social and cultural capital including: type of school, school district,

party representative, the number of witnesses testifying for the parent and number of exhibits submitted by the parent. Below is an explanation of the coding scheme:

- Age of the student- The coding of the age of student involved in the hearing is based on the age of the student at the time of the hearing. Many of the decisions did not give the accurate age of the specific student, however, most decisions provided the student's year of birth. In order to not make assumptions pertaining to the student's age, this variable became a categorical variable that included the following categories: 0-4, 5-9, 10-14, 15-19, and 20-24.
- Gender of the student- The coding of gender involved the following options: male or female.
- Disability classification - The coding of disability classification is based upon the disabilities outline in the IDEA and accepted by Maryland Administrative Rules. Disability classification coding included the following 15 categories: None, Autism, Deaf-Blindness, Deafness, Emotional Disturbance, Hearing Impairment, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech/Language Impairment, Traumatic Brain Injury, Visual Impairment, and Developmental Delay.
- Grade of the student - The coding scheme for grade of the student included the following categories: PreK/Elementary, Middle School, High School, Post Secondary and No school attended.
- Type of school – The coding scheme for type of school included the following categories: Public, Private - Parentally Placed, Private – School Placed, and

Home. I used this variable as a proxy for economic capital. The price of private school for a student with special needs is very expensive. The average cost of private school in the State of Maryland for the 2015-2016 school year is $11,843 (Private School Review, 2016); this average is among the 10 highest in the United States. This variable was collapsed into two categories for purpose of statistical analysis beyond descriptive statistics. The two categories are: private school- parentally placed and public/home/private-school placed.

- Placement/LRE – The coding scheme for the type of placement/LRE focused on the placement of the student at the time of the hearing. It included the following categories: no special education, general education classroom, special education classroom, separate day program – public, separate day program- private, combination special education/general education classroom, residential, home and other.
- School District – The coding scheme included various school districts. There are currently 24 school districts in the state of Maryland (Maryland State Department of Education, 2014). I used this variable as a proxy for economic capital. In 2013, the national median household income was $52,250 (Noss, 2014). The state of Maryland had the highest median household income at $72,483 (Noss, 2013). Based on the median household income, this variable was collapsed into two categories for purpose of statistical analysis beyond descriptive statistics. It was collapsed into the following: districts with a median household income under $73,000 and districts with a median household income over $73,000.

- Hearing officer – The coding scheme includes the name of the hearing officer who wrote the decision. The State of Maryland utilizes its Administrative Law Judges (ALJ) from their Office of Administrative Hearing (OAH) as hearing officers.
- Parent representation – The original coding scheme included the following two categories: parent handled the hearing (pro se) and attorney/advocate representation. The representation by a special education attorney is expensive (NOLO, 2015). Attorneys fees can cost anywhere from $200 to $500 an hour (Tudisco, 2014). I used this variable as a proxy for economic capital.
- Number of witnesses testifying for the parent – The coding scheme included information regarding the number of witnesses the parent called to testify at the hearing. I used this variable as a proxy for social and cultural capital.
- Number of exhibits submitted by the parent – The coding scheme included the number of exhibits submitted into evidence by the parent at hearing. I used this variable as a proxy for social and cultural capital.
- Number of witnesses testifying for the school district– The coding scheme included information regarding the number of witnesses the school district called to testify at the hearing.
- Number of exhibits submitted by the school district – The coding scheme included the number of exhibits submitted into evidence by the school district at hearing.

Issues

The complaint issues were coded using the following categories: IEP, Placement, Related Services, Eligibility, Evaluation, Discipline, Extended School Year, Transition, Procedural Safeguards and Other. Similar categories were used during the coding of an earlier study of special education due process hearings (Blackwell & Blackwell, 2015; Rickey 2003).

Outcomes/Remedies

The coding scheme focused on the prevailing parties, outcomes, and remedies requested and provided. This study is using a coding scheme that is similar to previous studies looking at case outcomes (Blackwell & Blackwell, 2015; Kuriloff, 1985; Kuriloff, Kirp, & Buss 1979; Newcomer & Zirkel, 1999; Mayes & Zirkel, 2001; Newcomber et al., 1998; Rhen, 1989; Rickey 2003; Tarola, 1991; Zirkel, 1997).

- Outcome - To capture the outcome of the hearing, the coding scheme included the following categories: parent complete win, parent partial win and school complete win. This variable was later collapsed into two categories for purposes of regression analysis to see if parents with more capital have more success. The two categories were: school win and parent win. The parent win included decisions in which the parent completely won and partially won the case.
- Remedies requested and granted– The coding scheme of remedies involved the major forms of injunctive relief (Zirkel, 2011a) including the following categories: tuition reimbursement, compensatory education, prospective revision of the IEP, prospective placement, and evaluations. I also included the following categories to capture the remedies that were requested and granted when the

school district filed the request for hearing. These additional categories included eligibility, order giving consent to evaluate, consent to evaluation, and order that the evaluation was appropriate.

Once coding was completed, the frequency data was captured through descriptive statistics. The presentation of descriptive statistics provided a summary of the sample. The descriptive statistics summarized the characteristics of the participants involved in the hearing and laid out the most common issues and outcomes within the hearing decisions. The descriptive statistics from the data allowed me to make findings related to the demographics of the participants of special education due process hearings in the State of Maryland. Additionally, the descriptive data allowed me to make arguments regarding how successful Maryland parents are during due process hearings.

This study examined whether parents with more capital are more successful at due process hearing, therefore additional statistical analysis was needed to look for a relationship between capital and the parent's chances of winning. In order to preliminarily determine if there was a relationship between a prevailing outcome and capital, I begin by utilizing chi-square testing. Chi-squared analysis determines if there is a significant difference between the expected frequencies and the observed frequencies in one or more categories. Chi-squared testing indicates if a relationship exists between variables, however it does not provide the strength of the relationship. After looking for a relationship, I utilized regression analysis to further look at the relationship. Regression analysis was appropriate since it is a statistical tool that looks at the relationships between variables. It identifies the relationship between a dependent variable and one or more independent variables. Regression analysis is beneficial to lawyers and those involved in

legal policy making (Sykes, 1993). Multiple regression is useful when looking at how multiple variables simultaneously impact a single dependent variable (Sykes, 1993). This study involves multiple variables that can come into play when looking at the relationship between the capital of the parent and a parent's success at a due process hearing, therefore multiple regression analysis was appropriate. It is important to point out that "there is no simple relationship between this burden of proof and the statistical significance test" (Sykes, 1993, p. 32). Regression estimates are typically not the only material that is available and these estimates are susceptible to manipulations (Sykes, 1993). Regression analysis cannot be interpreted as establishing a cause-effect relationship. "Ultimately, therefore, statistics itself does not say how much weight a regression study ought be given, or whether it is reasonable to use a particular parameter estimate for some legal purpose or other. These assessments are inevitably entrusted to triers of fact, whose judgments on the matter if well informed are likely as good as those of anyone else" (Sykes, 1993, p. 33).

Logistic regression was used since the dependent variable is categorical data. The dependent variable for the regression was outcome. Although the coding scheme allowed for three possible outcomes, for the purposes of regression analysis, the outcomes categories were collapsed into two possible outcomes, parent win – which will involve parent's complete win and parent's partial win, and school complete win. The new variable was called success.

Regression analysis provided the support to make arguments regarding the relationship between outcome of the hearing and capital of the parent. The regression analysis focused on six variables as they relate to the outcome variable. The variables

school district, type of school and parent representative were used as a proxies for economic capital. The variables number of witnesses called by the parent and number of exhibits presented by the parent are proxies for social and cultural capital.

Reliability

"The importance of reliability rests on the assurance it provides that data are obtained independent of the measuring event, instrument or person. Reliable data, by definition, are data that remain constant throughout variation in the measuring process" (Kaplan & Goldsen, 1965, pp.83-84). Content analysis involves a subjective classification scheme therefore has the potential to lead to unreliable measures (Krippendorff, 2004). According to Krippendorff (2004) there are three types of reliability. They are: stability, reproducibility, and accuracy (Krippendorff, 2004). Stability involved looking at the degree of unchange in the process over time (Krippendorff, 2004). Reproducibility involves looking at the degree of replication in the process by a different analyst (Krippendorff, 2004). Accuracy involves looking at the degree "to which a process conforms to its specifications and yields what [it] is designed to yield" (Krippendorff, 2004, p. 215). "The choice of reliability standard should always be related to the validity requirements imposed on the research results, specifically to the costs of drawing wrong conclusions" (Krippendorff, 2004, p. 242).

This study utilized intrarater and interrater reliabilities to focus on the three types of reliability. There are different coefficients to calculate reliability. The Cohen's kappa is a widely used reliability coefficient within content analyses (Neuendorf, 2002). However some criticize that the Cohen's kappa "is concerned with the two individual observers, not with the populations of data they are observing, which ultimately is the

focus of reliability concerns" (Krippendorff, 2004, p. 248). There are many other coefficients to look at reliability, including percent agreement, Holsti's method, Krippendorf's alpha and Scott's pi (Neuendorf, 2002). Two different reliability coefficients were calculated for this study.

The percent agreement coefficient was used for the intrarater reliability. The percent agreement coefficient represents the number of agreements divided by the number of units coded (Neuendorf, 2002). This coefficient is sometimes referred to as crude agreement (Neuendorf, 2002). The representative formula for percent agreement is as follows:

$$PA_o = A/n$$

In the formula above the PA_o represents the observed proportion of agreement, A represents the number of agreements, and n represents the number of coded.

The Holsti's method calculated the interrater reliability. Holsti's method, a commonly used coefficient for reliability, looks at the agreement between multiple coders (Neuendorf, 2002). The representative formula for Holsti's method is as follows:

$$PA_o = 2A/(n_A + n_B)$$

In the formula above PA_o represents the observed proportion of agreement, A represents the number of agreements between two different coders, and $n_A \; and \; n_B$ represent the number of units coded by the different coders (Neuendorf, 2002). I set the reliability level for this study at 80% as it has been accepted in most contexts (Neuendorf, 2002).

I was responsible for the data collection in this study and one additional coder was utilized to calculate interrater reliabilities. Intrarater reliability requires the coder to recode a set of data at a different point in time (Neuendorf, 2002). I originally coded the

due process hearing decisions during the months of November and early December 2015. A month later, in January 2016, I recoded a random sample of 10 cases to look at degree of agreement. Each of the 119 decisions has a number assigned to it. I used a random selection website in order to generate the random numbers. That website is randomizer.com. The website is a free product offered by Research Randomizer, a service offered by the Social Psychology Network. The website was developed for researchers, students, and others interested in generating sets of random numbers. The Social Psychology Network is a website maintained by Wesleyan University that is dedicated to psychological research and teaching; the site is supported in part by the National Science Foundation (Plous, 2015).

I used percent agreement to look at intrarater coding. The representative formula for percent agreement is as follows: $PA_o = A/n$. The calculation was the following:

$$PA_o = A/n = 166/174 = .971$$

The intrarater score was .971. The score represented that 97.1 % of my January 2016 recoding agreed with my original coding from December 2015. Based upon the reliability scoring and agreement of over 80% the results from this study are reliable.

I enlisted the assistance of another coder to determine an interrater reliability. The second coder was a graduate student with experience in the language of special education and special education law. I trained the graduate student on the coding scheme during the month of January and provided him with 10 due process hearing decisions that were randomly selected from the Research Randomizer website. I used Holsti's method to look at interrater reliability. The representative formula for Holsti's method is as follows: $PA_o = 2A/(n_A + n_B)$.

Below is my calculation of reliability:

$$PA_o = 2A/(n_A + n_B) = 2(175)/(219+219) = .845.$$

The interrater score was .845. There was an 84.5% agreement between me and the other coder. Based upon the reliability scoring and agreement of over 80% the results from this study are reliable.

