The impact of legislation and litigation on the education of students with Autism Spectrum Disorders

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THE IMPACT OF LEGISLATION AND LITIGATION ON THE EDUCATION OF STUDENTS WITH AUTISM SPECTRUM DISORDERS

by

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Approved May 2008

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DEDICATION

In memory of my beloved father, David S. Joy, who made my successes possible,
who showed me how to believe in myself and stand on my own two feet,
who taught me how to forge my own path,
and who inspired in me a great love of learning...

To my wonderful mother, Helen K. Joy, who encouraged me, guided me, supported me,
and showed me that I could accomplish anything I set my mind to. She taught me to try
to make the world a better place, to reach for my dreams, and to always follow my heart.
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THE IMPACT OF LEGISLATION AND LITIGATION ON THE EDUCATION OF STUDENTS WITH AUTISM SPECTRUM DISORDERS

ABSTRACT

The purposes of this study were to review and analyze legal issues related to the provision of education for students with Autism Spectrum Disorders (ASD). Specifically on: 1) an examination of federal laws that affect the education of students with ASD; and 2) case law pertaining to the education of students with ASD. Results indicated that there was some compatibility between No Child Left Behind Act (2001) and the Individuals with Disabilities Education Improvement Act (2004). Also, litigation included showed that schools were slightly favored by courts. Demographics were similar to national averages. The provisions of IDEIA formed the basis of the cases with a free and appropriate public education and procedural safeguards being the greatest areas of conflict.

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EDUCATION POLICY, PLANNING, AND LEADERSHIP:
SPECIAL EDUCATION ADMINISTRATION PROGRAM
THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA
THE IMPACT OF LEGISLATION AND LITIGATION ON THE EDUCATION OF
STUDENTS WITH AUTISM SPECTRUM DISORDERS
The Impact of Legislation and Litigation on the Education of Students with Autism Spectrum Disorders

CHAPTER 1: THE PROBLEM

Introduction

The prevalence of students diagnosed with an Autism Spectrum Disorder (ASD) has increased over the past few decades. Children with ASD may have significant and complex needs that affect nearly all areas of their daily life including their life in school. Because of the varied needs of children with ASD and the array of instructional approaches available to teach this population of learners, schools and families may favor different instructional priorities and methods. As a result, educational planning has led to discord between many families and school systems in many cases (Yell, Katsiyannis, Drasgow, & Herbst, 2003). Considering the potential for conflict and the complexity of serving students with ASD as well as the growing prevalence, administrators and other educators continue to be faced with the growing challenge of providing students with ASD a free and appropriate public education.

ASD includes developmental disorders that can affect many areas of daily life, such as communication and social interaction. Several separate examples of ASD have been cited throughout history. McDermott (2002) highlighted the case of Victor, a child who had grown up with almost no human contact and the man who taught him, Jean Itard. Other cases have included Kaspar Hauser and the wolf-girls of India as well as Peter, the Wild Boy of Hanover, Germany (Heflin & Alaimo, 2007). However, it would take many years before these and other such accounts would be identified as possible cases of autism.
Background of the Study

Current Overview of ASD

The fourth edition of the Diagnostic and Statistical Manual [DSM-IV] defined autism and as a developmental disorder manifesting before age three, and including three primary characteristics: 1) impaired social development; 2) repetitive, stereotypic behaviors; and 3) absence or significant delay in language (see Appendix A). Autism is now considered a disorder on a continuum and is often called Autism Spectrum Disorder (ASD) (Lord & Risi, 2000). Children and adults with ASD may have received a diagnosis of autism, Asperger syndrome, Pervasive Developmental Disorder, Rett Syndrome, or Childhood Disintegrative Disorder (Lord & Risi; Wing, 1997).

Many children with ASD also may experience co-morbidity. It has been estimated that approximately 75 percent of people with autism also experience mental retardation (Gresham, Beebe-Frankenberger, & MacMillian, 1999). However, in recent years, this number has been reported as low as 25 percent (Shea & Meisbov, 2005 as cited in Odom, Horner, Snell, & Blacher, 2007). Nearly one third of children with autism also will have epilepsy or seizure activity. Tuberous Sclerosis will affect approximately six percent of children with ASD and Fragile X Syndrome affects nearly 2.1 percent of children with ASD (National Institute of Child Health and Human Development, [NICHD] 2005b). Additionally, children and adults with ASD may also exhibit co-morbidity with other disorders such as obsessive-compulsive disorder, sleep disorders, allergies, digestive problems, or depression (NICHD, 2005b; Simpson, 2003).
Prevalence of ASD

As of 2007, the prevalence figures for eight year olds with ASD were 1 in 150 (Centers for Disease Control and Prevention, 2007) with boys being three to four times more likely to have an ASD than girls (Griffin, Griffin, Fitch, Albera, & Gingras, 2006), which makes ASD the most common developmental disorder (Jordan, 2004). Also, ASD has appeared to run in families; families that have a child with autism are 3 percent to 4.5 percent more likely to have another child with autism, which is 50 times the normal risk (Griffin, et al.).

As the prevalence of people with ASD has grown and the research for the treatment and education of students with ASD has developed, laws that govern the education of children with ASD have evolved to reflect these changes. These laws affect the education of all students with disabilities including students with ASD and some laws were established to explicitly address students with ASD.

Legislation Regarding Students with ASD

As a result of the increased prevalence, more and more children are entering school with ASD. This increase in ASD in the student population has affected many changes in the United States federal law over time. In the field of education, students must qualify for special education in one of the identified disability categories. Autism was added as a separate disability category in the Individuals with Disabilities Education Act [IDEA] (1990). From its initial incorporation as a separate disability category in IDEA, ASD was considered a low incidence disability. Consequently, states were asked to explain the large increase in the category of ASD by the United States Department of Education. An increased awareness and the inclusion of other developmental disabilities
such as Asperger syndrome, Rett syndrome, and Childhood Disintegrative Disorder were most frequently cited as the cause for the increase (U.S. Department of Education, 26th Annual Report to Congress, Vol. 1, 2006).

In response to the addition of students with autism in the federal educational legislation, students with ASD began receiving special education services and were counted in the official federal counts on a national level in 1991. That year, students with ASD accounted for only 0.57 percent of the special education population (U.S. Department of Education, Data Analysis System, 1991, Table EA 3.6.A). This prevalence increased to 2 percent by 2002 (U.S. Department of Education, 26th Annual Report to Congress, Vol. 1, 2006).

The No Child Left Behind Act [NCLB] (2001) concentrated on all students, including students with ASD, achieving high academic standards in reading and mathematics; highly qualified teachers; safe, drug-free schools and classrooms; and all students graduating from high school (Yell, Drasgow, & Lowrey, 2005). This included a focus on all students having access to the general education curriculum. Additionally, NCLB decreed students should receive instruction that is scientifically-based to improve their achievement (NCLB).

Disability Education Law Today

In the most general terms, the evolution of the education disability law, P.L. 94-142, into its current state, the Individuals with Disabilities Education Improvement Act [IDEIA] (2004), has shifted its focus from access to equity. The equity inherent in IDEIA came from the emphasis on accessing not only education, but also the general curriculum as well as the integration of students with disabilities with their nondisabled
peers. IDEA required that a general education teacher attend and participate in designing the individual education program. IDEIA strengthened that requirement by highlighting collaboration between general and special education. The law also called for improving and developing collaborative personnel preparation activities around scientifically-based research and the incorporation of best practices for teachers of special and general education as well as administrators and related services personnel. These personnel preparation activities were supposed to focus on effectively supporting students with disabilities in seven areas:

1) Collaboration between general and special education;
2) Accommodations/modifications;
3) Implementing research-based instructional practices;
4) Parent involvement;
5) Employing positive behavioral supports;
6) Individualized Education Program planning and implementation; and
7) Participation in alternate assessment programs.

The law additionally was written to complement the ideas of NCLB while still stressing the individual. In essence, NCLB centered on student achievement for all students while IDEIA used this focus but mandated individualized education programs for students with disabilities, including students with ASD.

As one of the disability categories, children and youth identified with an ASD are eligible to receive special education services. According to IDEIA, the purpose of special education is to provide “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability” (IDEIA, 2004, p. 2657). To receive
special education services to meet such individual needs, an individualized education program (IEP) must be designed and implemented. An IEP has been defined as “a written statement for each child with a disability that is developed, reviewed, and revised” by the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA 2004, p. 2707). The IEP is the program that is designed to meet the unique needs of students receiving special education services. The IEP was an assurance in IDEIA 2004 and has a set of components that must be included: present level of performance, measurable annual goals, progress monitoring, services, least restrictive environment, testing, accommodations/modifications, transition plan, age of majority, and progress toward annual goals.

Despite, or perhaps due to, the specific language in the federal law governing students with disabilities, conflict has occurred between school officials and families in many areas regarding students with ASD. This conflict may stem from disconnect between IDEIA (2004) and NCLB (2001). Though written to complement NCLB, IDEIA focused on individualized education whereas NCLB focused on standardized academic achievement. This disconnect may become especially problematic for administrators when developing specific programs for students.

In 2006, the Combating Autism Act was passed by the United States Congress. The intent of this legislation was to support the creation and implementation of systems of care for children with ASD. These systems of care were meant to include educational entities. The Act also allowed for funding for the Centers for Excellence which research various areas related to children with ASD. The research was intended to explore the causes, diagnosis, early detection, prevention, intervention, and possible cures for ASD.
Essentially, the Combating Autism Act called for collaboration between public schools and agencies such as the Centers for Disease Control, the National Institute for Health, and others to promote more successful identification and intervention for students with ASD.

As the number of students identified with ASD has increased, more emphasis has been placed on programmatic improvements for these students as well as improving personnel preparation to work with students with ASD. IDEIA (2004) specifically suggested school districts work on “developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders” (IDEIA, p. 2777).

**Increased Litigation**

In the past decade, there has been a considerable increase in the amount of litigation surrounding the education of students with ASD (Yell, et al., 2003; Zirkel, 2002). IDEIA (2004) called for evidence-based practices to be used with students with disabilities. However, it has not been entirely clear what this means for students with ASD. Simpson (2003) noted the variety and sheer amount of interventions that have been used with students with ASD. Simpson stated that although there has been a plethora of interventions created for students with ASD, the effectiveness of these interventions were typically either unproven or unknown. This is another area of potential conflict for schools and families for there is no one particular intervention that has been proven to be effective. In view of the complexity of ASD and the cost of litigation, autism “has become a high-stakes issue for parents and school districts” (Yell, et al., pp. 182). Since the Combating Autism Act was passed in 2006, potential for
conflict has increased and now areas outside of education, such as the medical field, may affect how students receive their educational services as well.

*Purpose of the Study*

The purposes of this study were to review and analyze legal issues related to the provision of the education for students with ASD. Specifically, the study focused on: 1) an examination of federal laws that affect the education of students with ASD; and 2) case law pertaining to the education of students with ASD.

*Research Questions*

1. Is there compatibility regarding major provisions among the federal statutes that address the education of students with autism spectrum disorders?

2. What were the frequency and outcomes, including who was favored in cases related to the education of children with autism spectrum disorders, which were decided in the federal courts of appeals and above from 2001-2007?

3. What were the demographics, including gender and age of the student with autism spectrum disorders, in cases decided in the federal courts of appeals and above from 2001-2007?

4. What were the plaintiffs’ and defendants’ claims and what were the bases upon which cases for students with autism spectrum disorders were litigated in cases decided in the federal courts of appeals and above from 2001-2007?
Significance of the Study

The prevalence of students diagnosed with an ASD has increased over the past decades. Individuals with ASD vary immensely from each other and many may have significant and complex needs that can affect all areas of their daily life; particularly their life in school. As noted earlier, discord surrounding the education of students with ASD has grown between parents and schools (Yell, et al., 2003). Due to the potential for conflict and the complexity of serving students with ASD as well as the growing prevalence, administrators and other educators are now faced with the growing challenge of serving students with ASD and providing them with the appropriate education to which they are entitled. The education of these students is complicated even further with the continued reauthorizations of federal laws and the growing body of litigation surrounding this particular population. This study also extended the findings by Yell and Drasgow (2000) and Zirkel (2002).

The cost of litigation is an immense burden for both families and school districts. There are many costs that occur before cases even reach the courts. Typically, conflict that reaches the courts has exhausted administrative procedures such as mediation or due process hearings. These steps have costs involved that the school district bears such as the mediator or hearing officer. Additionally, many cases in which families prevail result in monetary reimbursement related to private placement and attorney’s fees. For example, in Jaynes v. Newport News School Board (2001), the family was awarded nearly $118,000 for educational expenses. In King v. Floyd County Board of Education (2000), over $37,000 were awarded in attorney’s fees. Over $50,000 were awarded to the
family in Drew P. v. Clark County School District (1989) for tuition and fees for private placement as well as attorney's fees.

Definition of Key Terms

Education and law, like every profession, have their own particular vernacular. Terms in education may be shared with terms in law; however, these terms may have different meanings. Legislation and judicial opinions have their own set of vocabulary that can differ greatly from the field of education. Therefore, it is important to provide operational definitions for the purposes of this study. The definitions below were taken from Black's Law Dictionary (Gamer, 2005).

Adjudication: The legal process of resolving a dispute; the process of judicially deciding a case

Administrative hearing: An administrative-agency proceeding in which evidence is offered for argument or trial

Affirm: To confirm a judgment on appeal

Animus: Ill will; animosity

Appeal: To seek review by a higher court

Appellant: A party who appeals a lower court's decision

Appellee: A party against whom an appeal is taken and whose role is to respond to that appeal

Arbiter: One with the power to decide disputes, such as a judge

Arbitrary: Depending on individual discretion rather than by fixed rules, procedures, or law, founded on prejudice rather than on reason or fact
Capricious: Characterized by or guided by unpredictable or impulsive behavior; contrary to the evidence or established rules of law

Case: A civil or criminal proceeding, action, suit, or controversy at law or in equity

Case law: The law to be found in the collection of reported cases that form all or part of the body of law within a given jurisdiction

Certiorari: [Law Latin “to be more fully informed”] An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review

Class action: A lawsuit in which the court authorizes a single person or a small group of people to represent the interests of a larger group

Code: A complete system of positive law, carefully arranged and officially promulgated

Constitution: The fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties

Decision: A judicial or agency determination after consideration of the facts and the law; especially a ruling, order, or judgment pronounced by a court when considering or disposing of a case

Defendant: A person sued in a civil proceeding or accused in a criminal proceeding

Dictum: A statement of opinion or belief considered authoritative because of the dignity of the person making it
Disability: The inability to perform some function; an objectively measurable condition of impairment, physical or mental

Dismissal: Termination of an action or claim without further hearing, especially before the trial of the issues involved

Disposition: A final settlement of determination

Dissent: A disagreement with a majority opinion, especially among judges

Due process: The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case

Finding of fact: A determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usually presented at the trial or hearing

Judgment: A court’s final determination of the rights and obligations of the parties in a case

Legislation: The process of making or enacting a positive law in written form according to some type of formal procedure, by a branch of government constituted to perform this process; the law so enacted

Litigation: The process of carrying on a lawsuit; a lawsuit itself

Majority rule: The principle that a majority of a group has the power to make decisions that bind the group

Opinion: A court’s written statement explaining its decision in a given case, usually including the statement of facts, points of law, rationale, and dicta
Per curiam: [Latin “by the court as a whole”] An opinion handed down by an appellate court without identifying the individual judge who wrote the opinion

Plaintiff: The party who brings a civil suit in a court of law

Precedent: A decided case that furnishes a basis for determining later cases involving similar facts or issues

Property right: A right to specific property, whether tangible or intangible

Regulation: A rule or order, having legal force, usually issued by an administrative agency

Remand: The act or an instance of sending something back for further action

Remedy: The means of enforcing a right or preventing or redressing a wrong

Stare decisis: [Latin “to stand by things decided”] The doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation

Statute: A law passed by a legislative body; specifically, legislation enacted by any lawmaking body, including legislatures, administrative boards, and municipal courts

Suit: Any proceeding by a part or parties against another in a court of law

Trial: A formal judicial examination of evidence and determination of legal claims in an adversary proceeding

Verdict: A jury’s finding or decision on the factual issues of a case; in a nonjury trial, a judge’s resolution of the issues of a case
**Writ**: A court’s written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act.

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**Limitations of the Study**

The study was limited to cases adjudicated in the federal courts of appeals and above from January 2001 through December 2007. The review included only those cases that included students who had been identified as having Autism, Asperger Syndrome, or Autism Spectrum Disorder. The review also only included those cases that were based, in whole or in part, on the education of these students. Cases that were decided through administrative hearings were not reviewed or considered in this study. Likewise, cases that were settled prior to adjudication were not reviewed or included in this study. This would include cases that were settled in due process hearings in specific school districts. Cases settled in this manner may have further effects on how students with ASD are educated.
CHAPTER 2: THE LITERATURE

Introduction

The prevalence of children diagnosed with Autism Spectrum Disorders (ASD) has been growing over recent decades (Centers for Disease Control and Prevention, 2007; Heflin & Alaimo, 2007). The needs of these children can vary dramatically, may be significant, and are often complex. There has been a focus placed on children with ASD in recent legislation (Children's Health Act, 2000; Combating Autism Act, 2006; Individuals with Disabilities Education Improvement Act, 2004). The increase in prevalence and the complexity of educationally serving students with ASD has led to litigation to interpret how students with ASD should be educated. This chapter will provide an overview of ASD and education. Additionally, the legal bases for the education of students with ASD, including of review of related legislation as well as relevant litigation will be provided.

Autism Spectrum Disorders and Education: An Overview

Autism Spectrum Disorders (ASD) is an umbrella term that describes the five disorders listed under Pervasive Developmental Disorders in the Diagnostic and Statistical Manual – Fourth Edition [DSM-IV]. These five disorders are Autism, Asperger Syndrome, Rett Syndrome, Childhood Disintegrative Disorder, and Pervasive Developmental Disorder-Not Otherwise Specified (Sponheim, 1996). ASD is characterized by a deficit in communication skills, impairment in social interactions, and engagement in repetitive and stereotyped patterns of behavior.
Children with ASD have a variety of needs including the communication and social deficits inherent in the disability. There also are many instructional approaches that have been developed. Schools and families may favor different instructional priorities and methods as a result. Thus, discord between many families and school systems occur periodically (Yell, et al., 2003). Considering the potential for conflict and the complexity of serving students with ASD as well as the growing prevalence, administrators and other educators continue to be faced with the growing challenge of providing students with ASD a free and appropriate public education.

Definition of Autism

Autism was added as a diagnosis to the Diagnostic and Statistical Manual of Mental Disorders in the third edition [DSM-III] in 1980 (Sponheim, 1996). Autism, previously the only specified category under Pervasive Developmental Disorders, became less restrictive in its definition. The revised DSM-IV (American Psychiatric Association, 2000) defined autism as a developmental disorder manifesting before age three, and including three primary characteristics: 1) impaired social development; 2) repetitive, stereotypic behaviors; and 3) absence or significant delay in language (see Appendix A). Autism is now considered a developmental disorder that is on a continuum, called Autism Spectrum Disorders (Lord & Risi, 2000; National Institute for Child Health and Human Development, 2005a). Children and adults considered to be on the spectrum may have received one of the following diagnoses: Autism Disorder, Asperger Disorder, Pervasive Developmental Disorder-Not Otherwise Specified (PDD-NOS), Rett Disorder, or Childhood Disintegrative Disorder (Lord & Risi; Wing, 1997).
Children diagnosed with autism spectrum disorders (ASD) can also experience co-morbidity with a variety of other disorders. Mental retardation, epilepsy or other seizure activity, Tuberous Sclerosis, Fragile X Syndrome affect many children with ASD (Gresham, Beebe-Frankenberger, & MacMillian, 1999; NICHD, 2005b). Additionally, children and adults with ASD may also exhibit co-morbidity with other disorders such as obsessive-compulsive disorder, sleep disorders, allergies, digestive problems, or depression (NICHD, 2005b; Simpson, 2003).

**History of Autism and Autism Spectrum Disorder**

The word autism is based on the Greek root *autos*, or self. This term has been in use for many decades. Bleuer first used the term *autism* to describe a specific characteristic of schizophrenia (Heflin & Alaimo, 2007). In the early 20th century, the term autism was used to describe people with schizophrenia who had a particular focus on personal interests not typically seen in this population (Heflin & Alaimo). For example, some children would give intense attention to common objects such as string.

Autism remained unrecognized as its own disorder until two separate accounts in the early 1940s; first by Leo Kanner in 1943 and an unconnected discovery in 1944 by Hans Asperger. Both men found specific groups of children that appeared to have similar characteristics, though the groups were slightly different. Specifically, Kanner defined autism as "children’s inability to relate themselves in the ordinary way to people and situations from the beginning of life" (Kanner, 1943, p. 242). Kanner observed a deficit with language and social communication. Kanner applied the term autism to the children he observed because he “viewed them as being self-absorbed and self-satisfied” (Kanner as cited in Heflin & Alaimo, p.49). Asperger described the boys he observed as "having
typical intellectual abilities but inept social skills” (Asperger, 1944 as cited in Heflin & Alaimo, 2007, p. 50). The chief difference between the two accounts was that Asperger observed children who struggled mainly with social communication whereas Kanner observed children who also struggled with language at a deeper level.

Kanner’s definition of autism was considered narrow, however, and by the 1950s more and more children were receiving the label of autism (Wolff, 2004). In the 1950s and 60s, children with autism were often served in a similar manner to children who had schizophrenia because of similar characteristics that manifested in a manner consistent with mental health disorders.

**Changing Views of ASD.** During the second half of the 20th century, many different theories on the cause of autism were developed and applied to children and adults with ASD (Fombonne, 2003). In the 1950s, a focus grew on the bonding of a child with autism and his mother in the first three months of life indicating that infants turned away from their mother in response to the “mother’s underlying hostility or disgust” (Waal, 1955, p. 445). Though it was later disproved, the cause of autism in the 50s was considered to be poor parenting (Wolff, 2004). Again, this typically led to the use of psychoanalysis as the chief form of treatment.

Psychology, as a field, was focused on psychoanalysis in the 1960s. This major theory was continually applied to students with ASD during this time. The 1960s saw children with ASD often misdiagnosed as having infantile schizophrenia, early childhood psychosis, or symbiotic psychosis (Fombonne, 2003). Systematically, autism started to emerge as its own disorder. It started to become apparent that the outcomes of using psychoanalysis as used for people with schizophrenia differed greatly for individuals with
autism. Essentially, individuals with autism did not respond in the same way that individuals with schizophrenia typically responded to treatment (Fombonne). During this time, psychoanalysis was found to be ineffective and an expensive option for families of children diagnosed with autism (Wolff, 2004).

In 1967 Bruno Bettelheim proposed the idea of the “refrigerator mother” positing that parents, especially mothers, caused their child’s autism by lacking in responsiveness emotionally (Heflin & Alaimo, 2007; Waters, 1990). This theory led to much misplaced blame on parents and treatments revolved around a lot of contact between parents and the child in an attempt to create a warm, loving, secure environment which was intended to compensate for the environment that lacked emotionality (Waters).

Causes of ASD

The considered causes of ASD have changed over the decades. In the past decade the cause of ASD has been attributed by some to a chemical in the measles, mumps, rubella (MMR) vaccination (Wolff, 2004). However, ASD is estimated to be heritable at a rate of 90 percent (Fombonne, 2003) and is now generally considered to be a genetic disorder with 10 or more genes on different chromosomes being involved to varying degrees (NICHD, 2005a), though the exact cause of autism is still unknown.

Though the most recent cause of ASD is considered genetic, the diagnosis of ASD remains a clinical judgment (Jordan, 2004) meaning that it is diagnosed through application of the diagnostic criteria to observations of the child. Typically, a diagnosis is made by obtaining and reviewing a developmental history of the child from parents and other informants, making observations of the child, and the use of structured interviews
To meet the DSM-IV criteria for autism, the child should have shown the behaviors before the age of three.

Growing Prevalence of ASD

The prevalence of ASD has increased substantially since its discovery. In the late 1960s and early 1970s, the prevalence of individuals with ASD was 4.4 people in every 10,000. Once the disorders were added to the DSM-III in the 1980s, the prevalence grew to 7.7 people in every 10,000. In the 1990s the prevalence was 9.6 people in every 10,000, or about 1 in every 1,000 (Heflin & Alaimo, 2007). The most recent figures reported in the United States were 1 in every 150 eight year old child (Centers for Disease Control and Prevention, 2007) with boys being three to four times more likely to have an ASD than girls (Griffin, et al., 2006), which makes ASD the most common developmental disorder (Jordan, 2004).

Students with ASD often have complex and significant needs. The growing prevalence in the population has obviously been seen in schools as well. Students must qualify for special education services in one of the identified disability categories. Autism was not added as a separate disability category until the Individuals with Disabilities Education Act (IDEA) of 1990. In response to the addition of students with autism in the federal educational legislation, students with ASD were counted in the official federal counts on a national level beginning in 1991. That year, students with ASD accounted for only 0.57 percent of the special education population (U.S. Department of Education, Data Analysis System, 1991, Table EA 3.6.A). This prevalence increased to 2 percent by 2002 (26th Annual Report to Congress, 2006). States were asked to explain the large increase in the category of autism by the United
States Department of Education. An increased awareness and the inclusion of other developmental disabilities such as Asperger Syndrome, Rett syndrome, and Childhood Disintegrative Disorder were cited most frequently as the causes for the increase (26th Annual Report to Congress, 2006).