CHAPTER 4

RESULTS

This study provides a critical examination of Maryland special education due process hearings for fiscal school years 2010 through 2014, seeking to point out any potential problems within the system of due process hearings. This study addresses the following research questions:

- Who participated in Maryland special education due process hearings during the fiscal school years 2010-2014?
- How successful are Maryland parents at due process hearings?
- Do parents with more capital have better success at due process hearings?

Who participated in Maryland special education due process hearings?

Pursuant to IDEA the school district or the parent can request special education due process hearings (20 U.S.C. §1415). This research question captured an overview of the demographic and other relevant information to describe who participated in due process hearings within the State of Maryland. There were 119 hearing decisions that were analyzed from the time period covered by this study. The hearing decisions were downloaded from the Maryland Department of Education website. The website referenced 123 hearings held during Fiscal Years 2010 through 2014. Four of the cases listed on Maryland's website had no decision attached because they could not be sufficiently redacted to obscure the identity of the students involved in the cases. Those four cases were not included in the 119 cases. Maryland parents filed 103 (87%) of the 119 cases. The remaining 16 (13%) cases were filed by the school district. The majority

of the complaints were filed in response to the parent requesting an Independent Education Evaluation (IEE).[3] Other complaints involved hearing requests to obtain consent to evaluate or initially evaluate a student.

School District

The data revealed that approximately 53 (44%) of the cases involved parents and students zoned for Montgomery County Public Schools. Based on the data, 68% of the cases came from school districts with a median household income of more than $73,000. The smallest number of cases came from the following school district zones: Allegany County, Cecil County, Carroll County, Queen Anne's County, and Wicomico County. One decision involved the Maryland State Office of Infants and Toddlers.[4] There were several school districts in Maryland that did not have any hearing decisions including: Calvert County, Caroline County, Charles County, Dorchester County, Garrett County, Harford County, Kent County, Queen Anne's [County], Somerset County, St. Mary's County, Talbot County, Washington County, Somerset County, and St. Mary's County. Data regarding the frequency of the school districts involved in the hearing decisions is summarized in Table 4-1.

[3] Pursuant to IDEA regulations 34 C.F.R Part 300.502 the parent of a student with a disability has the right to request an independent educational evaluation at public expense. Upon receipt of the request, the school district has to without delay grant the evaluation at public expense or file a due process complaint showing that the school's evaluation is appropriate.

[4] The Maryland State Office of Infants and Toddlers is a division that implements special education services of Infants and Toddlers pursuant to of IDEA.

Table 4-1.

Maryland Hearing Frequency Based on the School District
Fiscal Years 2010-2014

School District	Frequency	Proportion of the Decisions
Allegany County	1	1%
Anne Arundel County	7	6%
Baltimore County	8	7%
Cecil County	1	1%
Carroll County	1	1%
Baltimore City	9	7%
Frederick County	4	3%
Howard County	15	13%
Maryland State –Infants Toddlers Division	1	1%
Montgomery County	53	44%
Prince George County	13	11%
Queen Anne County	1	1%
Wicomico County	1	1%
Worcester County	4	3%

n = 119

Data summarizing the enrollment of students with disabilities for all of the school districts involved in the hearing decisions are shown in Table 4-2.

Table 4-2

Enrollment of Maryland Students with Disabilities (IDEA) by School District: Fiscal Year 2011-2012

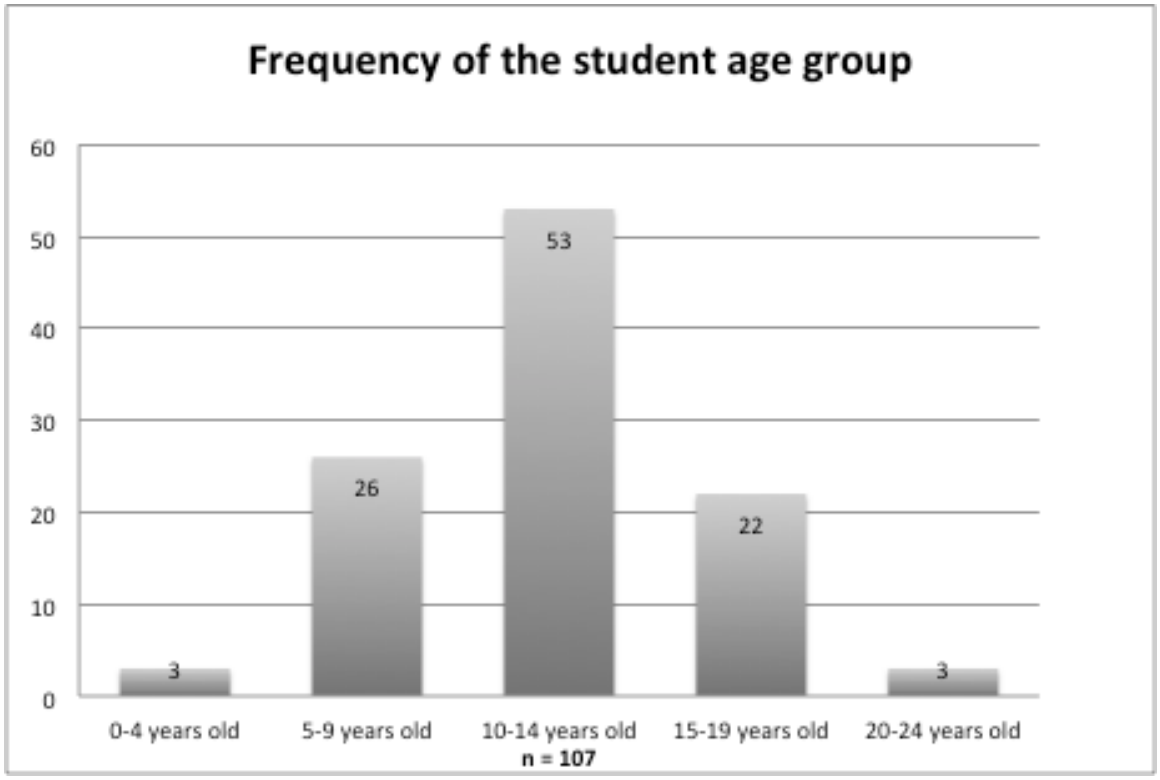
School District	Student Enrollment	# Students with Disabilities (IDEA)	% Students with Disabilities (IDEA)	% Enrollment of Male Students in the District	% Enrollment of Male Students Served under IDEA	% Enrollment of Female Students in the District	% Enrollment of Female Students Served under IDEA	% of Free and Reduced Price Lunch (FRPL)
Allegany	8,946	1,189	13.8	52.3	62.7	47.7	32.8	53.6
Anne Arundel	70,968	6,342	9.5	51.3	70.2	49	29.8	31.2
Baltimore City	84,521	12,630	15.4	50.7	68	49.3	32	84
Baltimore County	105,732	11,566	11.5	51.1	68.6	48.9	31.4	44.7
Carroll	28,710	3,077	11.3	51.9	65.5	48.1	34.5	16
Cecil	15,878	1,815	12	52	68.3	48	31.7	40.9
Frederick	40,485	3,800	10	51.5	70.6	48.5	29.4	23.2
Howard	51,591	4,037	8.4	52	71.5	48	28.5	17.1
Montgomery	147,033	15,011	10.6	51.3	69.6	48.7	30.4	32.2
Prince George	130,165	13,946	11.2	51.2	69.6	48.8	30.4	55.3
Queen Anne	7,726	927	12.8	51.5	67.9	48.5	32.1	25.6
Wicomico	14,533	1,576	11.4	51.7	71.3	48.3	28.7	56.7
Worcester	6,687	741	11.9	51.6	65.5	48.4	34.5	43

Source: U.S. Department of Education, Office of Civil Rights (2012)

Age

Of the 119, 107 decisions reported the age of the students involved in the cases. Additionally, 50% of the cases involved students who were between the ages of 10 and 14. The smallest number of decisions came from the age groups 0 to 4 and 20-23. Data regarding the age of the students that were involved in due process hearing decisions are shown in Figure 4-1.

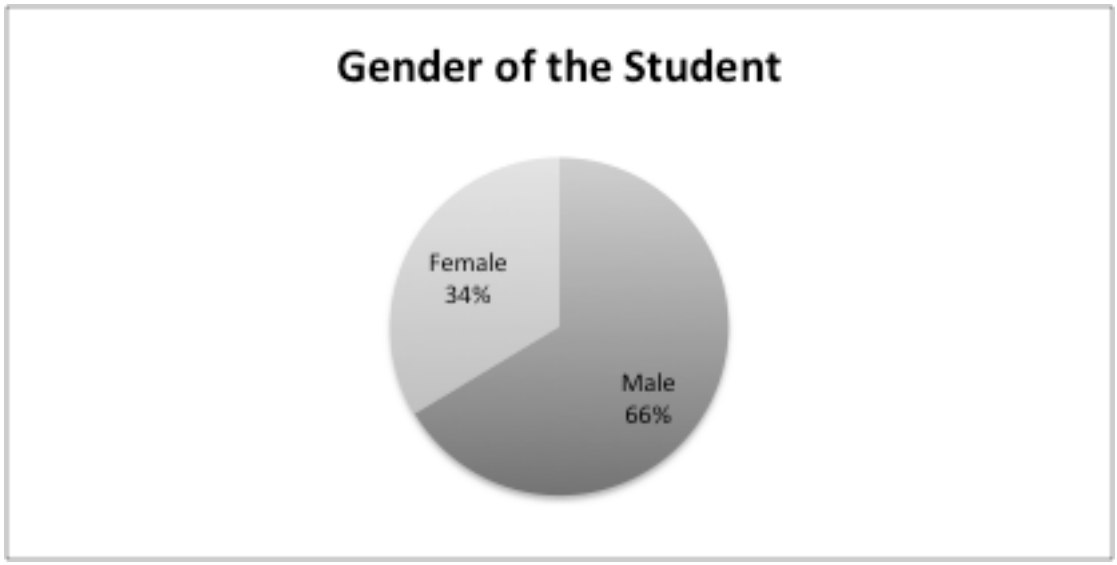
Figure 4-1
Age of Students Involved in Maryland Special Education Due Process Hearings
Fiscal Years 2010-2014



Gender

Of the 119 decisions, 116 reported the gender of the students involved in the cases. Of the 116, 77 (67%) of the cases involved students that were male and 39 (34%) of the cases involved students that were female. Data regarding the gender for the participants are reported in Figure 4-2.

Figure 4-2
Gender of Students Involved in Maryland Special Education Due Process Hearings
Fiscal Years 2010-2014



Type of School

Of the 119 decisions, 117 indicated the type of school the student attended. Of the 117, 66 (56%) cases involved students attending public schools; 46 (39%) cases involved students in private schools; 28 (24%) cases involved students parentally placed at private schools; 18 (15%) cases involved students placed at private school by their school district; and 5 (4%) cases involved students that were at home and not attending school.