Students diagnosed with ASD are now served in public and private schools along the continuum of services and are assured a free and appropriate public education by federal legislation (IDEIA, 2004). The growing prevalence that has been seen for people diagnosed with ASD will continue to be a challenge for families, health service agencies, and educational entities.

**Evolution of Treatments for ASD**

As the 1960s waned, a new wave of research emerged. This research incorporated developmental and behavioral approaches and used scientific methods to evaluate effectiveness. The focus was on positive reinforcement and individualization (Green, 2001). In the 1970s, the empirically-based research began to reveal that students with autism could make developmental gains under certain circumstances such as active teaching, structured classrooms, high teacher to student ratios, and individualized plans addressing student strengths and weaknesses (Fombonne, 2003).

The 1970s saw a new intervention called the Treatment and Education of Autistic and Communication Handicapped Children (TEACCH). This model used visual supports and structured environments to create individualized person and family-centered plans (Division TEACCH, 2006). The evidence to support the application of the TEACCH approach for the treatment of autism eventually caused the replacement of the older method of treatment, namely psychoanalysis (Fombonne, 2003). In 1978, megavitamin
therapy was studied to see if the administration of large amounts of vitamin B6 or magnesium would treat individuals with ASD. Studies found a significant decrease in children’s behavior. However, this research was highly criticized because of methodological flaws such as errors in sampling and unreliable behavior ratings (Pfeiffer, Norton, Nelson, & Shott, 1995).

The 1980s saw a growth in the area of behaviorism. Lovaas began disseminating his research in 1981 when he published *The ME Book* (Lovaas, et al., 1981). This began a new phase in the education of students with ASD. The field of Applied Behavior Analysis (ABA) began to focus on the treatment of students with ASD. The basic premise was that students with ASD could learn and, in order to do so, tasks needed to be presented systematically in a special, intense, and comprehensive learning environment (Lovaas, 1987).

In 1982 a federally funded and developmentally based program called Learning Experiences... an Alternative Program (LEAP) was created to serve children with ASD who were 3 to 5 years old. This program was based on four components: 1) a preschool with typically developing peers; 2) parent behavioral skills training program; 3) national outreach training in individualized education program (IEP) development, behavior management, social skills training, and transition planning; and 4) ongoing research in instructional practices (Gresham, Beebe-Frankenberger, & MacMillian, 1999). This program showed some success because of the parent-school partnership, but at the time there was not enough research to determine the effectiveness of short- and long-term outcomes for individuals with ASD (Gresham, et al.).
Subsequent treatments gained support in the early 1990s (Gresham, et al., 1999). Facilitated communication was a method used to increase communication by the physical support to the person with ASD by another individual. Specifically, someone would physically assist an individual with ASD by using words, letters, or pictures to communicate. This treatment was based on the premise that individuals with ASD have an excellent command of both expressive and receptive language, but are unable to express themselves because of a motor deficit. In the late 1990s, facilitated communication was refuted by many professional organizations including the American Psychological Association, the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, and the American Academy of Speech and Hearing (Campbell, Schopler, Cueva, & Hallin, 1995).

Auditory integration training was developed in 1993. Certain individuals with ASD have been found to have either hypo- or hypersensitivity to various sounds. This treatment was designed to soften or eliminate specific sound frequencies heard by children with ASD. By implementing this treatment, aggressive behavior was supposed to decrease and attention was supposed to increase. When rigorous empirical measures were used to study this intervention, however, auditory integration training was unable to provide the results it had promised (Gresham, et al., 1999).

By the mid-1990s, many of the therapies that had been embraced up to that point were either disputed or discredited. Mega-vitamin therapy began to lose favor (Pfeiffer, et al., 1995) and facilitated communication was shown to be ineffective (Mostert, 2001). The new millennium has brought an amplification in the scientific study of proposed treatments used with people with ASD, a continuance in the use and evolution of ABA to
more generalized settings as an effective practice, and an increase in the prevalence of individuals diagnosed with ASD.

*Early Intervention*

Billstedt, Gillberg, and Gillberg (2005) performed a population-based follow-up study of 120 people with ASD 13 to 22 years later to determine how these individuals fared in later life. Their study found 78 percent of these individuals experienced poor outcomes. Only four of the individuals who participated in the study were considered independent and even those four people reportedly led relatively isolated lives. The two factors that were found to greatly correlate with better outcomes were childhood IQ level and the existence of some communication by the age of six. Both of these factors can be affected by early intervention services.

There has been an ever-growing body of research that has demonstrated the merits of early intervention for children with ASD (Chakrabarti, Haubus, Dugmore, Orgill, & Devine, 2005; Corsello, 2005; Woods & Weatherby, 2003; Guralnick, 2000). Considering the relatively meager outcomes shown by Billstedt, et al. (2005), early intervention becomes extremely important to individuals with ASD and their families. Thus, the earlier a child can receive a diagnosis of ASD, the earlier an intervention can begin. According to the NICHD (2005b), some studies have shown some more subtle signs of autism can be detected as early as 8 months in certain individuals.

*Evidence-Based Practices and ASD*

Creating and maintaining effective educational programming for students with ASD is not an easy task. IDEIA (2004), NCLB (2001), The Children’s Health Act of 2000, and the Combating Autism Act of 2006 all call for the use of evidence-based
practices. According to Heflin and Alaimo (2007), there has been much “marketing hype” (p. 87) surrounding the treatments and interventions for students with ASD. Many families will ask for these by name often because of a case study that received publicity. It is understandable that a family would want a “cure” but, as of yet, there is no cure to ASD (NICHD, 2005b). Simpson (2003) stated all disabilities have various interventions that work and don’t work and all have had to sort through the research base. However, no disability area has had such difficulty determining effective and evidence-based practices as autism (Simpson).

Published literature on interventions for students with ASD has provided contradictory conclusions and many interventions come from different perspectives including educational, behavioral, and pharmacological, among others (Campbell, et al., 1995; Heflin & Alaimo, 2007). The contradictions in the literature are compounded by the use of heterogeneous samples. It can be difficult to know which interventions have been shown effective unless the reader has knowledge of research methodology and can critically analyze research. This can be an area of contention between parents and schools when one side may have more experience in consuming research literature. Certain interventions may work better for students with ASD who may not have accompanying impairments, such as those who are diagnosed with Asperger Syndrome, whereas other interventions may have better results for students with ASD who have an accompanying impairment such as a cognitive delay. Some interventions are more appropriate for younger children and some for older children on the spectrum. These factors must be taken into consideration when determining which interventions are the most appropriate for an individual student.
Yell, et al. (2005) highlighted the call for the use of scientifically-based instruction in the NCLB Act (2001) and he suggested collecting meaningful data to show student progress. In the past decade, there has been a considerable increase in the amount of litigation surrounding the education of students with ASD (Yell, et al., 2003). IDEIA (2004) called for evidence-based practices to be used with students with disabilities. Although it has not been entirely clear what this means for students with ASD. Simpson (2003) reported the variety and large amount of interventions that have been used with students with ASD and stated that though there has been a plethora of interventions, the effectiveness of these are questionable. This is an area of potential conflict for schools and families for there is no particular intervention that has been proven to be effective for all students with ASD. In view of the complexity of ASD and the cost of litigation, autism “has become a high-stakes issue for parents and school districts (Yell, et al., 2003, p. 182).

**Federal Legislation Related to the Education of Students with ASD**

Students with disabilities, including those with ASD, have not always had access to public education. The basis of special education came from a case that had little to do with disabilities. *Brown v. Board of Education of Topeka, Kansas* (1954) was heard to determine whether schools could segregate their population based on the students’ race. This seminal case found that separate is inherently unequal. This case led to other cases more specific to students with disabilities.
Legislation for the Education of Students with Disabilities

Students with disabilities, including those with ASD, have not always had access to public education. The Brown case opened the gateway for other cases based on segregation of specific types of people. Specifically, the Brown case eventually led to cases that were more specific to students with disabilities such as Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania (1972) and Peter Mills v. Board of Education of the District of Columbia (1972). These cases caused the United States to examine its educational practices and for advocacy groups and parents to press for their children with disabilities to receive access to public education. Eventually, in 1975, the Education of All Handicapped Children’s Act, or P.L. 94-142 as it was more commonly known, was passed. Its original intent was to provide access to public education for children with disabilities.

Legislation today. Since the passing of P.L. 94-142, special education has evolved. There have been three reauthorizations of this act: Individuals with Disabilities Education Act (1990), Individuals with Disabilities Education Act (1997), and the Individuals with Disabilities Education Improvement Act (2004). Each successive reauthorization of the law has shifted the focus of the law from its original intent of access to one of equity.

The equity inherent in IDEIA (2004) came from the emphasis on accessing not only education, but the general curriculum as well as the integration of students with disabilities with their nondisabled peers. IDEA (1990) required that a general education teacher attend and participate in designing the individual education program. IDEIA strengthened that requirement by highlighting collaboration between general and special
education professionals. IDEIA also called for improving and developing collaborative personnel preparation activities around scientifically-based research and the incorporation of best practices for teachers of special and general education as well as administrators and related services personnel. These personnel preparation activities were supposed to focus on effectively supporting students with disabilities in seven areas:

1) Collaboration between general and special education;

2) Accommodations and modifications;

3) Implementing research-based instructional practices;

4) Parent involvement;

5) Employing positive behavioral supports;

6) Individualized Education Program planning and implementation; and

7) Participation in alternate assessment programs.

Additionally, IDEIA was written to complement the ideas of NCLB (2001) while still focusing on the individual’s education. In essence, NCLB focused on student achievement for all students while IDEIA attempted to align with this focus but mandated individualized education programs for students with disabilities, including students with ASD.

As the number of students identified with ASD has increased, more emphasis has been placed on programmatic improvements for these students as well as improving personnel preparation to work with students with ASD. IDEIA (2004) specifically suggested school districts work on “developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders” (IDEIA, 20 U.S.C. 1462 § 662[2G]). The law also suggested “focusing on the needs and issues that
are specific to a population of children with disabilities ... to schools and personnel
providing special education and related services for children with autism spectrum
disorders” (IDEIA, 20 U.S.C. 1463 § 663[8D]). The education that students receive is
highly dependent upon who is providing the instruction (Tsatsanis, et al., 2004). Yell, et
al. (2005) identified the requirement for highly qualified teachers and paraprofessionals
in NCLB. Those who teach students with ASD may need different or enhanced skills in
certain areas such as behavior management and assessing communication needs
(Scheuermann, Webber, Boutot, & Goodwin, 2003).

In addition to law specific to students with disabilities, NCLB (2001) also
affected how students with disabilities were educated. NCLB concentrated on all
students, including students with ASD, achieving high academic standards in reading and
mathematics; highly qualified teachers; safe, drug-free schools and classrooms; and all
students graduating from high school (Yell, et al., 2005). This included a focus on all
students having access to the general education curriculum. NCLB decreed students
should receive instruction that is scientifically-based to improve their achievement.

General provisions of key legislation. IDEIA (2004) was a reauthorization of
previous forms of the law and, therefore, builds upon those iterations. IDEIA has six
general provisions (Murdick, Gartin, & Crabtree, 2007; Turnbull, Wilcox, & Stowe,
2002).

1. Non-discriminatory evaluation
2. Free and appropriate public education (FAPE)
3. Least restrictive environment (LRE)
4. Individualized education program (IEP)
5. Procedural safeguards and due process

6. Parent and student participation

The provisions, their relative definitions, and what areas were related to these provisions are delineated in the table below.

Table 1

*Provisions of IDEIA (2004)*

<table>
<thead>
<tr>
<th>Provision</th>
<th>Definition of Provision</th>
<th>Related to the Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Discriminatory Evaluation</td>
<td>“testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this title will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child” (IDEIA of 2004, P.L. 108-446, § 612 [a][6][B], 118 Stat. 2678)</td>
<td>Zero reject, pre-placement evaluation, independent educational evaluations</td>
</tr>
<tr>
<td>FAPE</td>
<td>“special education and related services that--(A) have been provided at public expense, under ____________________________________________________________</td>
<td>Functional behavioral assessments and positive</td>
</tr>
</tbody>
</table>
public supervision and direction, and without behavioral supports, charge;
(B) meet the standards of the State educational interagency agreements, personnel development agency;
(C) include an appropriate preschool, elementary and highly qualified personnel, research-based school, or secondary school education in the State interventions involved; and
(D) are provided in conformity with the individualized education program required under section 614(d)” (IDEIA of 2004, P.L. 108-446, § 602 [9][A-D], 118 Stat. 2653-2654)

LRE “To the maximum extent appropriate, children with Continuum of placements, disabilities, including children in public or private early intervention, institutions or other care facilities, are educated inclusion, neighborhood with children who schools, private school,
are not disabled, and special classes, separate parent reimbursement, schooling, or other removal of children with supplementary aids and disabilities from the regular educational services
environment occurs only when the nature or
severity of the disability of a child is such that the
education in regular classes with the use of
supplementary aids and services cannot be achieved satisfactorily” (IDEIA of 2004, P.L. 108-446, § 612 [a][5][A], 118 Stat. 2677)

<table>
<thead>
<tr>
<th>IEP</th>
<th>“The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d)” (IDEIA of 2004, P.L. 108-446, § 602 [14], 118 Stat. 2655)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedural Safeguards and Due Process</td>
<td>“procedures... to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education” (IDEIA of 2004, P.L. 108-446, § 615 [a], 118 Stat. 2715)</td>
</tr>
</tbody>
</table>
| Parent/Student Involvement | “An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to

Access to the general education curriculum, focus on outcomes, individualization, related services, extended school year, alternate assessments, assistive technology

Discipline, suspension/expulsion, providing notice, access to records, mediation, resolution session, attorney’s fees

Transfer of rights at age of majority
the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child” (IDEIA of 2004, P.L. 108-446, § 615 [a][1], 118 Stat. 2716)

The following principles were included in NCLB (2001) (Cortiella, 2007; Yell, et al. 2005). The provisions, their definitions, and the areas related to the provision were included in the table below.

Table 2

Provisions of NCLB (2001)

<table>
<thead>
<tr>
<th>Provision</th>
<th>Definition of the Provision</th>
<th>Related to the Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountability for</td>
<td>“Each State plan shall demonstrate that the State has developed and is implementing a single, statewide State accountability system that will be effective in ensuring that all local educational agencies, public elementary schools, and public secondary schools make adequate yearly progress as defined under this paragraph” (NCLB of 2001, P.L. 107 110, § 1111 [2][A])</td>
<td>Statewide standards, state-wide assessments, Adequate Yearly Progress, annual statewide Report Card</td>
</tr>
</tbody>
</table>
Scientifically-Based Instruction "includes research that—Must be demonstrated to
(i) employs systematic, empirical methods that draw on observation or experiment;
(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
(iii) relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations; and(iv) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review" (NCLB of 2001, P.L. 107-110, § 1208 [6][B][i-iv])

Highly Qualified Teachers & Paraprofessionals "holds at least a bachelor's degree; and (II) has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum; or "(ii) a middle or secondary school teacher..."
who is new to the profession, means that the
teacher holds at least a bachelor's degree and
has demonstrated a high level of competency
in each of the academic subjects in which the
teacher teaches by--

"(I) passing a rigorous State academic
subject test in each of the academic subjects
in which the teacher teaches (which may
consist of a passing level of performance on
a State-required certification or licensing test
or tests in each of the academic subjects in
which the teacher teaches); or

"(II) successful completion, in each of the
academic subjects in which the teacher
teaches, of an academic major, a graduate
degree, coursework equivalent to an
undergraduate academic major, or advanced
certification or credentialing" (NCLB of
2001, P.L. 107-110, § 9101 [23][B][i][I-III])

"a paraprofessional who has not less than 2
years of--

"(A) experience in a classroom; and

"(B) postsecondary education or
demonstrated competence in a field or academic subject for which there is a significant shortage of qualified teachers”

(NCLB of 2001, P.L. 107-110, § 2102 [4][A-B])

| Academic Assessments | “Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the primary means of determining the yearly performance of the State and of each local educational agency and school in the State in enabling all children to meet the State's challenging student academic achievement standards” (NCLB of 2001, P.L. 107-110, § 1114 [a][3][A]) | Academic standards that are the same for all students, alternate assessments, high participation in assessments of all students in a district, availability of reasonable accommodations for students with disabilities |
Legislation More Specific to Students with ASD

In 2000, the United States Congress passed the Children’s Health Act of 2000. This Act spoke directly to the increases of children diagnosed with an ASD, and Title I of the Act dealt solely with ASD. It called for the establishment and implementation of a program to inform and educate health professionals and the general public on the diagnosis and treatment of ASD. The Children’s Health Act of 2000 also called for the establishment of an “Autism Coordinating Committee” to include national research institutes, Centers for Disease Control and Prevention, parents of individuals with ASD, and representatives from agencies that serve individuals with ASD including the Department of Education. The Children’s Health Act of 2000 has called for collaboration between the agencies that serve individuals with ASD in order to create better and more cohesive services for these students.

The increase seen in the prevalence rate also led to the Public Health Service Act amendment which has been named the Combating Autism Act of 2006. The purpose of this legislation was to provide additional funding and to promote valid and reliable screening for diagnosis of ASD. It also emphasized the importance of using evidence-based interventions for both early childhood interventions and for interventions for older children and adults with ASD.

Litigation Related to the Education of Students with Disabilities

Although legislation guides educational practice, litigation can be another area that should be considered when creating and maintaining educational programming for students with ASD. There have been numerous court cases that have been heard since
the reauthorization of IDEIA (2004). Typically, these cases pertain to the provision of free and appropriate public education (see, for example, *A.K. v. Alexandria City School Board*, 2007; *Lauren W. v. DeFlaminis*, 2005; *Van Duyn v. Baker School District 5J*, 2007; *Wooley v. Valley Center-Pauma Unified School District*, 2007). Most recently, *J.P v. County School Board of Hanover County, Virginia* (2007) found in favor of the plaintiff, J.P. Hanover County was ordered to pay for tuition reimbursement for private placement and attorney’s fees because the student did not receive a free and appropriate education in the public school setting. *Kirby v. Cabell County Board of Education and William A. Smith, Superintendent* (2006) found that identified areas of deficiency need to be addressed even if that means addressing those areas outside of the regular school day. In his review of over 290 published administrative and court decisions, Zirkel (2002) found that schools were slightly favored by the courts overall.

The cost of litigation is an immense burden for both families and school districts. There are many costs that occur before cases even reach court including the mediator or hearing officer as well as any monetary reimbursement that is ordered for educational expenses or attorney’s fees. For example, in *Jaynes v. Newport News School Board* (2001), the family was awarded nearly $118,000 for educational expenses. In *King v. Floyd County Board of Education* (2000) over $37,000 were awarded in attorney’s fees alone. Over $50,000 were awarded to the family in *Drew P. v. Clark County School District* (1989) for tuition and fees for private placement as well as attorney’s fees.

There are many possible reasons for a dispute to be litigated. Murdick, et al. (2007) identified six basic principles for disputes. These principles included a free and appropriate public education (FAPE), least restrictive environment (LRE), individualized
program development, procedural due process, non-discriminatory evaluation, and parental participation. These six principles have formed the basis of many cases related to special education. Other reasons, such as attorney's fees, have caused litigation as well.

*Free and Appropriate Public Education*

The Education of All Handicapped Children Act (1975) defined its purpose "to assure that all handicapped children have available to them... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs" (20 U.S.C. § 602[9]). A free appropriate public education (FAPE) has been a historical issue of contention for parents and schools. The chief difficulty of applying this principle has been in its ambiguous definition. The words "free" and "appropriate" have not been defined by the legislation.

Murdick, et al. (2007) stated that families cannot be charged for services that a child, eligible under the provisions of IDEIA (2004), would receive to access and benefit from his or her education. The individualized education plan team, including the parent(s), must determine these services and a school cannot deny a service based on its cost (Cambron-McCabe, et al., 2004; Murdick, et al.). Students with disabilities may be charged for services only when these services are uniformly assessed of all students, including those without disabilities. An example of this might be a book fee that all students have to pay. However, if students are required to pay for transportation or living expenses, students with disabilities may not be charged these fees if placed in the program by a public school (Murdick, et al.).
The second term, "appropriate," was given no definition in the original federal legislation. However, the term has been somewhat defined by the Supreme Court in the case of Board of Education of the Hendrick Hudson Central School District v. Rowley (1982). According to Cambron-McCabe, et al. (2004) and Murdick, et al. (2007) the case provided a two-part test now known as the Rowley test:

First, has the State complied with the procedures set forth in the Act? And, second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more. (Board of Education v. Rowley, 1982).

In its most current reauthorization, IDEIA (2004), the Act reiterated the Rowley test and stated that FAPE meant:

special education and related services that —

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under 614(d). (IDEIA, 2004, P.L. 108-446, § 602[8], 118 Stat. 2647[2005]).

Least Restrictive Environment

Brown v. Board of Education of Topeka, Kansas (1954) determined that separate is inherently unequal based on a person's race. This principle has also been applied to people with disabilities. Murdick, et al. (2007) stated that litigation occurring after Brown, such as Mattie T. v. Holladay (1979) and Wyatt v. Stickney (1971), expanded the idea that personal characteristics, such as gender and disability, should not be grounds for segregation and that if segregation occurred, it was "a denial of opportunity and equality" (p 119).

This idea that children with disabilities should be integrated with their non-disabled peers to the greatest extent possible is known as least restrictive environment (LRE). In 2004, IDEIA defined LRE as:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular
educational environment occurs only when the nature of severity of the
disability of a child is such that education in regular classes with the use of
supplementary aids and services cannot be achieved satisfactorily (IDEIA,

The Secretary of Education has mandated a continuum of alternative placements
be available to all students with disabilities (Cambron-McCabe, et al. 2004; Murdick, et
al., 2007; and Weishaar, 2007). This continuum should include at least the regular
general education classes, special classes, special schools, home instruction, and
instruction in hospitals or institutions (Cambron-McCabe, et al.; Murdick, et al.).
Additionally, students are to be educated in their home schools unless the IEP states
otherwise (Weishaar). Students with ASD may be served anywhere along this continuum
depending upon the student’s individual needs. Where the student is served most
appropriately would be his or her least restrictive environment. Various cases have been
litigated surrounding students with ASD and LRE. For examples, see Board of
Education of Township High School District 211 v. Ross (2007); Linda T. v. Rice Lake
Area School District, (2005); and Pachl v. Seagren and the School Board of Anoka-

Individualized Program Development

Individualized program development focuses on the individualized education
program (IEP). An IEP is developed annually (Weishaar, 2007) and is the culmination of
two guidelines (Murdick, et al., 2007). First, the IEP must result from a collaborative
effort of the IEP team, comprised of the parents, school personnel, and other service
providers. Second, the IEP is the culmination of a process which is outlined by the
legislation and regulations. Once the IEP document has been developed and agreed upon, the school district is expected to implement the IEP as written as not doing so would constitute a failure to provide FAPE (Huefner, 2006).

IDEIA (2004) has specified the components of an IEP. There are ten components that must be included in an IEP (see Table 3 below).

Table 3

*Description of IEP Components*

<table>
<thead>
<tr>
<th>Component</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Present level of performance (PLOP)</td>
<td>Statement of the student’s present level of academic and functional performance, which must address how the child’s disability affects the child’s involvement and progress in the general education curriculum</td>
</tr>
<tr>
<td>2. Measurable annual goals</td>
<td>A statement of academic and functional goals that enable the child to participate and make progress in the general education curriculum as well as meet the child’s other educational needs resulting from the child’s disability</td>
</tr>
<tr>
<td>3. Progress monitoring</td>
<td>A description of how the child’s progress toward meeting these annual goals will be measured and reported</td>
</tr>
<tr>
<td>4. Services</td>
<td>A statement of the special education services, related services, and supplementary aids and services to be provided to the child, which should be based on peer-reviewed research and a statement of the program modifications or supports for school personnel to be provided to the child</td>
</tr>
</tbody>
</table>
5. LRE A statement of explanation of the extent, if any, the child will not participate in the regular class

6. Testing A statement explaining the extent to which a child will participate in state or district assessments, accommodations to testing, or alternative assessments that might be implemented

7. Accommodations/Modifications A statement of accommodations needed to measure academic achievement and functional performance of the child on assessments and the anticipated frequency, location, and duration

8. Transition Plan A plan which would include measurable postsecondary goals and the services required to assist in achieving those goals (Graham & Wright, 2007) related to training, education, employment, and, when appropriate, independent living skills for children who will be 16 years old or older

9. Age of Majority A statement of the child’s rights to be transferred at the age of majority beginning no later than 1 year prior to the child reaching that age

10. Progress toward annual goals A statement and plan of how the annual goals will be measured and how parents will be informed of this progress

Components adapted from Huefner (2006), *Individuals with Disabilities Education Improvement Act* (2004), and Murdick, Gartin, and Crabtree (2007).

Cases concerning the IEPs of students with ASD have been adjudicated as well.