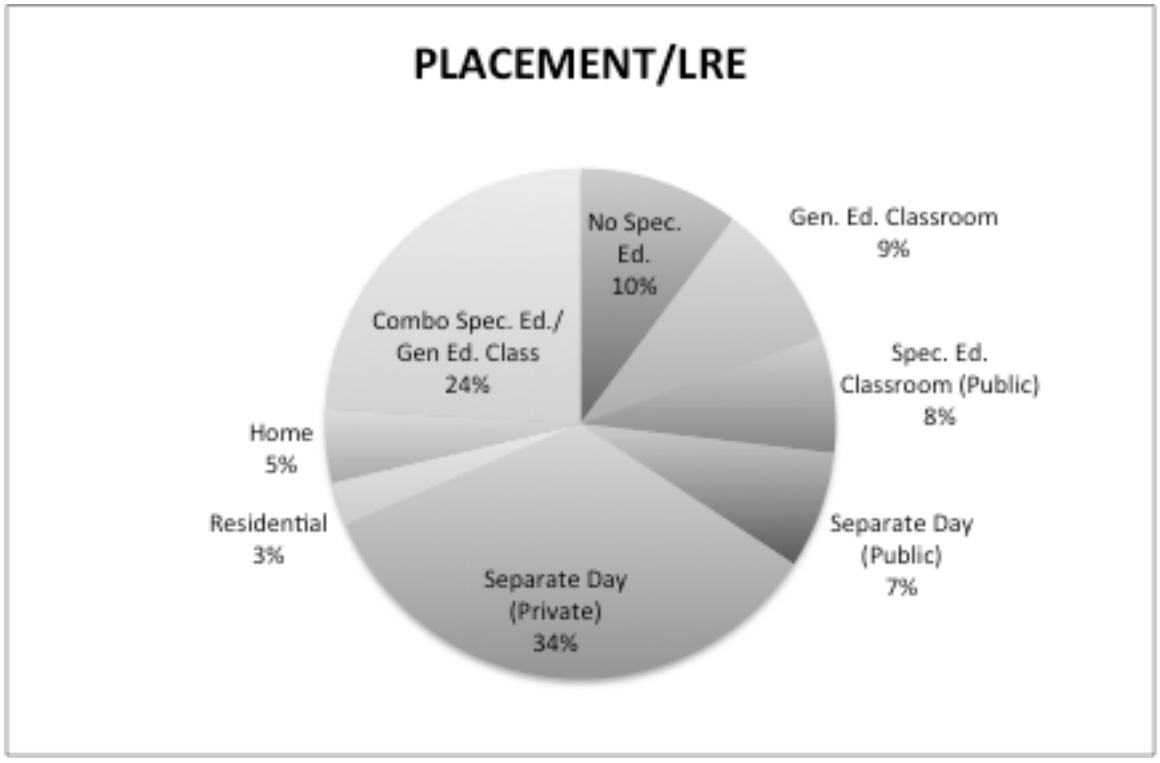
Placement/LRE

Of the 119 decisions, 108 indicated the type of special education placement/least restrictive environment or the type of classroom setting of the student at the time the hearing was held. Of the 108, 37 (34%) cases involved students with a separate day private school placement and 26 (24%) cases involved students with a combination special education and general education classroom placement. The fewest number of

cases 3 (3%) came from cases that involved students in a residential classroom setting. Data regarding the placement/least restrict environments of the students involved in special education hearing decisions are summarized in Figure 4-3.

Figure 4-3

Placement/Least Restrictive Environment of Students
Maryland Special Education Due Process Hearings
Fiscal Years 2010-2014



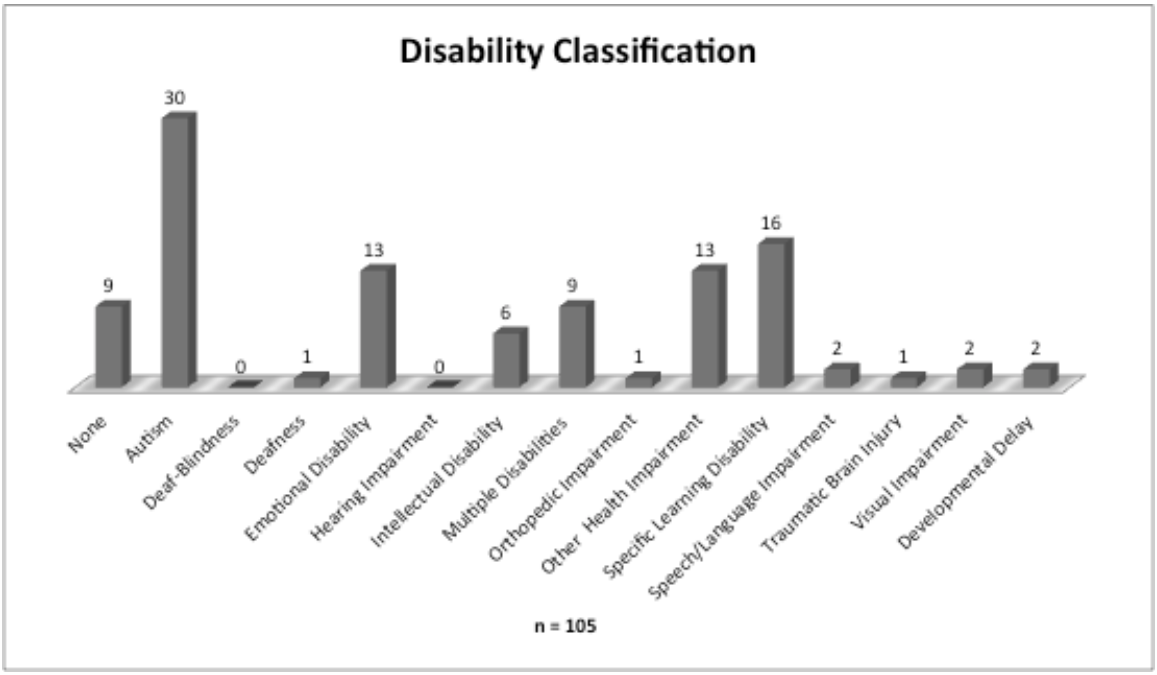
Disability Classification

Of the 119 decisions, 105 indicated a disability classification for the student involved in the cases. An analysis of the students' disability classifications revealed that disputes related to students with autism spectrum disorder (ASD) represented the largest percentage of the hearing decisions that reported disability classification. Overall, 30 of the 105 cases (29%) of the involved students with ASD as their disability and 16 of the

105 cases (15%) indicated the disability of Specific Learning Disability. The disabilities of deaf-blindness and hearing impairment were not indicated within the 105 cases. The disabilities of deafness, traumatic brain injury, and orthopedic impairment were indicated in the smallest percentage of the hearing decisions. Data regarding the frequency of the disability classifications involved in the hearing decisions are summarized in Figure 4-4.

Figure 4-4

Disability Classifications of Students
Maryland Special Education Due Process Hearings
Fiscal Years: 2010-2014



Party Representation

At the 119 hearings parents were represented by attorneys or advocates in 75 (63%) cases. It should be noted that of the 75 cases, 73 involved attorney representation and 2 cases involved advocate representation. The majority of the attorney/advocate represented cases involved hearings from Montgomery County Public Schools. In Montgomery County, 36 of the 53 cases from that district involved included an

attorney/advocate. In several school districts, all cases from that school district involved an attorney/advocate. Data regarding the frequency and percentage of the attorney/advocate representation are based on school district as seen in Table 4-3.

Table 4-3

Attorney/Advocate Representation Based on School District
Fiscal Years 2010-2014

School District	# of due process decisions from the school district (n=119)	# of parents represented by an attorney/advocate in school district (n =75)	% of the parents represented by attorneys/advocate in the school district
Allegany	1	1	100.00%
Anne Arundel	7	3	42.86%
Baltimore City	8	4	50.00%
Baltimore County	1	1	100.00%
Carroll	1	1	100.00%
Cecil	9	3	33.33%
Frederick	4	4	100.00%
Howard	15	9	60.00%
Maryland State-Infants Toddlers Division	1	1	100.00%
Montgomery	53	36	67.92%
Prince George	13	11	84.62%
Queen Anne	1	1	100.00%
Wicomico	1	0	0.00%
Worcester	4	0	0.00%

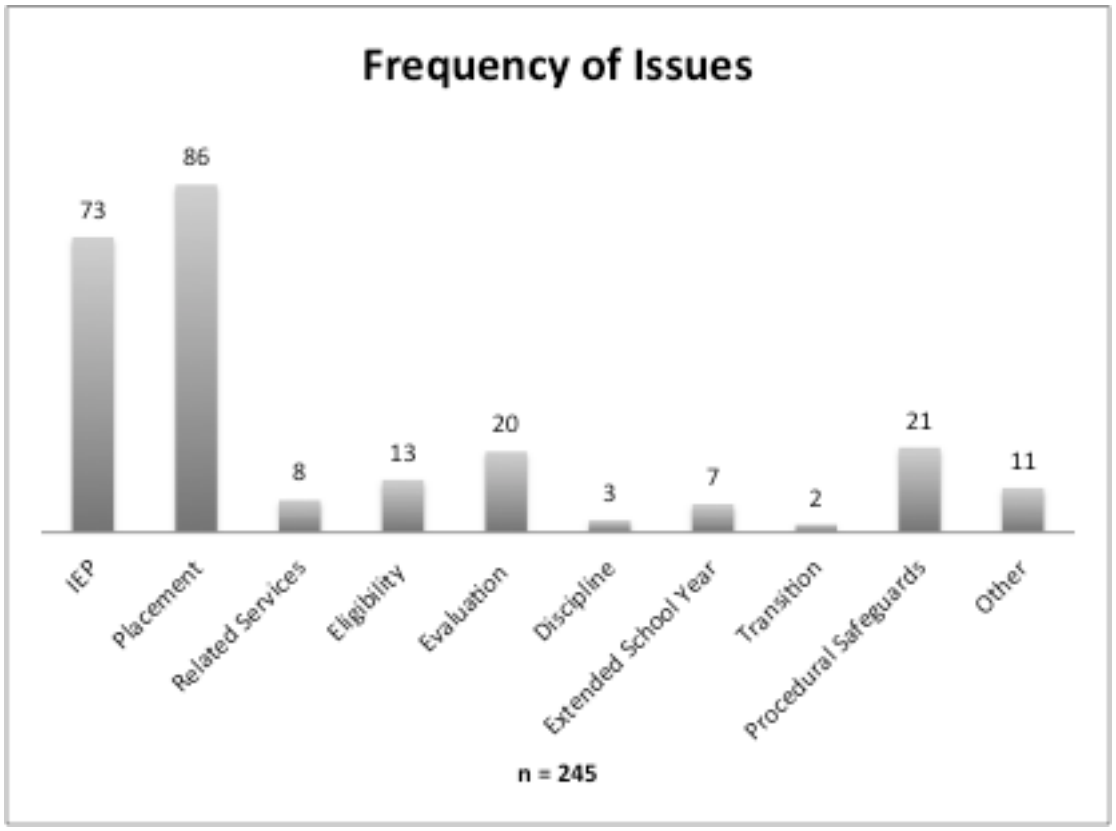
Issues

Within the 119 hearing decisions there were 245 issues. Many cases cover multiple issues. An analysis of the issues found that the most common issues challenged were the IEP and placement. Within the decisions, 73 of the cases involved an issue related to the IEP and 86 of the cases involved an issue of placement. The issues of IEP and placement were frequently addressed in the same hearing; 59% of the cases involved

issues of both IEP and placement. Data regarding the number of cases that involved specific issues are in Figure 4-5.

Figure 4-5

Frequency of Due Process Hearing Decision Issues
Fiscal Years 2010-2014



Parent Witnesses and Exhibits

In almost 8% of the cases, the parent did not call any witnesses to testify at the hearing. Data regarding the number of witnesses the parent called to testify at the hearing granted are presented in Table 4-4 below.

Table 4-4

Number of Witnesses Testifying for the Parents
Fiscal Years 2010-2014

# of witnesses the parent called to testify	Frequency of the decisions	% of the decisions
None	9	7.69%
1 to 2	37	31.62%
3 to 4	24	20.51%
5 to 6	19	16.24%
7 to 8	16	13.68%
9 to 10	8	6.84%
11 to 12	1	0.85%
13 to 14	2	1.71%
15 to 16	1	0.85%

n = 117

In 24% of the cases, the parent did not present any exhibits into evidence at the hearing. Data regarding the number of exhibits the parent presented at the hearing are detailed in Table 4-5.

Table 4-5

Number of Exhibits Presented by the Parents at the Hearing
Fiscal Years 2010-2014

# of exhibits presented by the parent	# of Hearings	% of Hearings
0	26	24.07%
1-5	6	5.56%
6-10	10	9.26%
11-20	17	15.74%
21-50	23	21.30%
51-80	15	13.89%
81-120	6	5.56%
121-200	3	2.78%
200-250	2	1.85%

n = 108

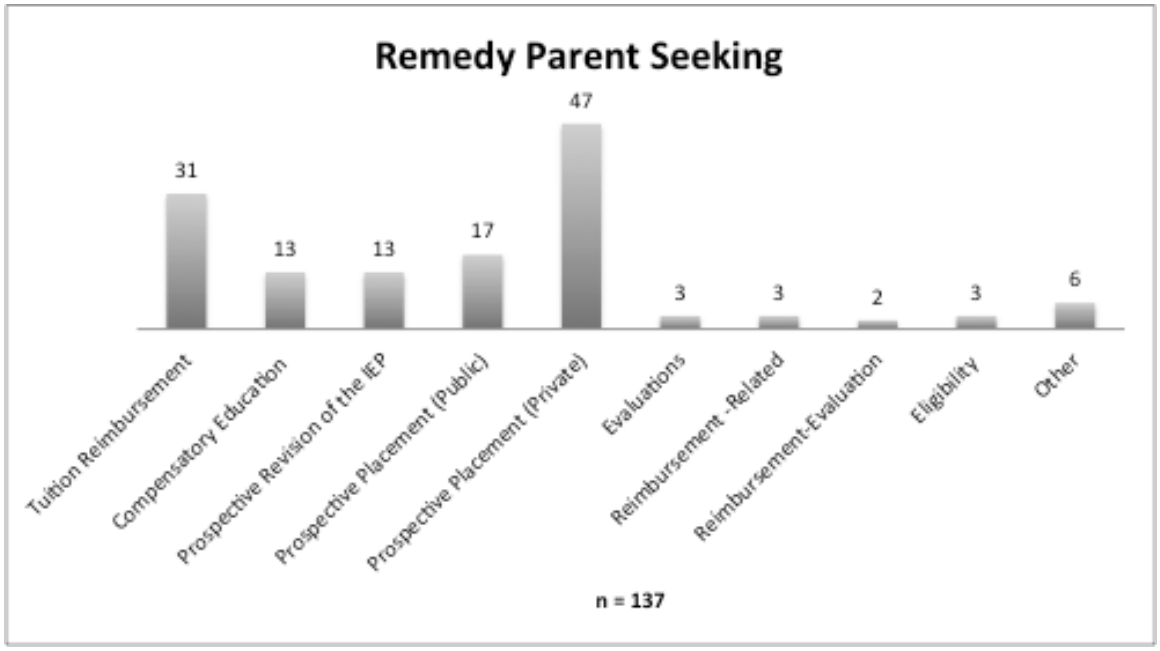
How successful are Maryland parents at due process hearings?

Overall the parent prevailed in 16 of the total 119 decisions, giving them an overall 13% prevail rate and the school district an overall 87% prevail rate. Of the 16 parent prevailing cases, 10 were complete wins for the parents and 6 were partial wins. Within the 16 cases that parents won, 5 involved students with Autism. The parents filed 103 of the 119 cases. The parent was the prevailing party in only 15 of the 103 cases filed, giving the parent a prevailing party rate of approximately 15% for cases filed by the parent. The school district filed 16 of the 119 cases. The school district was the prevailing party in 15 of the 16 cases filed, giving the school district a 93% prevailing party rate for case filed by the school district.

An analysis of the remedies sought by the parents at the hearing found that the most common remedies sought by the parent were tuition reimbursement and private school placement. In 31 of the cases parents were seeking reimbursement for tuition paid for private school placements. In 46 of the cases parents requested that the impartial hearing officer issue an order for a prospective placement at a private school. Less common remedies requested during the time period of this study were: evaluations, reimbursement for related services, reimbursement for evaluations, and orders of eligibility. Data regarding the remedies that the parent was seeking in the due process hearing decision are summarized in Figure 4-6.

Figure 4-6

Frequency of the Remedies Parent Seeking
Fiscal Years 2010-2014

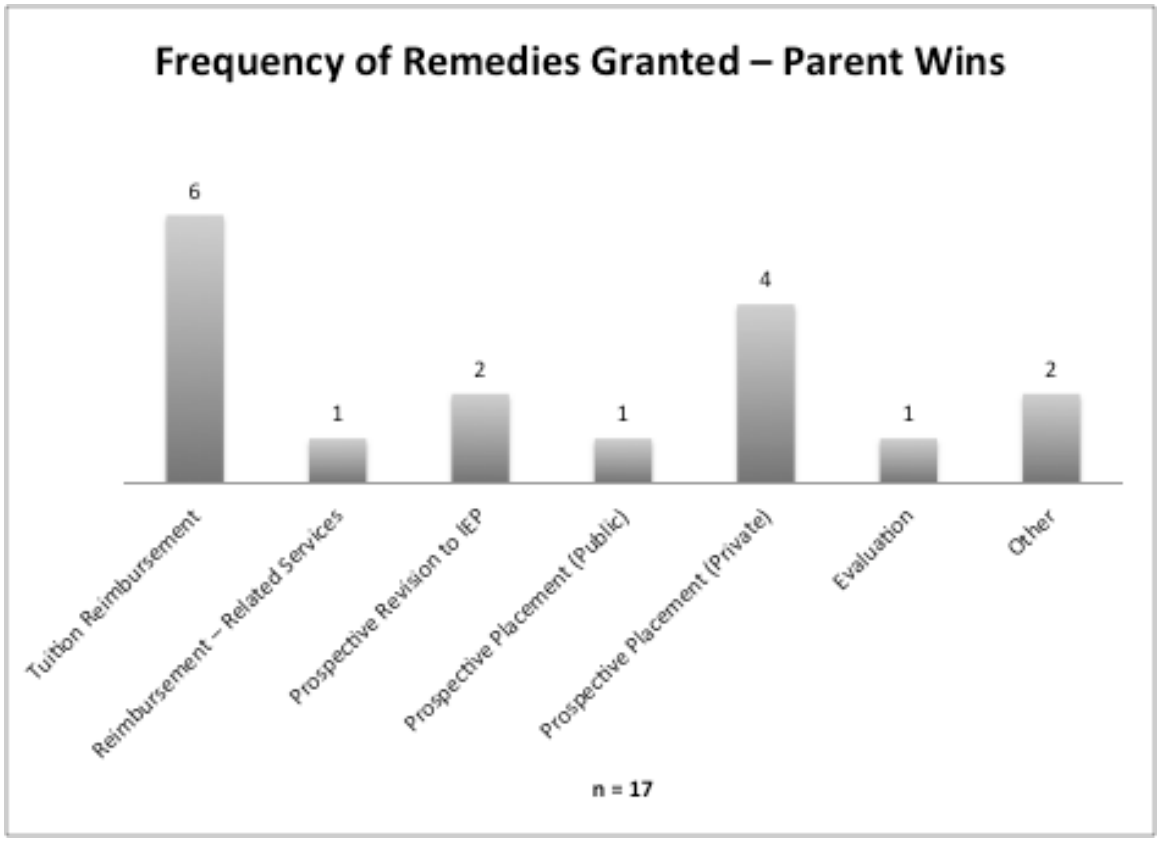


An analysis of the remedies awarded to prevailing parents found that the most common remedies granted by the due process hearing decisions were tuition reimbursement for private school and prospective placement. For the purpose of this section, partial and

complete wins are combined together. Of the 16 winning cases, 6 decisions granted tuition reimbursement as a remedy and 4 decisions granted a prospective private placement. Data regarding the remedies granted by hearings officer in the decisions are presented in Figure 4-7.

Figure 4-7

Frequency of Remedies – Parent Wins
Fiscal Years 2010-2014



Profile of the Prevailing Parties

As indicated above, parents prevailed in 16 cases. Parents were represented by attorneys in all 16 of the prevailing cases. Of the 16 prevailing cases, 25% were in favor of parents and students in the Montgomery County School District. Data regarding the number of parents that won based on school district are summarized in Table 4-6.

Table 4-6

Number of Prevailing Parents Based on School District
Fiscal Years 2010-2014

School District	# of hearings won by the parent	% of hearings won by the parent
Allegany County	1	6.25%
Baltimore County	2	12.50%
Carroll County	1	6.25%
Baltimore City	2	12.50%
Frederick County	2	12.50%
Howard County	1	6.25%
Montgomery County	4	25%
Prince George's County	3	18.75%

n = 16

Data regarding the gender of the students involved in the parent prevailing cases are shown in Table 4-7.

Table 4-7

Gender of Students Involved in the Parent Prevailing Hearings
Fiscal Years 2010-2014

Gender of the Student	# of prevailing parents	% of prevailing parents
Male	10	66.67%
Female	5	33.33%

n = 15

The 16 hearings that parent prevailed in represent students in 7 disability classifications. Of the 16 prevailing cases, 33% involved students with Autism/ASD.

Data regarding the disability classification of the students involved in the parent prevailing cases are summarized in Table 4-8.

Table 4-8
Disability Classifications of the Students in the Parent Prevailing Hearings Fiscal Years 2010-2014

Disability classification of the student	# of prevailing parents	% of prevailing parents
None	1	6.67%
Autism	5	33.33%
Intellectual Disability	2	13.33%
Multiple Disabilities	1	6.67%
Orthopedic Impairment	1	6.67%
Other Health Impairment	1	6.67%
Specific Learning Disability	4	26.67%

n = 15

It should be noted that one of the prevailing cases did not provide the disability classification of the student.

The majority of the students involved in the prevailing parent hearings were in elementary schools. Data regarding the grade of the students involved in the parent prevailing cases are given in Table 4-9.

Table 4-9

The Grade of the Students in the Parent Prevailing Hearings
Fiscal Years 2010-2014

Grade of the student	# of prevailing parents	% of prevailing parents
Elementary School	11	68.75%
Middle School	4	25%
High School	1	6.25%

n = 16

The majority of the students involved in the prevailing parent hearings were attending private school. Data regarding the type of school the students involved attended in the parent prevailing cases are recorded in Table 4-10.

Table 4-10

Type of School Attended in the Parent Prevailing Hearings
Fiscal Years 2010-2014

Type of school the student is attending	# of prevailing parents	% of prevailing parents
Public	6	37.50%
Private-Parentally Placed	7	43.75%
Private-School Placed	3	18.75%

n = 16

The greatest number of the students, in the prevailing parent hearings, were in a separate day program placement/least restrictive environment. Data regarding the placement/least

restrictive environment of the students in the parent prevailing cases are summarized in Table 4-11.

Table 4-11

Least Restrictive Environment/Placement of the Students
Parent Prevailing Hearings
Fiscal Years 2010-2014

LRE/Placement of the student	# of prevailing parents	% of prevailing parents
No Special Ed.	1	6.67%
General education classroom	1	6.67%
Separate Day Program	10	66.67%
Combination Special Ed/General Ed Classroom	3	20%

n = 15

The majority of the hearings, which parents prevailed in involved issues, related to IEP and placement. Data regarding the issues involved in the parent prevailing cases are presented in Table 4-12.

Table 4-12

Issues within the Parent Prevailing Hearings
Fiscal Years 2010-2014

Issues at the hearing	# of prevailing parents	% of prevailing parents
IEP	13	81.25%
Placement	15	93.75%
Related Services	1	6.25%
Evaluation	1	6.25%
Procedural Safeguards	3	18.75%
Other	2	12.50%

n = 16

The majority of the hearings in which parents prevailed involved the parent requesting tuition reimbursement remedy. Data regarding the requested remedies involved in the parent prevailing cases are shown in Table 4-13.

Table 4-13

Remedies Requested in the Parent Prevailing Hearings
Fiscal Years 2010-2014

Remedies requested at the hearing	# of prevailing parents	% of prevailing parents
Tuition Reimbursement	7	43.75%
Compensatory Education	1	6.25%
Prospective revision of the IEP	2	12.50%
Prospective Placement-Public	3	18.75%
Prospective Placement-Private	6	37.50%
Evaluations	1	6.25%
Reimbursement - related services	3	18.75%

n = 23

Do parents with more capital have better success at due process hearings?