For examples of these cases, see *Bradley v. Arkansas Department of Education* (2006),
Due Process Applied to Legal Review of ASD Disputes

Due process is a fundamental right of the U.S. Constitution. This principle is further guaranteed by the Fifth and Fourteenth Amendments in the Bill of Rights. Specifically, the Fourteenth Amendment prevents the deprivation of life, liberty, or property without due process of the law. The safeguard of due process applies to judicial proceedings as well as acts of governmental agencies, such as schools (Cambron-McCabe, et al., 2004). In special education, due process ensures the rights of the student with the disability and his or her parents. These rights are afforded during the identification, evaluation, and placement of the child with a disability as well as one who is suspected of having a disability (Weishaar, 2007). There are two types of due process: substantive due process and procedural due process. Due process was of particular importance to the current study because it can be a frequent underpinning of cases concerned with students with disabilities.

Substantive due process. Substantive due process stipulates state actions should not be arbitrary or capricious. Substantive due process is concerned with the action itself. Reasons for action should be valid and objective (Cambron-McCabe, et al., 2004). If an action is taken that is not based on valid and objective reasons then there has been a violation of the person's substantive due process rights guaranteed by the Fourteenth Amendment. For example, if a school district were to decide people with red hair shouldn't be allowed to take chemistry, that action would be arbitrary and not based on
any valid reason. That action would violate the substantive due process rights of people with red hair.

_Procedural due process._ Fundamental fairness when the government threatens life, liberty, and property is ensured by procedural due process under the Fourteenth Amendment (Cambron-McCabe, et al., 2004). Procedural due process deals specifically with the set of procedures followed when an action is taken by the state. An example of this is when there is conflict between the school district and another party, such as a family (Jewett, 2007). In matters of conflict, action must be taken that is “not arbitrary, unreasonable, or discriminatory, and follows certain procedures before anyone can be deprived of ‘life, liberty, or property’” (Jewett, p. 6). An example of a procedural due process right violation would be if a student was suspended and no notice was given to the student or the parents.

*Non-Discriminatory Evaluation*

Three significant court cases have led to the principle of non-discriminatory evaluation: *Hobson v. Hansen* (1967), *Larry P. v. Riles* (1972); and *Parents in Action on Special Education [PASE] v. Hannon* (1980). These three seminal cases provided the foundation for the legislation that followed. In the 1975 Education of All Handicapped Children Act, nondiscriminatory testing procedures were guaranteed by requiring tests (1) to be presented in the child’s native language or mode of communication; (2) to be administered by personnel trained via the manufacturer’s instructions; and (3) must be validated for the purpose for which they were used (Murdick, et al., 2007). IDEIA (2004) further ensured this principle by mandating additional requirements related to parental consent and permission and exceptions. See Appendix B for a summary of these
requirements. Additionally, there is a provision in IDEIA that allows for independent educational evaluations. These evaluations are provided, upon parental request, to allow for triangulation of evaluation or reevaluation data. For examples of cases regarding students with ASD and evaluation, see *Amanda J. v. Clark County School District and Nevada State Department of Education* (2001) and *N.N.J. v. Broward County School Board* (2007).

**Parental Participation**

Prior to the Education of All Handicapped Children Act (1975), children with disabilities were not always allowed to receive a public education. However, parents were strong advocates for their children and pushed legislators to pass the Act which would allow for access to public education. Because parents have always been part of this initiative and because parents are a large part of their children's lives, parents have rightfully wanted to remain involved in the special education process.

According to IDEIA (2004), a parent is a "natural, adoptive, or foster parent of a child" or "a guardian", "an individual acting in the place of a natural or adoptive parent with whom the child lives, or an individual who is legally responsible for the child's welfare," or someone assigned as "a surrogate parent" (IDEIA, as cited in Murdick, et al., 2007, p. 165). Many of these definitions have been further defined. Regardless, the Act strongly encourages and indeed mandates parental involvement.

Parental participation can take many forms in special education processes. Parents must provide consent for evaluation as well as consent for receiving special education and related services (Murdick, et al., 2007). Parents are mandated members of the IEP team and must be informed as to the intentions of the school district in providing
an education as well as receive a copy of their rights and procedural safeguards (Cambron-McCabe, et al., 2004). Parents, as well as school districts, have the right to initiate due process procedures (Cambron-McCabe, et al., and Murdick, et al.). Because of the mandate that parents have “meaningful participation in all decisions with regard to their child’s education” (Weishaar, 2007, p. 17) for children with disabilities, there are other rights that are afforded to parents as well. Finally, because of mandated meaningful participation, parents must also understand what is occurring at the IEP meeting which may mean utilizing an interpreter for parents who are deaf or for whom English is a second language (Huefner, 2006).

According to Murdick, et al. (2007), there has been little litigation seen on the basis of parental participation. Furthermore, those cases that have been adjudicated that involve parental participation have typically been in conjunction with another issue such as FAPE, LRE, or evaluation. Though parental participation may not have been the sole tenet of the case, the following examples are specific to students with ASD: E.P. v. San Ramon Valley Unified School District (2007) and Kings Local School District v. Zelazny (2003).

Summary

The prevalence of children diagnosed with ASD has increased during recent decades (Centers for Disease Control and Prevention, 2007; Heflin & Alaimo, 2007). The needs of these children can vary dramatically, may be significant, and are often complex. There has been a particular focus placed on children with ASD in recent legislation (Children’s Health Act, 2000; Combating Autism Act, 2006; Individuals with
Disabilities Education Improvement Act, 2004). Additionally, the increase in prevalence and the complexity of educationally serving students with ASD has also led to litigation to interpret how students with ASD should be educated.

Simpson (2003) suggested that no other specific disability area has had such difficulty determining effective and evidence-based practices for treatment and intervention as autism. The treatments for ASD have changed dramatically since its discovery as its own disability in the 1940s. Even since its inception as a distinct disability category in special education legislation, the treatments and interventions have been numerous. Many of these treatments have been fads that have been shown to not be effective. However, there is still conflict as to which treatments and interventions are best and, in some cases, this conflict has led to litigation between school districts and parents.

The requirement of school districts to provide an appropriate education to students with disabilities has led to discord between school districts and families. Students with ASD are no different. In fact, Yell, et al. (2003) reported that there has been a considerable increase in the amount of litigation surrounding the education of students with ASD during the past decade. The awareness of autism and ASD has increased as well as the prevalence of the disabilities included in the spectrum (Centers for Disease Control and Prevention, 2007; Heflin & Alaimo, 2007). Considering the increase in prevalence and the complexity of educationally serving students with ASD as well as the increase in litigation, it is important for school districts to know what issues are being adjudicated and who is prevailing. If school districts are aware of these "hot button" issues, they may be better prepared to provide appropriate education to students
with ASD. School districts also may have a better standing when conflict does arise in knowing how parents and districts typically fare depending upon the issue in question before the courts.

With litigation being so costly and so time consuming to both school districts and parents, it would seem advantageous to avoid going to court, when possible. Knowing which federal statutes address the education of students with ASD and what provisions are included, as well as the agreement and disparities between these statutes, can be the first step for school districts to develop and maintain educational programming for students with ASD. Moreover, knowing the outcomes, frequencies, and legislative components of cases related to the education of students with ASD can assist with knowing the "hot button" issues that exist and who, if anyone, the courts are favoring in their decisions.
CHAPTER 3: METHODS

Students with autism spectrum disorders (ASD) can vary immensely in their abilities and challenges. Additionally, students with ASD may have significant and complex needs that can affect all areas of their daily life. Friction surrounding the education of students with ASD has grown between parents and schools since the inclusion of the disorder into the federal special education laws. This discord has led to a significant amount of time-consuming and costly litigation (Yell, et al, 2003). Due to the potential for conflict and the complexity of serving students with ASD, administrators and other educators are now faced with the growing challenge of serving students with ASD and providing them with the appropriate education provided by the IDEIA (2004). Additionally, the growing body of litigation can further inform schools and parents and assist in interpreting the legislation.

This study examined the relevant legislation and recent case law applicable to students with ASD. Laws and case law are written documents. Because statutory law and case law are codified as documents that were analyzed in this study, a content analysis was the appropriate method for data analysis. Content analysis allows for the "systematic examination of forms of communication to objectively document patterns" (Rossman & Rallis, 2003, p. 198). The purposes of this study were to review and analyze legal issues related to the provision of education for students with ASD. Specifically, the study focused on: 1) an examination of the No Child Left Behind Act (2001) and the Individuals with Disabilities Education Improvement Act (2004) which affect the education of students with ASD; and 2) case law pertaining to the education of students with ASD.
Research Questions

This study focused on the legislation surrounding the education of students with ASD and the relevant case law that has further defined that legislation. The purposes of this study were to review and analyze legal issues related to the provision of education for students with ASD. Specifically, the study focused on: 1) an examination of federal laws that affect the education of students with ASD; and 2) case law pertaining to the education of students with ASD. Once the purposes were clarified, the research questions were identified. These questions allowed for identification, comparison, and analysis of the specified legislation and litigation.

1. Is there compatibility regarding major provisions among the federal statutes that address the education of students with autism spectrum disorders?

2. What were the frequency and outcomes, including who was favored in cases related to the education of children with autism spectrum disorders, which were decided in the federal courts of appeals and above from 2001-2007?

3. What were the demographics, including gender and age of the student with autism spectrum disorders, in cases decided in the federal courts of appeals and above from 2001-2007?

4. What were the plaintiffs’ and defendants’ claims and what were the bases upon which cases for students with autism spectrum disorders were litigated in cases decided in the federal courts of appeals and above from 2001-2007?
Data Gathering

Content for Review

Two types of content were examined in this study. The first was the relevant federal legislation of the *Individuals with Disabilities Education Act* (2004) and the *No Child Left Behind Act* (2001). The second type of content was the case law related to the education of children with autism decided in the federal courts of appeals and above from 2001-2007. Both types of content were public information and, thus, easily accessible. Also, the population was defined by the timeframe specified. Therefore, no sample was selected. Additionally, because only public, permanent products were reviewed, no review was required from the Human Subjects Review Committee.

The year 2001 was chosen as the starting date for the review because that was the year the *No Child Left Behind Act* was enacted. Federal litigation relating to autism spectrum disorders and education was included from January 2001 through December 2007. This six year span gave a snapshot of the current status of legal issues surrounding the education of students with ASD as well as whom the courts favored regarding specific legal components.

Federal Legislation. Relevant legislation was found through the use of LexisNexis Congressional. This database contained the full text versions of the laws enacted by the United States Congress. The most recent authorization of the *No Child Left Behind Act* (2001) and the *Individuals with Disabilities Education Improvement Act* (2004) were the versions of the law reviewed. Federal statutes were saved and stored on disk for review.
Case Law. The second type of data that was collected was relevant case law from 2001 to 2007. Cases adjudicated by December 2007 were included in this study. Only cases that had been adjudicated by the federal court system were included. Cases settled or decided outside the federal courts were not reviewed or considered in this study.

Like federal legislation, case law was public information and readily available. Relevant case law was found through the use of LexisNexis Academic. The search for federal case law used key words such as autism, Asperger, and education. All case law found under these and any other applicable key words, or identified otherwise in the course of the search, were saved and stored on disk for review.

Content Analysis

Content analysis is an analytic method for reviewing texts. Specifically, it is used with forms of communication, such as legislation and case law, to objectively and systematically examine documents for patterns (Rossman & Rallis, 2003). White and Marsh (2006) stated that results of content analysis may be presented with the use of numbers or percentages to show relationships but that a narrative or textual presentation also may be appropriate. Content analysis provides for the obtainment of quantitative data, which will allow for frequency of cases and their outcomes to be calculated and displayed (Babbie, 2008).

Appropriateness of Content Analysis Methodology

Rossman and Rallis (2003) suggested content analysis could be used for researching human communication. This can include a broad variety of exemplars such as song lyrics, movies, and television advertisements. However, Arkin (1999, citing
Krippendorf, 1980) provided a rationale for applying content analysis to reviewing legal documents such as legislation and case law. Krippendorf wrote 'humanities and the social sciences, including efforts to improve the political and social conditions of life [emphasis added], is concerned with symbols, meanings, messages, their functions, and effects' (p. 9). Arkin (citing Krippendorf) also stated

'within social organizations the right to use a particular channel of communications is regulated and whatever data one obtains in such contexts, they reveal what an institution deems permissible' (p. 47)...

Laws certainly fit the criteria of being documents that are regulated and whose primary purpose is political and social improvement (p. 67).

Content analysis is an appropriate method for researching written communication. Indeed, Babbie (2008) stated content analysis “is particularly well suited to the study of communications” (p. 350). Legislation and case law are the written products of human communication in the context of legal proceedings. Legislation is the summary of ideas, suggestions, and debates that occurred to determine the law in Congress. Case law summarizes the decisions made regarding the characteristics of the facts presented to the court.

White and Marsh (2006) provided seven criteria for the application of content analysis. These seven criteria included: Cohesion, Coherence, Intentionality, Acceptability, Informativity, Situationality, and Intertextuality.