This study examined whether parents with more capital were more successful at due process hearings. It attempted to determine the relationship between outcome and capital, net of other factors. I examined three forms of capital: economic, social and cultural. The variables that served as proxies for social and cultural capital were the number of witnesses the parent called to testify at the hearing and the number of exhibits presented by the parent at the hearing. The variables that served as the proxy for economic capital were parent representative, type of school and school district. For the purpose of statistical relationship analysis, the school district variables were collapsed

into two categories: districts with a median household income under $73,000 and districts with a median household income over $73,000. The types of school were also collapsed into two categories: private school- parentally placed and public/home/private-school placed.

Pearson Chi-Square

In order to determine if there was a relationship between a prevailing outcome and capital I began by utilizing a chi-squared test. Chi-squared analysis determines if there is a significant difference between the expected frequencies and the observed frequencies in one or more categories. Chi-squared testing indicates if a relationship exists between variables, however it does not provide the strength of the relationship. Chi-squared analysis was conducted with the outcome of the hearing as the dependent variable and the variables associated with capital as the independent variables. For chi-squared testing my null hypothesis is that there is not a relationship between the prevailing outcome and the independent variable. Chi-squared testing results are summarized in Table 4-14.

Table 4-14

Chi-Square values for the outcome of hearings

Capital Variable	Chi-square	DF*	p
Parent Representative	10.84	1	0.001
School District	2.78	1	0.096
Type of School	4.2	1	0.04
# of witnesses that testified for the parent	21.36	8	0.006
# of exhibits the parent presented at the hearing	14.89	8	0.061

*DF, degree of freedom

As the table represents, the null hypothesis is rejected, because in several of the instances variables are significant at the .05 significance level, including parent representative, type of school and number of witnesses that the parent called at the hearing. The null hypothesis is accepted for the variables: number of exhibits called by the parent and school district. Chi-squared testing does not determine the extent of the relationship, therefore further analysis was warranted. Logistic regression was utilized to look at the extent of the relationship between the significant variables and the outcome at a due process hearing.

Logistic Regression

Chi-square testing determines if there was a relationship between some of the variables and outcome. Based on the chi-squared testing there appears to be some sort of relationship between the outcome of a hearing and parent representative, the type of

school and number of witnesses the parent called to testify at the hearing. Logistic regression allowed more insight in these relationships. For the purpose of regression analysis, the school district variables were collapsed into two categories: districts with a median household income over $73,000 and districts with a median household income under $73,000. The types of school were also collapsed into two categories: private school- parentally placed and public/home/private-school placed. I began my analysis by developing the null model for outcome. Logistic regression for the null model for outcome yielded a log likelihood of -46.97719. Next, I conducted logistic regression of the full model including all variables related to capital except for parent representative.[5] The full model included the variables: number of witnesses called by the parent, school district, type of school and number of exhibits presented by the parent. The log likelihood for the full model was -31.680287. Although the log likelihood of the full model is closer to zero than the null model, the full model had two variables that were not significant (number of exhibits and type of school). In order to create an alternative model, I refined the full model by dropping the least significant variable, which was number of exhibits the parent submitted at the hearing. By dropping the least significant variable, the variable of type of school became significant. The alternative model log likelihood was -38.314356 and all variables in the model were significant. A

[5] Based on chi-square analysis and descriptive statistics, inferences were made that not having an attorney perfectly predicts the parent's failure at a due process hearing. Although it was conducted, it was not necessary to conduct a regression analysis to look at outcome as predicted by parent representative because it was clear that the party representative variable was a perfect predictor. A subsequent regression analysis using parent representative as a predictor of a successful outcome confirmed the inferences made. The results of the analysis were null because it is a perfect predictor, therefore the variable of parent representative was eventually dropped from the full model.

comparison of the alternative model to null model shows that the log likelihood of the alternative (-38.31) is closer to zero than the null model (-46.98), therefore the alternative model is a better fit. The results of the analysis for the different models are summarized in Tables 4-15, 4-16 and 4-17.

Table 4-15

Logistic regression log likelihood results for models

	Log Likelihood
Null Model	-46.98
Full Model	-31.68
Alternative Model	-38.31

Table 4-16

Logistic regression coefficients results for full vs. alternative model

	Full	Alternative Model
# of witness-parent	0.54*	0.49 **
School district	-1.90*	-1.70*
Type of school	1.42	1.43*
# of exhibits-parent	.01	
Constant	-2.90	-2.68

*Notes: (*p < .05. **p < .01)*

Table 4-17

Logistic regression odds ratio results for alternative model

	Odds Ratio	
# of witness-parent	1.62	**
School district	0.18	*
Type of school	4.17	*

*Notes: (*p < .05. **p < .01)*

As seen by the tables, there is a relationship between the outcome of the hearing and number of witnesses called by the parent at the hearing, school district, and type of school. The alternative model alternative model presented is a good model. All variables

are significant at the 0.05 level, therefore the variables contributes significantly to the prediction of the outcome variable.[6] As shown by table 4.18, controlling for type of school and school district, if there is a one unit increase in the number of witnesses called at the hearing, there will be a 1.6 times increase in the likelihood of the parent having a successful outcome in contrast to those who are not in that group. Controlling for number of witnesses and type of school, parents that have a student in a school district that has a median household income above $73,000, have a 0.18 increase in the likelihood of success in contrast to those who are not in that group.[7] Controlling for school district and number of witnesses, parents that have parentally placed and funded their student in a private school placement prior to the hearing have a 4.17 times increase in chance of likelihood of success in contrast to those who are not in that group.

The equation for logistic regression analysis is: $logit(p) = b_0 + b_1X_1 + b_2X_2 + b_3X_3 + \cdots b_kX_k$. Based on the coefficients in table 4-18, the equation for my alternative model is: $logit(p) = -2.68 + .49\ (\#\ of\ witnesses) - 1.70\ (School\ District) + 1.43$ (Type of School)

[6] It should be noted that one of the variables, number of witnesses, is also significant at the 0.01 level.

[7] It is important to note that the school district variable has a negative relationship to outcome. As shown in Table 4- 17, the regression coefficient for school district is -1.90. Keeping in mind that the school district variable was collapsed into two categories: school districts that have a median household income above $73,000 and school districts that have a median household income below $73,000, the negative relationship can be the result of the data being skewed. Of the 119 cases analyzed for this study, 81 (68%) came from school districts with a median household income of above $73,000. Of those 81 cases, Montgomery County Public Schools represented over half of the 81 cases.

CHAPTER 5

SUMMARY, DISCUSSION, RECOMMENDATIONS, AND CONCLUSION

I. Summary

Purpose

Students with disabilities have historically been discriminated against, leading to the creation of law and policy that was supposed to alleviate inequalities. Since 1973, the Individuals with Disabilities Education Act (IDEA) has outlined the substantive and procedural rights of eligible students with disabilities (20 U.S.C. 1400, 2004). The IDEA requires the school districts to provide eligible students with disabilities with a free appropriate public education (FAPE), however the context of the law does not provide school districts any substantive standard to measure the adequacy of the services (Osborne, 2009). Disagreements over student services have lead to conflict between the school and the home. Pursuant to IDEA, parents can utilize one of three complaint mechanisms to attempt to resolve conflicts with the school. Parents have the option of a state complaint, mediation, or due process hearing (20 U.S.C. 1400, 2004). Historically, these complaint mechanisms were put in place to provide the parents a vehicle to participate in the educational planning of their students. Over the decades parents have utilized due process hearings to resolve disputes with the school district. Researchers have developed negative opinions of the system of due process hearings and have called for changes.

Those who have studied due process hearings have argued that the disputes have a negative impact on the parties involved and are said to be unfair, costly, and time consuming (Coker, 2013; Kaufman & Blewett, 2012; Mueller, 2014; Pasachoff, 2011;

Pudelski, 2013). The purpose of this study was to examine parents' participation in due process hearings system in Maryland in order to point out potential problems with the system. Identifying potential problems could provide support for social change. The study examined the system by answering the following research questions:

- Who participated in Maryland special education due process hearings during the fiscal school years 2010-2014?
- How successful are Maryland parents at due process hearings?
- Do parents with more capital have better success at due process hearings?

Studies of special education litigation revealed that the school district typically wins in due process hearings (Newcomer & Zirkel, 1999; Zirkel & D'Angelo, 2002; Menacker, 1992, Maloney, 1995; Blackwell & Blackwell 2015, Mckinney & Schultz, 1996; Cope-Kasten, 2013; Kuriloff, 1985; Chambers et al, 2003; Rickey, 2003). However, some earlier studies showed that parents were the prevailing party in a majority of due process hearings (Sultana, 1997; McKinney & Schultz, 1996). It is important to point out that the earlier studies were prior to significant amendments to the IDEA that changed the substance of due process hearings. Studies of special education due process hearings revealed that the placement of students with disabilities is the most common issue disputed during due process hearings (Rickey, 2003; Blackwell & Blackwell, 2015; Sultana, 1997). The IEP is the second most common issue litigated at due process hearings (Sultana, 1997). Tuition Reimbursement, compensatory education and prospective private school placement are the most common remedies granted to parents if they prevail during a hearing (Blackwell & Blackwell, 2015; Mayes & Zirkel, 2001).

In the past, students with learning disabilities were involved in the greatest amount of special education disputes (Newcomer & Zirkel, 1999), however increasingly students with autism spectrum disorder (ASD) have been added to those numbers (Mueller & Carranza, 2011; Zirkel 2011b; Zirkel, 2002). Studies have shown that most due process hearings are concerned with male students (Newcomer & Zirkel, 1999; Rickey, 2003; Shuran & Roblyer, 2012). Parents from more wealthy school districts are more likely to request a due process hearing (Chambers et al., 2003). Studies show that parents are more likely to be successful at a due process hearing if they involve an attorney or advocate (Blackwell & Blackwell, 2015, Cope-Kasten, 2013).

Methodology

For the purposes of answering the research questions, a content analysis of special education due process hearing decisions from the State of Maryland was conducted to provide insight into the parents' participation in due process hearings. The coding scheme for the content analysis focused on demographic variables related to the parties, as well as other relevant data points. The coding scheme included the following demographic variables: age of the student, gender of student, disability classification of the student, grade of the student, type of school, school district, type of placement/LRE, hearing officer, fiscal year, parent representation, party requesting hearing, the number of witnesses testifying for the parent, number of exhibits submitted by the parent, the number of witnesses testifying for the school district, and number of exhibits submitted by the school district. Moreover, decision issues were coded using the following categories: IEP, Placement, Related Services, Eligibility, Evaluation, Discipline,

Extended School Year, Transition, Procedural Safeguards and Other. The coding scheme also focused on the prevailing parties, outcomes, and remedies requested and provided.

Interrater and intrarater coefficients were used to determine that the data collection for this study was reliable. The descriptive statistics summarized the characteristics of the participants involved in the hearings and provided the data to support findings related to the demographics of the participants of special education due process hearings in the State of Maryland. Additionally, the descriptive data provide support for arguments regarding how successful Maryland parents are during due process hearings. This study examines whether or not parents with more capital are more successful at due process hearings, therefore additional statistical analysis was needed to look for a relationship between capital and a parent's chances of winning. Considering that this study focused on economic, social and cultural capital, several of the variables acted as proxies for capital to serve as predictors. The variables school district, type of school and parent representative were used as proxies for economic capital. The variables number of witnesses called by the parent and number of exhibits presented by the parent are proxies for social and cultural capital. A chi-squared analysis of the variables revealed the variables that needed further exploration through regression analysis.

Findings

This examination focuses on 119 Maryland special education due process hearing decisions from fiscal years 2010 through 2014. The due process decisions were available to the public on the Maryland State Department of Education website. Data revealed that 44% of the cases involved parties from Montgomery County Public Schools. The second highest (13%) involved Howard County Public Schools. Of the 119 cases, 103 (87%) of

the cases were filed by the parent; 16 (13%) cases were filed by the school district. 50% of the cases involved students that were between the age of 10 and 14. 67% of the cases involved students that were male. 37% of the students involved in this analysis were in private day placements. An analysis of the issues found that the most common issues challenged were the placement and IEP. An analysis of the remedies awarded to prevailing parents found that the most common remedies granted were tuition reimbursement for private school and prospective placement into private schools. An analysis of the students' disability classifications revealed that disputes related to students with autistic spectrum disorder (ASD) represent the largest percentage of hearings.

Parents were not very successful at due process hearings in Maryland. Parents only prevailed in 16 of the overall 119, giving them a prevailing rate of 13%. The data revealed that parents with the economic capital to hire an attorney were more successful at their due process hearings. Attorneys represented the parents in all 16 winning decisions. Chi-squared testing found a relationship between the outcome of the hearing and the variables related to capital, warranting logistic regression to look at the extent of the relationship. Logistic regression analysis found a significant relationship between outcome and capital. More capital increases the parent's likelihood of being successful at a due process hearing.

II. Discussion

Maryland parents were active in special education due process hearings

Maryland parents are active in special education litigation. The State of Maryland is considered one of the most active in special education litigation (Zirkel & Scala, 2010, Zirkel & Johnson, 2011) and the results of this study provide a good overview of the participants in this form of litigation. From fiscal year 2010 through fiscal year 2014, there were 119 due process hearings. Parents requested 103 of the hearings that were held. That was 87% of the total cases. The school district requested the remaining 16 hearings (13%). The majority of due process hearings are requested by the parents (Zirkel, 2014a; Mueller & Carranza, 2011; Blackwell & Blackwell, 2015; Rickey, 2003; Newcomer & Zirkel, 1999; Cope-Kasten, 2013).

Montgomery County Public Schools parents were the most active in special education due process hearings; 53 (44%) of the cases involved parents and students zoned for Montgomery County Public Schools. There are 24 school districts in Maryland, but it is not surprising that Montgomery County has the largest participation. Montgomery County Public School District has a greater number of special education students than other school districts within the state. According to the United States Department of Education Office of Civil Rights (2012), Montgomery County Public Schools is the largest school district and has a total student enrollment of 147,033 students. 15,011 students of those students were served under IDEA. Montgomery County Public Schools students with disabilities represents 16% of all of the special education students in the State of Maryland (Maryland State Department of Education, 2014). The enrollment of students with disabilities served by IDEA for each school

district involved in due process hearings was shown in Table 4-2. According to Table 4-2, Prince George County Public Schools has the second largest enrollment of students served under IDEA (Office of Civil Rights, 2012); this district represented only 11% of the due process hearing decisions during the time period examined for this study.

The finding that Montgomery County parents participated in the largest percentage of hearings could be anticipated, as Montgomery County is one of the wealthiest counties in the State of Maryland. Research shows that parents from wealthier school districts filed more special education disputes (Chambers et al., 2003). The data regarding the median household and per capita personal income of the school district boundaries is summarized in Table 2-2. As shown in Table 2-2, Montgomery County, Maryland has the second highest median household income and has the highest per capita personal income. The higher income districts are more than four times as likely to have a due process hearing than the lower income districts (Chambers et al., 2003). There were several school districts in Maryland that did not have any hearing decisions including Calvert County, Caroline County, Charles County, Dorchester County, Garrett County, Harford County, Kent County, Queen Anne's County, Seed School of Maryland, Somerset County, St. Mary's County, Talbot County, Washington County, Somerset County, and St. Mary's County. The six poorest counties in Maryland have a median household income under $50,000. Of these six counties, four counties did not have any parents or school districts that participated in a due process hearing[8]; Caroline County, Dorchester County, Garret County, and Somerset County. The two least wealthy counties that did have parents that participated in special education due process hearings were Baltimore City and Allegany

[8] It should be noted that parents from these school districts might have filed complaints for due process, however none of the complaints were fully adjudicated with an actual hearing. The matter could have been resolved or settled prior to the scheduling of a due process hearing.

County. Parents from Baltimore City participated in 9 hearings. Parents from Allegany County participated in 1 hearing.

Male students represented 67% of the cases. This finding is consistent with other research related to gender and participation in a due process hearing. Research shows that male student participation makes up over half of special education litigation (Newcomer & Zirkel, 1999; Rickey, 2003; Shuran & Roblyer, 2012; Blackwell & Blackwell, 2015). This finding is not surprising since males made up the majority of the special education population in Maryland, as well as across the United States. According to the U.S. Department of Education, Office of Civil Rights (2012), during the 2011-2012 school year, 68% of the students receiving special education services under IDEA in the State of Maryland were male and 31.7% were female.

An analysis of the students' disability classifications revealed that disputes related to students with autism spectrum disorder (ASD) represent the largest percentage of the hearing decisions that reported disability classification. Legal disputes filed on behalf of students with ASD are one of the fastest growing areas of special education litigation (Zirkel, 2011b; Mueller & Carranza, 2011). This could be expected considering that the number of students with Autism Spectrum Disorder (ASD) served under IDEA is growing (U.S. Department of Education, 2014; White, 2014). Currently, specific learning disability is still the largest disability classification for students (U.S. Department of Education, 2014), therefore it not surprising that in this study students with the disability classification of specific learning disability was the second largest disability classification to participation in Maryland due process hearings.

Results show that 66 (56%) cases involved students attending public schools and 46 (39%) cases involved students in private schools. Results show that students whose placement/least restrictive environment was a separate day/private school placement represented the largest percentage of students at the hearings. 37 (34%) cases involved students with a separate day-private school placement.

An analysis of the issues found that the most common issues litigated were placement and IEP. 72% of the cases involved an issue of placement and 61% of the cases involved an issue related to the IEP. 59% of the cases addressed both issues of IEP and placement in the same hearing. This finding is consistent with the research of other scholars, referring to the most common issues in special education litigation. The results are consistent with previous findings by Zirkel (2014a, 2014b) that placement is one of the most commonly disputed issues. Zirkel's (2014a, 2014b) research indicated that compensatory education is also a commonly disputed issue, however this study did not find that compensatory education is commonly disputed within due process hearings in Maryland. The results in this study are more consistent with a recent study of Massachusetts due process hearing decisions (Blackwell & Blackwell, 2015), finding that the most common dispute issues during special education hearings are IEP and Placement.

Over the past decades, there has been very little research related to the most common remedies granted in hearing officer decisions. Studies show that tuition reimbursement is one of the most common remedies awarded to prevailing parents in special education litigation (Blackwell & Blackwell, 2015; Mayes & Zirkel, 2001). The most common remedies granted were tuition reimbursement and private school

placement. The results for common remedies are consistent with Zirkel's (2013) recent finding that tuition reimbursement is one of the most common remedies awarded to prevailing parents. Zirkel's (2013) research also found that awards of compensatory education were a common remedy, however the Maryland results do not reflect compensatory education as a common remedy.

Maryland parents were not very successful in due process hearings

My results revealed that Maryland parents were not very successful in due process hearings. Parents prevailed in only 16 of the 119 hearings giving them a 13% prevailing rate.[9] This result is consistent with other research. Overall, research shows that school districts prevail in special education litigation more than the parents (Newcomer & Zirkel, 1999; Menacker, 1992, Maloney 1995, Blackwell & Blackwell 2015, Mckinney & Schultz, 1996; Cope-Kasten, 2013; Kuriloff, 1985; Chambers et al, 2003; Rickey, 2003) leading to arguments that the due process system is unfair and highly skewed in favor of school districts (Cope-Kasten, 2013).

Parents prevailed in a very low number of cases; accordingly it warranted a closer examination of the demographics of the parents that did prevail. The major difference between the prevailing parents and the non-prevailing parents was the party representative. Results show that all winning parents were represented by an attorney. Prevailing parents had the economic capital to hire representation. Attorneys are expensive and can charge from $200 to $500 an hour (Tudisco, 2014; NOLO, 2015). Furthermore, in the group of prevailing parents the majority, 43% of the students were

[9] It should be noted that this prevailing rate could be considered lower since 6 of the 16 cases were partial wins for the parent. If partial wins are taken out, the parents only prevailed completely in 8% of the hearings.

attending private school in which they were placed and funded by their parents. The price of private school for a student with special needs is very expensive, and these parents had the income to afford it. The average cost of private school in the State of Maryland for the 2015-2016 school year is $11,843 (Private School Review, 2016); this average is among the 10 highest in the United States.

Parents with more capital are more successful at due process hearings.

Findings show that parents with more capital are more successful at due process hearings in the State of Maryland. My results are consistent with other research. Prior studies show that there is moderate correlation between the parent's chances of winning the hearing and the following variables: (1) parent having a lawyer, (2) closing the hearing to the public, (3) number of witnesses called, (4) number of exhibits presented, (5) quality of questions and (6) quality of the presentation (Kuriloff, 1985). Many of the variables in Kuriloff's study relate to economic, social, and cultural capital. For purposes of this study, the focus was the relationship between outcome and the parent having an attorney, the number of witnesses called by the parent at the hearing, the number of exhibits presented by the parents, the type of school and the school district. My results show that parents with more capital are more successful at due process hearings. Descriptive statistics, chi square testing and logistic regression analysis confirm that there is a relationship between the capital of the parents participating in due process hearing and the outcome of those hearings. There was a significant relationship between being successful at a hearing and whether or not the parent was represented by an attorney. All prevailing parents in the State of Maryland were represented by attorneys. This finding is consistent with the findings from studies in the states of Wisconsin, Minnesota, Iowa,

Illinois and Massachusetts where parents with an attorney had an increased likelihood of prevailing at a due process hearing (Archer, 2002; Cope-Kasten, 2013; Blackwell & Blackwell, 2015). Unbalanced results have been attributed to unequal access to attorneys (Blackwell & Blackwell, 2015). Additionally, the logistic regression alternative model revealed that significant relationships between a successful outcome and the number of witnesses called by the parent at the hearing, the type of school, and the school districts. An increase in the number of witnesses called by the parent to testify and the student attending a parentally funded private school prior to the hearing increased the likelihood of the parent having a successful outcome.

The intent behind special education due process hearings was parent involvement in the decision making of their children with disability. Results illustrate that parents are not that successful in the system of due process hearing and it favors parents with more capital. This is a problem in society that needs a solution to effect social change. It is troubling that only a small percentage of parents prevailed in due process hearings, it is even more troubling that not one parent in the State of Maryland prevailed at a due process hearing without the assistance of an attorney. The provision of due process hearing is a procedural safeguard for all parents of eligible student with disabilities and was not meant to provide relief only to parents with more capital, but it appears that is what happened in the State of Maryland during the fiscal school years 2010 through 2014.

The goal of due process hearings was to facilitate resolution and minimize conflict, however that is not occurring when there is a large group of parents that cannot win at a hearing. There is work to be done to identify the nature of the social changes

necessary to produce a just and democratic society. As it stands, this system does not appear to be just; therefore some changes might be necessary. One should not expect there to be a 50/50 chance of prevailing at a due process hearing for the parties, but one would expect parents to have more than a 13% prevail rate. Furthermore, one should expect at least one parent without an attorney could have won a due process hearing during that time period.

Although due process hearings are a form of special education litigation, it was not set up like the traditional legal system. The purpose behind the right to a due process hearing was parent participation. It was to allow the parent a voice in the educational planning of students with disabilities. It was seen as a way to resolve conflicts and try to minimize the negative impact of the conflict. In a study of impartial hearing officers, one of the hearing officers interviewed in this study indicated that it is difficult for parents to win these cases because of the way the law is set up (Cope-Kasten, 2013). Parents are not trained in legal analysis and case preparation. Since the due process system now looks more like traditional litigation, many parents do not have the skills to successfully present a case against the school's attorney who has been trained in legal analysis and litigation.

Prevailing parents with attorneys presented high quality evidence and presentations

Given that the quantitative analysis were restricted by available data that could be coded uniformly, it is important to look within the data and results for alternative explanations for two key findings. First the models included in the regression analysis indicate that four factors: (presence of an attorney, school district, number of witnesses

called to testify for the parent, and the type of school) were associated with an increase in likelihood of the due process outcomes that favored the parents. Second, parents prevailed in 13% of cases examined. Therefore, there may possibly be factors beyond those identified by the models that influence due process outcomes. With the available data it is possible to investigate a subset of "matched" due process cases for which each of the identified factors (attorney, school district, number of witnesses called to testify for the parent and type of school) were observed.