Cohesion was defined as being “composed of linguistic elements arranged in a linear sequence that follows rules of grammar… to create a message” (White & Marsh, 2006, p. 28). Coherence means that the text has meaning. Intentionality deals with the
intend for the text to convey meaning which is juxtaposed with acceptability, or the understanding of the text message. Text "may contain new or expected information, allowing for judgments about its quality of informing" (White & Marsh, p. 28) is informativity. When text is affected by the situation or context of its production it is called situationality. Finally, intertextuality deals with the fact that texts are often related to what precedes and follows the text as well as other texts (White & Marsh).

Legislation and case law are composed of linguistic elements to create a message, have and intend for meaning, and allow for judgments. Laws and lawmakers are influenced by constituents and world events, the context, while they are being written and even when they are interpreted. Finally, these texts are related. Case law is the interpretation of legislation and may eventually influence future legislation. Consequently, both meet the criteria for content analysis.

Procedures

Procedures for Legislation Analysis

One question was identified related to the legislation:

1. Is there compatibility regarding major provisions among the federal statutes that address the education of students with autism spectrum disorders?

Provisions in the *No Child Left Behind Act* (2001) and the *Individuals with Disabilities Education Improvement Act* (2004) were identified through the literature review and defined according to the legislation. Related areas to these provisions were also identified by the literature and summarized in tables 1 and 2 in the literature review.
Once provisions and related areas were identified and the provisions defined, they were compared for compatibility. This happened in three phases. The first phase was to determine if the same provisions occurred in each piece of legislation. Differences were noted and summarized. The second phase was used when the same or similar provisions were included in both pieces of legislation. When this was the case, then the two definitions were compared for similarities. This comparison looked for similar words and phrases in each definition. The results of the second phase were summarized. The third phase looked at the similarities and differences between the related areas identified in the literature. The results of this comparison were also summarized.

**Procedures for Case Law Analysis**

Three questions were developed related to case law or litigation.

2. What were the frequency and outcomes, including who was favored in cases related to the education of children with autism spectrum disorders, which were decided in the federal courts of appeals and above from 2001-2007?

3. What were the demographics, including gender and age of the student with autism spectrum disorders, in cases decided in the federal courts of appeals and above from 2001-2007?

4. What were the plaintiffs’ and defendants’ claims and what were the bases upon which cases for students with autism spectrum disorders were litigated in cases decided in the federal courts of appeals and above from 2001-2007?

To research the case law-based questions listed above, content analysis was used. The provisions, definitions, and related areas found from the literature pertaining to the
identified legislation were formulated into two summary tables; one for IDEIA (2004) and one for NCLB (2001). These tables were included in the literature review and were applied as a framework to the cases. Emerging themes from the case law were also identified. A summary sheet was created (see Appendix C) to collect data that included the case title, court, plaintiff and defendant claims, and what those claims were based upon. This summary sheet also included demographic information such as the age, gender, and location of the student, as well as the outcome of the case and what that outcome was based upon.

The results from the summary sheet were expressed in a series of tables summarizing these results. The tables showed the cases that have been litigated and decided from January 2001 through December 2007.

Cases were identified based upon specific criteria. The case had to be adjudicated by a United States Courts of Appeals or above between January 1, 2001 and December 31, 2007. Cases were identified in LexisNexis Academic by using certain descriptors. Autism and education yielded 28 cases. Of these, 26 cases were reviewed. Upon review of the cases, it was determined that two of the cases were not about education and students with autism spectrum disorders. Asperger and education yielded 7 cases. Of these results, 2 cases were not duplicates from the 28 previously found and one of the two was not related to the education of students with ASD. There was one United State Supreme Court case found using the autism and education descriptors. No other United States Supreme Court cases matched the criteria. Thus, this study included a total of 28 cases.
Reliability

In quantitative content analysis, the type being used to code the case law, confirmability is assessed through inter-rater reliability (White & Marsh, 2006). Content analysis readily lends itself to be checked for inter-rater reliability. As already stated, content analysis is the systematic study of permanent products (Rossman & Rallis, 2003; Haggarty, 1996). Thus, the permanent product can readily be recoded by a second observer. For this study 54 percent of the cases were coded by a second observer. Interrater reliability was determined by counting the number of agreements and dividing that by the total items on the summary sheet to obtain a percentage of agreement.

Validity

At the basic level, validity is concerned with whether or not the procedures and methods actually measure what they are intended to measure (Babbie, 2008). The present study is looking at legislation and litigation in the areas of autism spectrum disorders and education. It only makes sense to use the legislation and body of case law as the data that are collected and reviewed for their content. Further, case law is the interpretation of the legislation. Thus, this data collection will yield face validity in that they are the logical data to be analyzed.

Ethical Safeguards and Considerations

The types of content that will be examined in this study are the relevant federal legislation and the case law related to the education of children with autism spectrum disorders decided in the courts of appeals and above from 2001-2007. Both types of
content are public information and easily accessible. Because only publicly available permanent products are being reviewed, no review will be required from the Human Subjects Review Board.
CHAPTER 4: THE RESULTS

Introduction

The primary purposes of this study were to review and analyze legal issues related to the provision of education for students with ASD. Specifically, the study focused on:

1) an examination of federal laws that affect the education of students with ASD; and 2) case law pertaining to the education of students with ASD. The following research questions were developed to investigate for this study.

1. Is there compatibility regarding major provisions among the federal statutes that address the education of students with autism spectrum disorders?
2. What were the frequency and outcomes, including who was favored in cases related to the education of children with ASD, which were decided in the federal courts of appeals and above from 2001-2007?
3. What were the demographics, including gender and age of the student with ASD, in cases decided in the federal courts of appeals and above from 2001-2007?
4. What were the plaintiffs’ and defendants’ claims and what were the bases upon which cases for students with ASD were litigated in cases decided in the federal courts of appeals and above from 2001-2007?

Content analysis was used to analyze the data consisting of the federal legislation of the Individuals with Disabilities Education Improvement Act (2004) and the No Child Left Behind Act (2001) and the litigation from the U.S. Courts of Appeals from 2001 through 2007. A map identifying the geographical boundaries of the locations of the United States Courts of Appeals was included in Appendix D. The results of this study are presented below.
Results of Data Collection

Federal Legislation

1. Is there compatibility regarding major provisions among the federal statutes that address the education of students with autism spectrum disorders?

The provisions of No Child Left Behind Act (2001) and the Individuals with Disabilities Education Improvement Act (2004) were identified through the literature review and defined by the legislation. Related areas to the provisions were also identified in the literature review. Similarities and differences between the provisions, their definitions, and the related areas were noted and summarized.

None of the provisions from IDEIA (2004) and NCLB (2001) were precisely replicated in both pieces of legislation. The following tables delineate the provisions identified in the literature and their corresponding definitions from the legislation.

Table 4

Summary of IDEIA Provisions and Definitions

<table>
<thead>
<tr>
<th>Provision</th>
<th>Definition of Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Discriminatory Evaluation</td>
<td>“testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this title will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a</td>
</tr>
</tbody>
</table>
child” (IDEIA of 2004, P.L. 108-446, § 612 [a][6][B], 118 Stat. 2678)

**FAPE**

“special education and related services that--

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 614(d)” (IDEIA of 2004, P.L. 108-446, § 602 [9][A-D], 118 Stat. 2653-2654)

**LRE**

“To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that the education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily” (IDEIA of 2004, P.L. 108-446, § 612 [a][5][A], 118 Stat. 2677)

**IEP**

“The term `individualized education program' or `IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d)” (IDEIA of 2004, P.L. 108-446, § 602 [14], 118 Stat. 2655)
“procedures… to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education” (IDEIA of 2004, P.L. 108-446, § 615 [a], 118 Stat. 2715)

“An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child” (IDEIA of 2004, P.L. 108-446, § 615 [a][1], 118 Stat. 2716)

It should be noted the attention paid to the individual in IDEIA (2004). Every provision listed above highlights the individuals’ needs. Non-discriminatory evaluation mandates providing evaluations in a student’s native language or mode of communication. FAPE is what is appropriate for the individual children. LRE is determined by an individual student’s unique needs. IEP deals solely with the individual student and what their educational programming should look like. Procedural safeguards and due process intend to protect the rights of the individual and parent/student involvement lends to further individuality and emphasizes the importance of the involvement of the individual.
### Table 5

**Summary of NCLB Provisions and Definitions**

<table>
<thead>
<tr>
<th>Provision</th>
<th>Definition of the Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountability for</td>
<td>&quot;Each State plan shall demonstrate that the State has developed and is implementing a single, statewide State accountability system that will be effective in ensuring that all local educational agencies, public elementary schools, and public secondary schools make adequate yearly progress as defined under this paragraph&quot; (NCLB of 2001, P.L. 107-110, § 1111 [2][A])</td>
</tr>
<tr>
<td>Results</td>
<td></td>
</tr>
<tr>
<td>Scientifically-Based</td>
<td>“includes research that--</td>
</tr>
<tr>
<td>Instruction</td>
<td>(i) employs systematic, empirical methods that draw on observation or experiment;</td>
</tr>
<tr>
<td></td>
<td>(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;</td>
</tr>
<tr>
<td></td>
<td>(iii) relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations; and (iv) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review&quot; (NCLB of 2001, P.L. 107-110, § 1208 [6][B][i-iv])</td>
</tr>
</tbody>
</table>
Highly Qualified Teachers & Paraprofessionals

holds at least a bachelor's degree; and

"(II) has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum; or

"(ii) a middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor's degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by--

"(I) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

"(II) successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing" (NCLB of 2001, P.L. 107-110, § 9101 [23][B][i][I-III])

"a paraprofessional who has not less than 2 years of--

"(A) experience in a classroom; and

"(B) postsecondary education or demonstrated competence in a field or academic subject for which there is a significant shortage of qualified teachers" (NCLB of 2001, P.L. 107-110, § 2102 [4][A-B])
Academic Assessments

"Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the primary means of determining the yearly performance of the State and of each local educational agency and school in the State in enabling all children to meet the State's challenging student academic achievement standards" (NCLB of 2001, P.L. 107-110, § 1111 [a][3][A])

<table>
<thead>
<tr>
<th>Academic Assessments</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the primary means of determining the yearly performance of the State and of each local educational agency and school in the State in enabling all children to meet the State's challenging student academic achievement standards” (NCLB of 2001, P.L. 107-110, § 1111 [a][3][A])</td>
</tr>
</tbody>
</table>

NCLB (2001) stressed the standardization of education for all students. Accountability for results mandate a single accountability system for each state. Academic assessments also push standardization in that all students are to participate in academic assessments of math, reading, and science so all students can meet the standards.

Though the provisions did not precisely match, there were some areas of intersection. The two pieces of legislation had definitional language that may not have corresponded entirely which underscores the differing purposes of the laws, namely that IDEIA (2004) stressed individualization and NCLB (2001) stressed standardization. The following table shows a summary of definitional differences that may not be completely compatible. The terms in bold represent those that most reflect the discrepancies.
<table>
<thead>
<tr>
<th>IDEIA Provision</th>
<th>IDEIA Definition</th>
<th>NCLB Provision</th>
<th>NCLB Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-discriminatory evaluation</td>
<td><strong>No single procedure</strong> shall be the sole criterion for determining an appropriate educational program for a child</td>
<td>Accountability for results</td>
<td>Each State plan shall demonstrate that the State has developed and is implementing a <strong>single, statewide State accountability system</strong></td>
</tr>
<tr>
<td>IEP</td>
<td>The term <strong>'individualized education program'</strong> or <strong>'IEP'</strong> means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d)</td>
<td>Academic Assessments</td>
<td>Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the</td>
</tr>
</tbody>
</table>
primary means of
determining the yearly
performance of the State
and of each local
educational agency and
school in the State in
enabling all children to
meet the State's
challenging student
academic achievement
standards

The provisions do not completely correspond to each other in definition or in purpose. For example, non-discriminatory evaluation in IDEIA (2004) stated that no single procedure shall be used. The NCLB Act (2001) stated a single statewide State accountability system shall be developed and implemented. The end purpose of these statements was not of equivalent intent because IDEIA called for individualization to determine appropriate education and NCLB called for standards applied to all children. The other example of this listed in the table above was the IEP of IDEIA and academic assessments of NCLB. IEP called for an individualized plan whereas the academic assessments called for all children meeting the same standards.

Analyzing the legislative definitions for similar words and phrases in both pieces of legislation yielded very few similarities. These words were public, standards, State,
State Education Agency, elementary school, and secondary. Because of so few similarities in the definitions, themes really can't be drawn. However, the words that were similar appear to revolve around the structure of education. Specifically, education covered by these two laws includes public education and the State and State Education Agency are involved. The context for State and State Education Agency were similar in both pieces of legislation in that these were the controlling bodies of public education. Elementary school and secondary are ways to structure how students are grouped to receive their education. Standards are a way to structure the curriculum and instruction.