To provide more context for the finding of the present study and to inform future research a subset of 10 cases (making 5 Case Pairs) were selected for two key issues: IEP and Placement. A brief content analysis of each pair was used to initiate the process of developing alternative explanations for the different outcomes of similar cases. The table in Appendix B provides a summary of the analysis of paired cases analysis. The content analysis disclosed that prevailing parents presented quality cases with sufficient evidence to establish claims. Three main points were revealed through the additional content analysis. First, in cases in which parents prevailed, the parent's attorney presented a significant amount of reliable data and relevant evidence. When parents with attorneys lost, although the parent presented evidence, the district's data and evidence were viewed as more reliable and relevant. For example in Case Pair Number 1, within the case that the school district won, the school district presented eight expert witnesses to testify that the student made progress in general education setting. See Appendix B. Second, in cases in which the parents prevailed there is documentation and testimony evidence that had a direct relationship to the area of student need that appeared to be an important part of the case. For example, in Case Pair Number 4, the administrative

hearing officer stressed that the programming did not provide the services that the student needed because the student needed English Language practice, yet insufficient services in this area were offered. The documentation and evidence presented by the parent's attorney exhibited that the school district's placement was in a setting were he was not in contact with English language speakers often enough to practice English with the other students; most of the students spoke another language. Finally, in several of the cases in which the parent prevailed it appeared the IEP document itself had been "recycled." There were a couple of cases in which the administrative law judge pointed out that the IEPs barely changed from year to year, thus making the individualization of the document less likely to provide meaningful educational benefit. See Appendix B. All of the examples above attribute to the quality of the evidence presented at the hearing. The school reports and the monitoring on educational progress of special education students may serve "to influence the ways that courts will interpret the FAPE mandate of the IDEA." (Crockett & Yell, 2008, p. 387). The introduction of a parent lawyer can level the playing field between the schools and the parents (Hoagland-Hanson, 2014). Having two attorneys present, both presenting evidence, allows the focus to be on the quality of the evidence presented influencing the way the hearing officer interprets whether or not there is a FAPE violation.

III. Recommendations

Although these results are limited to the State of Maryland, the findings are instructive and call the whole system of due process hearings into question. Findings support the recommendations of other scholars to start the discussion of whether it is time for changes to the IDEA and its provisions relating to parent complaint mechanisms.

Currently the IDEA allows three complaint mechanisms (20 U.S.C. 1415, 2004). Parents that have a dispute with the school can file a complaint with the state's board of education, request mediation, or file a due process hearing. Considering the historical intent of these complaint mechanisms, parents should be able to have a higher level of success than was exhibited in this study. The system of due process hearings provides hearing officers with the power and authority to make a decision regarding the fate of students with disabilities. Impartial hearing officers have the power and authority to provide parents with relief, including overturning a decision made by the school, to grant eligibility and special education services, and to order private school placement and reimbursement. Parents with the money to hire an attorney to present their case to a hearing officer are more likely to be successful gaining relief from a hearing officer than parents without an attorney. What does this say about our current system? And how can we fix a system that was meant to bring about parent participation, however looks more like traditional litigation? The traditional legal system is based on very specific procedural and evidentiary rules. The due process hearing system was not set up to be like the traditional legal system, however it is starting to look more like it.

Earlier research showed that parents prevailed more than school districts (Sultana, 1997; McKinney & Schultz, 1996). This research was prior to the amendment to IDEA requiring special qualifications for hearing officers. Prior to the amendments, people outside of the legal profession also served as hearing officers. Non-attorney hearing officers were not legally trained as professional lawyers therefore might have given parents more leeway when cases were presented.

Addressing the problems around the system of due process hearings is complex and will not be accomplished overnight. This is just one area of inequality present in America. There have been discussions of a reauthorization of the Individuals with Disabilities Education Act. Initially the discussion projected a reauthorization in 2011, however no reauthorization was to take place until the reauthorization of the Elementary Secondary Education Act (ESEA). ESEA has now been reauthorized therefore this is a great time for discussion of needed changes.

Drawing on the findings of this study that parents with more capital are more successful at due process hearings shows that there are problems that exist in society creating an uneven playing field for parents with less capital. Many have questioned the integrity of the system and recommended significant changes (Coker, 2013; Kaufman & Blewett, 2012; Mueller, 2014; Pasachoff, 2011; Pudelski, 2013). Recommendations for changes to the due process hearing system include calls for various provisions to be added to the system, including but not limited to: low-cost attorney services, interim hearing procedures, shifting the burden of proof, and strengthening notice (Chopp, 2012; Coker, 2013; Hyman et al, 2011; Weber, 2014; Mueller, 2014). Some advocate for the development of a less adversarial process (Mueller & Carranza, 2011).

There is no simple solution to fixing these problems. Inequality in the U.S. is rampant, including other legal arenas. Inequality and unequal access to attorneys are major problems in the legal area and some have called for society to rethink the role of judges (Pearce, 2004; Engler, 2008; Baldacci, 2007; Zorza, 2009; Goldin & Casey, 2010). Research shows inequality in the criminal legal system based on class and race (Cole, 1999; Hagan & Peterson, 1995; Bobo & Thompson, 2006). Additionally, research

shows inequality in civil litigation regarding divorce based on capital (Seltzer & Garfinkel, 1990; Seltzer). As long as the system of due process continues to exist and is set up like the traditional legal system, parents with more capital will always have a better advantage. Parents with attorneys will have a better chance at getting relief. The addition of an attorney to the litigation changes the quality and the presentation of evidence at the hearing. Attorneys are trained to understand legal analysis and to litigate. Attorneys possess the experience presenting evidence to prove or disprove legal disputes that most parents do not possess. As there is no single answer to fixing issues of equity and unequal access to attorneys, and considering that the system of due process hearings will most likely continue to exist in its current structure, a discussion of potential recommendations that might minimize some of the impact and unfairness that parents experience when there is a special education dispute with the school district is warranted.

Minimize Special Education Litigation

A major approach to minimizing the unpleasant impacts of litigation is to attempt to avoid special education litigation overall. A major way to avoid special education litigation is to review current program offerings, as well as meeting legal requirements (Mandlawitz, 2002). School administrators should consider providing additional training to school staff related to special education issues. Additional trainings related to issues of placement and IEP programming are warranted as this study and others indicate that the most common issues are placement and IEP. It is vital that members of the IEP team have the knowledge base necessary to make decisions regarding IEP programming and placement of students with disabilities. School officials and administrators should make sure all members of the team are aware of the what programing the school district has

available as well as what resources school staff have access to, in order to have the knowledge to make appropriate decisions related to IEP programing and placement.

Improving the legal literacy of school administrators and staff could help to minimize conflict (Schimmel & Militello, 2007; Militello et al, 2009; Paulken, 2012, Schimmel et al, 2010). Teacher preparation programs should consider making special education law a required class for all pre-service teachers and administrators. A 2008 study revealed that only one state requires teachers to take an education law class as a requirement of certification (Gajda, 2008). An education law course will introduce future teachers and school staff to the legal aspects of disability and programming for students with disabilities. The legal knowledge can help minimize litigation as well as increase the chances of school staff creating a legally appropriate IEP for a student with a disability.

Another approach to avoid special education litigation is IEP facilitation. IEP facilitation is a voluntary process involving a neutral third party facilitator who participates in the IEP to help facilitate communication and the successful drafting of the student's IEP. Implicit in participation in IEP facilitation is that the neutral party's involvement will reduce the negative impacts if a conflict arises and will positively affect the relationship between the parent and school. Many states are already beginning to use IEP facilitation. The Maryland State Department of Education promotes IEP facilitation, however according to a publication related to the program, available on the department's website, it appears that IEP facilitation might only be available in 12 school districts in the state (Maryland State Department of Education, 2015a). The Maryland State Department of Education indicated the following about the program: "When the relationship between parents and school personnel become strained or better yet, before

the relationship has the opportunity to fray, parents and school personnel are finding that using independent facilitators can assist the IEP team process" (Maryland State Department of Education, 2015b, p.1).

Research shows that IEP facilitation is a promising approach to conflict resolution between the parents and school (Mueller, 2009; Mueller, 2014; Little & Bellinger, 2000). This study does not provide any data regarding the use of IEP facilitation in Maryland, however it would be a good topic for a future study. States that do not utilize IEP facilitation should consider implementing a program. States that are already utilizing IEP facilitation should work to promote the usage of the program to all schools districts and to the parents. These districts should also work to strengthen existing programs.

Mandatory Mediation

In light of discussion of a reauthorization of IDEA, scholars have made recommendations that could have implications on dispute resolution policy (Mueller, 2014). One scholar recommends that any reauthorization should include provisions to (1) prohibit attorneys and advocates in the mediations, (2) provide procedures for resolution meetings that are similar to those of mediation, and (3) require that a legal advocate become a mandatory member of the IEP team (Mueller, 2014). IDEA outlines three legal complaint mechanisms that are available to the parent. Mediation is one of those mechanisms. The U.S. House of Representatives' Committee on Education and the Workforce (2005) defined mediation as the following:

> Mediation is defined as an attempt to bring about a peaceful settlement or compromise between parties to a dispute through the objective intervention of a neutral party. Mediation is an opportunity for parents and school officials to sit down with an independent mediator and discuss a problem, issue, concern, or complaint in order to resolve the problem amicably without going to due process (p. 23)

IDEA specifically states the following:

(e)Mediation

(1) In general

Any State educational agency or local educational agency that receives assistance under this subchapter shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

(2) Requirements

Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process—

(i)

is voluntary on the part of the parties;

(ii)

is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this subchapter; and

(iii)

is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) Opportunity to meet with a disinterested party.

—A local educational agency or a State agency may establish procedures to offer to

parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

(i)

a parent training and information center or community parent resource center in the State established under section 1471 or 1472 of this title; or

(ii)

an appropriate alternative dispute resolution entity,

to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) List of qualified mediators.—

The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) Costs.—

The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) Scheduling and location.—

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) Written agreement.—

In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that—

(i)

states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

(ii)

is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(iii)

is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(G) Mediation discussions.—

Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. (20 U.S.C. §1415 (e))

The National Center on Dispute Resolution in Special Education (CADRE) an organization funded by the Office of Special Education Programs at the U.S. Department of Education has the specific mission of "encouraging the use of mediation and other collaborative strategies to resolve disagreements about special education and early intervention programs" (The National Center on Dispute Resolution in Special Education, 2016). CADRE points out several benefits of mediation including the following: mediation is less expensive than due process hearings; mediation is a quick process; mediation improves relationships between the parents and schools; mediation is less adversarial; and mediation supports creative solutions (Bar-Lev et al., 2007). Currently in the State of Maryland, the Office of Administrative Hearings (OAH), the office that facilitates due process hearings, also facilitates mediation. The complaint form is actually the same for mediation or due process. The complaint form gives the

parties the option to file for mediation, a due process hearing or a due process hearing with an attempt at mediation prior to a hearing.