Though no provision was duplicated, there were similarities and differences noted between the laws in related areas that were identified through the literature. These are described in the table below.

Table 7

Similarities and Differences among the Related Areas of IDEIA and NCLB

<table>
<thead>
<tr>
<th>Similarities</th>
<th>Differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>IDEIA</td>
<td>NCLB</td>
</tr>
<tr>
<td>Research-based</td>
<td>Scientifically-based</td>
</tr>
<tr>
<td>interventions</td>
<td>instruction</td>
</tr>
<tr>
<td>Access to the</td>
<td>Academic, statewide</td>
</tr>
<tr>
<td>general education</td>
<td>standards for all</td>
</tr>
<tr>
<td>curriculum</td>
<td>students</td>
</tr>
<tr>
<td>Personnel development and highly qualified personnel</td>
<td>Highly qualified personnel in each core academic subject taught</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-------------------------------------------------------------</td>
</tr>
<tr>
<td>Accommodations and modifications</td>
<td>Reasonable accommodations for students with disabilities</td>
</tr>
<tr>
<td>Focus on outcomes</td>
<td>Adequate Yearly Progress and statewide Report Cards</td>
</tr>
<tr>
<td>Alternate assessments</td>
<td>Alternate assessments</td>
</tr>
<tr>
<td>Inclusion</td>
<td>Statewide standards for all students</td>
</tr>
</tbody>
</table>
Though the provisions did not offer much similarity, the related areas identified in the literature did. Both pieces of legislation had areas that focused on research-based interventions and providing equitable access including accommodations and alternate assessments. Both also focused on accountability. Examples of this included the focus on outcomes and public reporting of Adequate Yearly Progress (AYP) and the statewide Report Card. The other major similarity noted was the reference to highly qualified personnel in both pieces of legislation.

The major differences noted reflected the different purposes of the laws. IDEIA (2004) had a great focus on individualization whereas NCLB (2001) focused on standardization. This was evidenced by the individualization and independent evaluations as examples from IDEIA versus the statewide standards and statewide assessments highlighted in NCLB.

**Case Law**

2. *What were the frequency and outcomes, including who was favored in cases related to the education of children with autism spectrum disorders, which were decided in the federal courts of appeals and above from 2001-2007?*

**Frequency and Outcome Results**

Of the 28 cases reviewed and analyzed, the parents were favored in 10, or about 36 percent, and the schools were favored in 17, or about 61 percent, with one additional case favoring both the parents and the school in part. It was interesting to note that between July 2001 and March 2003, parents were favored for the six cases reviewed. Starting in April 2003, schools were favored in all but four cases.
There are eleven United States Court of Appeals Circuits. The largest number of cases reviewed by a single court was 10; these were heard in the 4th Circuit United States Court of Appeals. In these 10 cases, parents were favored in four cases, schools in five cases, and both in part in one case. Of these 10 cases, six were from Virginia, three from North Carolina, and one from South Carolina. In Virginia, four cases favored the school and two favored the parents. In North Carolina, one case favored the parents and school both in part, one favored the parents, and one favored the school. In South Carolina, the decision favored the parents.

The United States Courts of Appeals for the 1st Circuit and for the 7th Circuit both heard four cases during the timeframe under examination. In the 1st Circuit, all four cases were decided in favor of the schools and occurred in New Hampshire, Rhode Island, Maine, and Puerto Rico. In the 7th Circuit, two of these cases were heard from Wisconsin where one favored the parents and one favored the school. The other two cases favored the school and were heard from Indiana and Illinois.

The United States Courts of Appeals for the 6th Circuit and for the 11th Circuit both heard three cases during this timeframe. In the 6th Circuit, cases occurred in Ohio, Michigan, and Tennessee. In Ohio, the court found in favor of the school. In Michigan and Tennessee, the courts found in favor of the parents. In the United States Court of Appeals for the 2nd Circuit, there were two cases that both occurred in New York and both found in favor of the schools. One case occurred in the 9th Circuit in Oregon and that was found in favor of the parents. There were no cases heard matching the criteria of this study in the 3rd, 5th, 8th, and 10th Circuit United States Courts of Appeals. The following table summarizes the case locations and who was favored in each case.
Table 8

*Case by Circuit and Who was Favored*

<table>
<thead>
<tr>
<th>Court</th>
<th>School Favored</th>
<th>Parents Favored</th>
<th>School and Parents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Circuit Court of Appeals</td>
<td>4</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2nd Circuit Court of Appeals</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>4th Circuit Court of Appeals</td>
<td>5</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>6th Circuit Court of Appeals</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>7th Circuit Court of Appeals</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>9th Circuit Court of Appeals</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>11th Circuit Court of Appeals</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>United States Supreme Court</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

3. *What were the demographics, including gender and age of the student with autism spectrum disorders, in cases decided in the federal courts of appeals and above from 2001-2007?*

*Demographic Results*

The demographic information of age and gender were collected about the students involved in the cases during the analysis. There were 19 cases that involved male students, seven that involved female students, and two in which the gender was not provided. For the cases involving male students, 11 favored the schools and 8 favored the parents. For the cases involving female students, four favored the schools, two
favored the parents, and one favored both the school and the parents in part. Where the
gender was not provided, both cases favored the school. The age range for the students
was 3 years to 14 years. The median age for students whose age was included was 10
years old. For males, the median age was 10 years old and for females, the median age
was 11 years old. However, 16 cases did not provide the age of the student involved.
This made it difficult to draw conclusions regarding the age of the students. Of those that
did provide the age, there did not appear to be any pattern as to who was favored by age.
These data are summarized in the tables below.

Table 9

Gender of Students Involved in Cases and who was Favored

<table>
<thead>
<tr>
<th>Student Gender</th>
<th>School Favored</th>
<th>Parents Favored</th>
<th>School and Parents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>11</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Female</td>
<td>4</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Not Provided</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Table 10

*Age of Students Involved in Cases and who was Favored*

<table>
<thead>
<tr>
<th>Student Age</th>
<th>School Favored</th>
<th>Parents Favored</th>
<th>School and Parents</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 years</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>7 years</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>8 years</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>9 years</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>10 years</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>11 years</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>13 years</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>14 years</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Age Not Provided</td>
<td>10</td>
<td>5</td>
<td>1</td>
</tr>
</tbody>
</table>

4. *What were the plaintiffs’ and defendants’ claims and what were the bases upon which cases for students with autism spectrum disorders were litigated in cases decided in the federal courts of appeals and above from 2001-2007?*

*Plaintiff and Defendant Claims*

The plaintiffs and defendants in each case made specific claims typically based upon provisions included in IDEIA (2004). None of the cases found dealt with the NCLB Act (2001). One case was decided on the basis of “lack of evidence of retaliatory animus” and one was dismissed as moot. The table below summarizes the plaintiffs’ and
defendants’ claims as well as who was favored in each case and what that decision was based upon.

Table 11

**Claims, who Was Favored, and Provision upon Which Case Was Decided**

<table>
<thead>
<tr>
<th>Plaintiffs’ Claim</th>
<th>Defendants’ Claim</th>
<th>Decision Favored?</th>
<th>Based Upon?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parents wanted reimbursement for Lovaas therapy based on no notice provided and 60 day limitation conflict with IDEA</td>
<td>Due process must be filed within 60 days</td>
<td>School and parents both in part</td>
<td>FAPE, Procedural Safeguards</td>
</tr>
<tr>
<td>Parents wanted a reinstatement of an award for private placement because they were deprived the opportunity to a due process hearing as they were not informed of their right based upon procedural safeguards and failure to receive rights</td>
<td>School claims that the statute of limitations was misapplied and the court should have afforded less deference to the LHO based upon procedural safeguards</td>
<td>Parents</td>
<td>Procedural safeguards and FAPE</td>
</tr>
<tr>
<td>School said the mental health facility the parents wanted was too restrictive based upon LRE</td>
<td>Parents claim ZS had been denied FAPE based upon procedural safeguards and FAPE because he could not be</td>
<td>Parents</td>
<td>FAPE</td>
</tr>
</tbody>
</table>
Parents asked for reimbursement for in-home Lovaas program based upon FAPE successful in a public school

School refused to pay for services and said parents had not exhausted their administrative remedies (procedural safeguards)

Parents claimed the school failed to provide sufficient math instruction based upon IEP not being followed and asked for attorney’s fees

School said child was objecting to implementation of the IEP and that the services the school was providing were not materially different from what was required in the IEP

Parents wanted stay put provision while in due process and reimbursement for educational expenses based upon FAPE and Procedural Safeguards

Parents sought reimbursement because school did not provide appropriate for a Lovaas-certified

State refused to pay expenses due to statute of limitations

Parents wanted stay put provision while in due process and reimbursement for educational expenses based upon FAPE and Procedural Safeguards

Parents sought reimbursement because school did not provide appropriate for a Lovaas-certified

School said IEP was appropriate

Parents

Parents

Parents

Parents

IEP

IEP, Procedural Safeguards

IEP, Procedural Safeguards

IEP, Procedural Safeguards

IEP, Procedural Safeguards

IEP, Procedural Safeguards

IEP, Procedural Safeguards
consultant based upon FAPE and IEP and sought attorney's fees

<table>
<thead>
<tr>
<th>Parents paid for private school and wanted reimbursement based upon FAPE, LRE, IEP, and parent participation</th>
<th>School said IEP was appropriate in public school to make progress based upon IEP and FAPE</th>
<th>School said IEP was appropriate based on FAPE</th>
</tr>
</thead>
</table>

Parents sought reimbursement for private speech and OT services during the summer based upon FAPE

<table>
<thead>
<tr>
<th>Parents rejected the IEP saying they wanted 1:1 ABA and removed son from school seeking reimbursement for educational expenses based upon IEP, FAPE, and failure to notify under procedural safeguards</th>
<th>School said the text of IDEA does not mandate notice be given for the limitation to bring a due process based upon procedural safeguards</th>
<th>School said the parents were time barred and they were past</th>
</tr>
</thead>
</table>

Parents felt IEP was not appropriate based upon IEP
and FAPE

Parents requested tuition

School said FAPE wasn’t an issue at the time in question.

Parents sought attorney’s fees, costs, and prejudgment interest based upon procedural safeguards.

Parents said IEP was inappropriate, there were procedural violations, and that their son was denied FAPE and thus sought reimbursement for.

School said IEP was appropriate and rejected private placement based upon FAPE, and IEP.

School said notice of appeal except attorney’s fees was untimely based upon procedural safeguards.

School所述 FAPE wasn’t an issue at the time in question.

Parents referred to change in placement, said school failed and the child enrolled in private school prior to question.

Parents said IEP was improper, there were procedural violations, and that their son was denied FAPE and thus sought reimbursement for.

School said FAPE wasn’t an issue at the time in question and that they failed to prove their case based upon procedural safeguards and burden of proof.

School said notice of appeal except attorney’s fees was untimely based upon procedural safeguards.

Parents said IEP was improper, there were procedural violations, and that their son was denied FAPE and thus sought reimbursement for.

Parents referred to change in placement, said school failed and the child enrolled in private school prior to question.

Parents sought attorney’s fees, School said notice of appeal costs, and prejudgment interest except attorney’s fees was based upon procedural untimely based upon safeguards procedural safeguards.

Parents said IEP was improper, there were procedural violations, and that their son was denied FAPE and thus sought reimbursement for.