Participation in mediation is voluntary (20 U.S.C. §1415 (e); COMAR 13A.05.01.15). As it stands right now if a party files a request for mediation, the other party has to agree to mediate. Maybe it is time to look to amending IDEA to make mediation mandatory for all due process complaints. Requiring that all parties participate in mediation before a due process hearing can be held could minimize the number of cases that actually go to hearing. Looking at overall data, most special education complaints were resolved. An approach that will resolve more will limit the negative impact that a hearing has on the parties involved. During the 2011-2012 school year, parents filed 17,118 due process complaints across the United States (U.S. Department of Education, 2014). 12,777 (74.6 %) of the due process complaints were resolved without a hearing; 2,262 (13.2 %) of due process complaints resulted in a hearing with a written decision; and 2,079 (12.1 %) of the due process complaints were still pending at the end of the school year (U.S. Department of Education, 2014). Most special education disputes in Maryland are resolved, and if we put parents in a position where there is more potential for resolution it could alleviate some of the unfairness that presents itself at due process hearings. Mediation data for the State of Maryland show that from 2011 to 2014 the majority of mediations held were settled during the mediation (Maryland State Department of Education, 2015). See Appendix C. Requiring parties to go to mediation first gives another step to potentially get a resolution. Studies have shown that special education mediation can potentially positively impact the personal relationship between the parent and the school (Newell & Salem, 2007). Although required mediation might

drop the numbers of students that actually adjudicate to a full hearing, there have been noted downfalls of mediation, including the power imbalance between the parent and schools, access to resources and the ability of the parent to adequately advocate for the student (Marchese, 2000). Although the mediation process is set up so that a party does not need an attorney or advocate, one study notes that parents with the representation of an attorney or advocate found the mediation process to be fairer than those parents that were not represented at mediation (Kuriloff & Goldberg, 1997). Mandatory mediation would come with the imbalance of power that comes with due process hearings, however the role of the mediator is different and it might allow parents a better avenue to present their position.

Recommendations for further studies

Interviews or Surveys of Special Education Attorneys and Hearing Officers

My content analysis of Maryland special education due process decisions provided a glimpse into the participants, the issues and the outcomes, however adding a qualitative analysis to the study could further reveal more about who is actually participating in due process hearings and how successful the parents are during hearings. Additional research is needed to more closely examine the cost of special education attorneys and the ability of parents to present a case at the hearing. The qualitative data was useful in developing new themes and factors related to special education litigation. My study can be expanded to include interviews or surveys for a better understanding of my descriptive data. I believe an additional mixed methods portion to this study will round out the story. Further studies should consider interviews with special education attorneys to provide further insight into the economic, social and cultural capital of

parents. Interviews or surveys of attorneys that represent the school district could also provide further insight on the parents' preparedness and ability to present a case at hearing. It will also provide some clarity regarding the cost of attorney fees. Interviews or surveys of the hearing officers can provide some insight into the officer's perceptions of the parent's ability to present a case at due process hearing. It can also provide insight into the quality of the cases presented by the parent.

Maryland State Complaints

Recent Ohio research shows that their state complaint process is more favorable to parents than due process hearings (Colker, 2014). Further studies could examine the Maryland State Complaint system to determine if it is more favorable to the parent than due process hearings. Maryland state complaints are investigated and the Maryland State Department of Education issues a letter of finding. These letters of finding are available to the public on the Maryland State Department of Education website. A content analysis of the state complaint letters of finding for the time period of this study would provide data to make the determination of which complaint mechanism is more favorable to parents.

Larger sample size

Further studies might consider a larger sample size for the study of the State of Maryland. This study covered five fiscal school years and involved a sample size of 119. Although the results of this study were conclusive and provide insight into the relationship between the outcome of a hearing and the capital of parents, a future study should focus on a longer period of time to get a larger sample size. A larger sample size will provide for more generalizations regarding the State of Maryland. Furthermore, a

larger sample size could potentially change the significance of some of the predictive models analyzed in this study. Currently the State of Maryland only publishes the previous five years of due process hearing decisions on their website. A researcher will need to obtain the other years directly from the Maryland State Department of Education.

Further studies with a larger sample size should also provide a more representative number of samples from the different school districts. Currently the state of Maryland has 24 school districts, however one school district, Montgomery County Public Schools represented 44% of the cases during the time period of this study. Statistical analysis with a representative sample from each school district might provide more information or different results when looking at the relationship between the outcome of the hearing and capital.

IV. CONCLUSION

Overall, this study shows that there are some concerns and problems with the due process hearing system. My results show that parents in Maryland are not successful at due process hearing. Furthermore, parents without the capital to hire an attorney to present a case are not successful at all. Dealing with issues of equity and equality of resources are complicated and will not be alleviated overnight, if at all. We currently live in a society that accepts inequality of resources. Individuals with more capital will have better access to services, goods and advocacy for rights. Considering the existence of a capitalistic society, there are things that we can do to minimize the impact on individuals. There are changes that can be made to eliminate the impact of the disparities in the system on parents overall and parents with less capital. It might appear that an obvious way to alleviate the disparities at due process hearing is to help poor or middle class

parents obtain an attorney by requiring school districts or special education funding to provide low cost or free attorneys. I have not put this forward as a recommendation because I am concerned that it will have a more dire impact. School districts are already struggling to provide special education services with the funding that is available; taking funding and putting it into attorneys will potentially cause more harm by removing funding from special education services. This would be a valuable option if it could be achieved without taking funding away from existing special education programs.

I do not agree with recommendations for the discontinuation of the due process hearing system (Pudelski, 2013). I don't believe that this is a good solution to handle the problems of disparities and inequality. It took a long time for the development of disability rights and getting rid of the system would cause the Disability Rights Movement to take a step back. Scholar Mark Webber explains it best stating the following:

> In an economic system that permits inequality of resources, those who are better off will be able to afford better access to advocacy services just as they can afford better shelter, better nutrition, better clothing, better medical care, and better everything else. But that does not mean that the opportunities for advocacy should be taken away, leaving no one with the ability to use the law to assert their rights. Leveling parents of disabled children down simply levels the educational bureaucracy up (Webber, 2014, p. 513).

I am in support of changes that minimize the impact of systems on parents overall and parents with less capital. Creating situations that minimize the chances of cases being adjudicated to a full hearing will minimize that impact. I truly believe if we can minimize the number of special education disputes that will help with the number of cases that actually make it to due process. Minimizing the disputes will also help the relationship between the school and the family. If a matter does have to go to due

process, I believe mandatory mediation will further limit the number of cases that actually make it to a fully adjudicated hearing. Only time will tell how Congress will respond to the concerns and advocacy for changes in the due process hearing system, but hopefully we will not have to wait long considering there is an expected reauthorization in the works. There have been great strides made over the last four decades for individuals with disabilities, therefore whatever changes are made, I hope they are in the spirit of the IDEA and truly provide parents an opportunity to participate in the decision-making of their children with disabilities.

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APPENDIX A: CASE INFORMATION SHEET

Information Sheet

Case #: _____

Fiscal Year:_____

Hearing Officer:_____

School District: _____

Complaint filed by: Parent (1) School (2)

Parent Represented by: Pro Se (1) Attorney/Advocate (2)

Attorney/Advocate: _____

Gender of Student: Male (1) Female (2)

Disability Classification:

_ None (0) Not yet evaluated, etc
_ Autism (1)
_ Deaf-Blindness (2)
_ Deafness (3)
_ Emotional Disturbance (4)
_ Hearing Impairment (5)
_ Intellectual Disability (6)
_ Multiple Disabilities (7)
_ Orthopedic Impairment (8)
_ Other Health Impairment (9)
_ Specific Learning Disability (10)
_ Speech/Language Impairment (11)
_ Traumatic Brain Injury (12)
_ Visual Impairment (13)
_ Developmental Delay (14)

Grade of the student _____

_ PreK (0)
_ Elementary (1)
_ Middle School (2)
_ High School (3)
_ Post Secondary (4)
_ No school attended (5)

Age of Student_____

_ 0-4 (1)
_ 5-9 (2)
_ 10-14 (3)
_ 15-19 (4)
_ 20-24 (5)

Type of school

_ Public (1)
_ Private - Parentally Placed (2)
_ Private – School Placed (3)
_ Home (4)

Placement/LRE

_ No Special Ed (0)
_ general education classroom (1)
_ special education classroom within a public school (2)
_ separate day program – Public (4)
_ separate day program- Private (5)
_ residential (6)
_ home (7)
_ other (8)
_ Combination Spec Ed/Gen Ed Classroom (9)

Issues

_ IEP (1)
_ Placement (2)
_ Related Services (3)
_ Eligibility (4)
_ Evaluation (5)
_ Discipline (6)
_ Extended School Year (7)
_ Transition (8)
_ Procedural Safeguards (9)
_ Other (0)

Outcome

_ parent complete win (1)
_ parent partial win (2)
_ school complete win (3)

Parent Seeking

_ tuition reimbursement (1)
_ compensatory education (2)
_ prospective revision of the IEP (3)
_ prospective placement – Public (4)
_ prospective placement – Private (5)
_ evaluations (6)
_ reimbursement - related services (7)
_ reimbursement – evaluation (8)
_ Other (9) ESY, and other
_ Eligibility (0)

School Seeking

_ Order that Eval Appo (0)
_ Order consent for evals (1)
_ Order to send to IAES (2)

Remedies Granted

_ tuition reimbursement (1)
_ compensatory education (2)
_ prospective revision of the IEP (3)
_ prospective placement – Public (4)
_ prospective placement – Private (5)
_ evaluations (6)
_ reimbursement - related services (7)
_ reimbursement – evaluation (8)
_ Other - IEE granted, order Eval Appropriate (9), order placement app., order to IAES
_ Order giving consent to eval – school seeking eval consent (10)

Number of witnesses testifying for the parent: _____
Number of exhibits submitted by the parent: _____
Number of witnesses testifying for the school: _____
Number of exhibits submitted by the school: _____
Notes_____

_____

APPENDIX B: SUMMARY OF MATCHED DUE PROCESS ISSUES AND FACTORS INFLUENCING OUTCOME

Summary of Matched Due Process Issues and Factors Influencing Outcome

Pair	Issue	Case Parent Prevailed	Factors in Parent Prevailing Decision	Case School District Prevailed	Factors in School Prevailing Decision
#1	IEP Placement	XXXXX v. Prince George's County Public Schools	The IEP did not address the student's significant attention deficits rendering him unavailable to learning School witness testimony regarding progress not credible.	XXXXX v. Montgomery County Public Schools	The school presented 8 expert witnesses that established that student made progress and that a general education environment was appropriate.
#2	IEP Placement	XXXXX v. Frederick County Public Schools	Evidence showed that student was not meeting annual goals and the IEP barely changed annually. School and parent witnesses show that student needed more intensive reading and language program than was provided.	XXXXX v. Montgomery County Public Schools	The data does not show that the student needed special education instruction in order to understand math concepts. No evidence that Occupational Therapy needed Speech and language goals and services are appropriate.
#3	IEP Placement	XXXXX v. Baltimore City Public Schools	Parent presented significant evidence that the student would be overwhelmed if placed in a general education setting for over seven hours a week.	XXXXX v. Prince George's County Public Schools	Evidence provided that the IEP was appropriate. No evidence that the student needed a residential placement.
#4	Placement	XXXXX v. Montgomery County Public Schools	The placement did not expose the student to enough English. The student's lack of fluency in English negatively impacted her, therefore it was critical that she learn and use English in an educational setting.	XXXXX v. Montgomery County Public Schools	School witnesses provided credible testimony that the student needed exposure to good role models in the general education classroom.
#5	IEP Placement	XXXXX v. Montgomery County Public Schools	School's witness testimony and documentation in the record were contrary to what was actually occurring with the student. No data or evidence to show that the student made progress. IEP goals largely the same as previous year. School's witness testimony was well coached, inconsistent and lacked independent responses.	XXXXX v. Howard County Public Schools	The parents' witnesses were vague and unreliable. The parents did not provide evidence regarding the special education or related services that the school should have provided School's expert witnesses were credible and showed the appropriateness of the IEP and Placement.

APPENDIX C: STATE OF MARYLAND MEDIATION DATA

Fiscal Year	# of Mediations Requests Received	# of Mediation Held	% of Mediations Held	# of Mediations Held that were settled	% of Mediations Held that were settled	# of Mediations Held that were not settled	% of Mediations Held that were not settled
2011	277	204	73.6%	171	83.8%	33	16.2%
2012	314	197	62.7%	151	76.6%	46	23.4%
2013	299	177	59.2%	133	75.1%	44	24.9%
2014	262	148	56.5%	101	68.2%	47	31.8%

Source: Maryland State Department of Education (2015)