School said FAPE wasn’t an issue at the time in question.
private placement and sought
attorney's fees

<table>
<thead>
<tr>
<th>Parents said school failed to provide FAPE</th>
<th>School said they did provide FAPE and there were no procedural or substantive violations of IDEA</th>
<th>Parents</th>
<th>FAPE, Procedural Safeguards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parents sought reimbursement for summer private speech and OT services</td>
<td>School offered both services but at a lesser amount than parents wanted based upon that amount would meeting the goals of the IEP and FAPE</td>
<td>School</td>
<td>IEP and FAPE</td>
</tr>
<tr>
<td>School claimed the IEP was appropriate and the hearing officer failed to give proper deference to professionals</td>
<td>Parents claimed that IEP did not provide ZP with FAPE</td>
<td>School</td>
<td>FAPE</td>
</tr>
<tr>
<td>Parents wanted an independent consultant hire to train staff, attorney's fees, and that the IEP wasn't specific enough based upon FAPE, LRE, and IEP</td>
<td>School said placement was appropriate based upon IEP</td>
<td>School</td>
<td>FAPE, LRE, and IEP</td>
</tr>
</tbody>
</table>

82
<table>
<thead>
<tr>
<th>Parents said it was not an appropriate IEP because it didn’t include ABA at home and the IEP wasn’t reasonably calculated to make progress based upon FAPE and IEP</th>
<th>School said it provided ABA in the preschool program and meaningful progress was made based upon FAPE</th>
<th>School</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parents sought reimbursement for specialists based upon FAPE and IEP</td>
<td>School said IEP was appropriate</td>
<td>Dismissed as moot</td>
</tr>
<tr>
<td>Parents said that the use of a harness on the bus violated FAPE, they were denied an IEE, confidentiality was breached, and there was a failure to provide prior written consent for observation based upon FAPE, non-discriminatory evaluation, and procedural safeguards</td>
<td>School said plaintiff’s claims lacked merit based upon FAPE and procedural safeguards</td>
<td>FAPE, Non-discriminatory evaluation, procedural safeguards</td>
</tr>
<tr>
<td>Parents said school reported them negligent in retaliation for filing a complaint</td>
<td>School said child had bruises on arms and parents ignored efforts to contact them</td>
<td>Lack of evidence of retaliatory</td>
</tr>
<tr>
<td>Parents sought reimbursement for private placement and compensatory education services</td>
<td>School said that her disability did not adversely affect her educational performance based upon FAPE and IEP</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Parents said an IEP should have been written and temporary IEPs were invalid because there was no consent based upon IEP and FAPE</td>
<td>School said IFSP services don’t continue past age 3 and the triplets would have to enter a public school program based upon IEP</td>
<td></td>
</tr>
<tr>
<td>Parents said that the private school name was not written in the IEP based upon FAPE</td>
<td>School determined that 3 schools were appropriate and the parents refused based upon FAPE</td>
<td></td>
</tr>
<tr>
<td>Parents said school failed to include specific transition plans based upon FAPE and LRE</td>
<td>School recommended special placement based upon FAPE</td>
<td></td>
</tr>
</tbody>
</table>
Parents sought private school reimbursement. The 6th Circuit Court of Appeals denied hearing the case because the Winkelmans did not obtain counsel and FAPE was for a student, not a parent. Parents appealed to the Supreme Court based upon Procedural Safeguards, Parental Involvement, and FAPE.

Parents sought tuition reimbursement for private placement based upon FAPE only to the extent the parents represent their child’s interests based upon parental involvement. School said IEP was appropriate for student to receive educational benefit based upon IEP and FAPE.

Remembering that some cases had more than one provision that aided in the decision of the case, the following is a summary of the provisions that were utilized to decide the cases. Nineteen of the cases included in this study were based on a question of FAPE. Twelve of these cases favored the schools and six favored the parents. One additional case favored both the parents and the school in part.

Other provisions found that were disputed and decided upon were Procedural Safeguards, IEP, LRE, parent involvement, and non-discriminatory evaluation.

Procedural safeguards formed at least part of the basis of the decisions in 14 of the cases.
Of these, the schools were favored in six, the parents favored in seven, and both the school and parents favored in part in one. Eleven cases were decided upon IEP, at least in part. Of these 11, seven favored the schools and four favored the parents. Three cases were decided at least in part on the matter of LRE and all three were decided in favor of the school. Two cases were decided using parent involvement with one favoring the parents and the other favoring the school. There was one case that involved non-discriminatory evaluation in part which favored the school. Finally, there were two other cases that favored the school. One was based upon "lack of evidence of retaliatory animus" and the other was found moot because the parents moved out of the district.

Table 12

_Provision on Which Case Was Decided and who Was Favored*

<table>
<thead>
<tr>
<th>Provision</th>
<th>School Favored</th>
<th>Parents Favored</th>
<th>Both Favored</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAPE</td>
<td>12</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>Procedural Safeguards</td>
<td>6</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>IEP</td>
<td>7</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>LRE</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Parent Participation</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Non-Discriminatory Evaluation</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

*Some cases had multiple provisions upon which they were decided.

Cases that were decided upon FAPE dealt mainly with parents seeking reimbursement for private placement settings. When schools prevailed in this area, it was
because they showed they were able to provide similar services and supports as the private setting or that the IEP was reasonably calculated to provide educational benefit.

With cases decided upon procedural safeguards, the chief issue was the statute of limitations to file a due process claim. The Courts of Appeals agreed with the schools that it is appropriate to apply a statute of limitations to file a due process granted the schools provide notice to parents. Other issues for procedural safeguards included the courts or hearing officer not providing appropriate deference to specific evidence or the professionals’ opinions, awarding of attorney’s fees, and not exhausting administrative remedies.

Cases decided upon IEP typically were decided in conjunction with FAPE or procedural safeguards. For example, there were cases where the school had included services that were deemed appropriate by the court but the parents’ claimed the IEP was inappropriate. Courts found in favor of the school if the services were deemed appropriate, which relates to FAPE. Other decisions provided direction to schools related to IEP. Students must receive services on the IEP even if the student, as a minor, objects to the services. A student’s disability must affect their education in order to receive services. Finally, schools need to be specific in the IEP in the amount and frequency of services, such as staff training that will be provided.

LRE was only used for a decision basis in three cases that were reviewed, but in these cases the schools were favored by the courts. Specifically, schools that showed they had trained personnel were more likely to be favored. Also, when schools could show why they felt the placement was appropriate, they were more likely to be favored.
This was especially true when the issue of FAPE was included and parents wanted private placement settings.

Parent participation was an issue often found in conjunction with procedural safeguards. Parents need to have meaningful participation. In the case where the courts found in favor of the school, the school claimed the parents had inappropriately paid for private schooling, the student had made progress in the public schools, and the team had integrally included the parents in the process. On the other hand, the case that favored the parents was the Supreme Court case that determined parents could, indeed, represent themselves in court on behalf of their child and determined that the rights of the child with the disability extended to the parents as well.

In the case decided in part on non-discriminatory evaluation, the parents had requested an independent educational evaluation (IEE) for behavior. The school denied the request. The school was favored in this case because the student was not denied FAPE by denying the IEE.

One of the cases shown as "Other" in Table 12 was determined moot because the parents moved out of the district while the case was in court. The second case in this category was about whether the student's 14th Amendment rights had been violated. The parents said the school was retaliating against them and had filed a child neglect case because they had filed a complaint, but the case was decided in favor of the school on lack of evidence of retaliatory animus.

A table summarizing the information presented above in a more comprehensive manner is included in Appendix E.
Reliability

Reliability measures were taken on 54 percent of cases, or 15 of the 28 cases reviewed. Specifically, a second person coded the cases independently. These were compared to the first person's codes. On these 15 cases, there were 11 areas that were compared for reliability on the case law summary sheet. Reliability was calculated by counting the number of agreements between the two coders and divided by the number of agreements plus the number of disagreements between the two coders, or the total number of areas. The reliability on these eleven areas was 92.7 percent with a range of eight to eleven out of eleven possible agreements.
CHAPTER 5: CONCLUSIONS

Conclusions

When it comes to special education, schools and families may not always agree on what means to provide a student with ASD with an appropriate education. Understandably, parents want what is best for their child. Schools, though wanting a similar outcome, have confines in which they must function. These confines include personnel, finances, legal constraints, and research bases, among others. Simpson (2003) stated no other specific disability area has had such difficulty in determining the effective and evidence-based practices for treatment and intervention as autism spectrum disorders (ASD). The prevalence of ASD has grown during the past decade (Centers for Disease Control and Prevention, 2007) and with it, too, has grown the number of children in special education found eligible under the category of autism. The challenge of providing an appropriate education as mandated by IDEIA (2004), the varied needs of children with ASD, and the difficulty in determining evidence-based practices has led to some discord between families and schools.

The education of students with ASD is further complicated with the continued reauthorizations of the federal laws that govern special education and the growing body of litigation which is costly fiscally, but also in damaging the working relationship between the schools and the families. When involved in a legal dispute, the schools and the families are set at odds with each other by the very nature of a legal dispute. In a legal dispute, there must be a disagreement and, when decided, there is typically a prevailing party. There is little chance for a mutually agreeable outcome. Additionally, when the case is decided, the school and the family must often continue to work together.
Since the passing of P.L. 94-142, special education has evolved. There have been three reauthorizations of this act: *Individuals with Disabilities Education Act* (1990), *Individuals with Disabilities Education Act* (1997), and the *Individuals with Disabilities Education Improvement Act* (2004). Each successive reauthorization of the law shifted the focus of the law from its original intent of access to one of equity. NCLB (2001) also has affected how students with disabilities were educated by concentrating on all students, including students with ASD, achieving high academic standards, providing highly qualified teachers, ensuring safe schools and classrooms, and assisting all students to graduate from high school (Yell, et al., 2005). The newest reauthorization, IDEIA, was written to complement the ideas of NCLB while still focusing on the individual student's education. Essentially, NCLB focused on student achievement for all students while IDEIA mandated student achievement through individualized education programs for students with disabilities.

**Legislation**

The findings of this study related to legislation determined that no provision was duplicated between IDEIA (2004) and NCLB (2001). That being said, it was found that there were similarities in some of the language dealing with structure of education and in some of the related areas identified in the literature.

The United States Congress passed both IDEIA (2004) and NCLB (2001). When IDEIA was passed by Congress in 2004, the intent was for the two pieces of legislation to be compatible. The question asked in this study was whether that intent was realized. In general, the two pieces of legislation focused on very different aspects. Thus, there were
some areas that did not necessarily correspond. Not surprisingly, the legislation diverged most in the area of the student. The differences noted in this study were consistent with the different assumed purposes of the law. Namely, NCLB concentrated its effects upon all students, whereas IDEIA described how the law affects individual students.

There were similarities between the laws. These similarities revolved around rigor of research behind interventions, equity, and highly qualified personnel. In regards to students with ASD, it is important to note the challenges of the field. As noted earlier, Simpson (2003) stated that it has been difficult for professionals and researchers to determine effective and evidence-based practices for treatment and intervention of students with ASD. The level of research rigor that is required may not exist for this population for a variety of reasons. First, the population of students with ASD is difficult to study because people on the spectrum can vary so much. Second, there hasn’t typically been a readily available population from which to draw appropriate samples for statistically significant comparisons. Third, there have been different philosophies when it comes to developing interventions and these may or may not have been researched as the field is still evolving.

*Equity* is a relative term. It is like *appropriate*, which has been a large factor in litigation (Yell & Drasgow, 2000). What one person believes is equitable may not be what another person believes. Parents want what is best for their children and schools are held to what is appropriate, not necessarily what is best. With the variety of manifestations seen in students identified with ASD, there is such a variety of needs that may be addressed that it can be very difficult to determine what makes an educational situation equitable for students with ASD.
Not every state has distinct licensure criteria that are specific to a teacher who teaches children with ASD. Teachers who teach this population may not have the option to be certified in ASD but may have other certifications such as emotional disabilities or mental retardation. Because of the variety of students that are on the spectrum, it is highly possible that another licensure would not necessarily specifically prepare a teacher to teach students with ASD. Parents may also have a different definition of a highly qualified teacher for students with ASD. Many parents want teachers who have experience in areas such as Applied Behavior Analysis (ABA) or the Treatment and Education of Autistic and related Communication-handicapped Children (TEACCH). Neither IDEIA nor NCLB explicitly identified what highly qualified actually meant with respect to children with ASD. Even the similarities, though compatible, can cause conflict between schools and parents of students with ASD. Considering interventions such as ABA or TEACCH may not be implemented in a general education classroom, or not to the extent some students with ASD require, a general education setting may not be the least restrictive environment for some students with ASD. This may be why parents request private placement settings that can provide these interventions. However, as seen in the litigation, when schools can provide such supports, courts will tend to side with the school.

The content analysis of the legislative definitions yielded little in way of similarities. The biggest similarity between the two laws was in the area of structure. What education looks like in terms of how it is organized and the supervision of it were the main similarities. For example, both laws are in regards to public education. The State and State Education Agency govern the elementary and secondary schools as well
as determine the appropriate standards. Those standards then provide the structure for
instruction. Students with ASD are affected by these similarities in a manner comparable
to all students.

Case Law

The findings of this study related to case law determined that schools were
slightly more likely to prevail in court cases. Also, males were represented about three
times more than females in the court cases reviewed. Griffin, et al. (2006) reported boys
were three to four times more likely than girls to have an ASD so this study, though a
little low, correlated to the national reported average. The greatest number of cases heard
on autism spectrum disorders and education occurred in the 4th Circuit which included the
states of Virginia, North Carolina, and South Carolina. The provisions that formed the
bases of the decisions of the courts were mainly FAPE, Procedural Safeguards, and IEP
with a few cases decided on other provisions including LRE, Parent Involvement, and
Non-discriminatory evaluation.

The considerable increase in the number of cases surrounding the education of
students with ASD was noted by Yell, et al. (2003). Both schools and families incur the
immense burden of the cost of litigation which can include attorney’s fees, a mediator or
hearing officer, and even reimbursement for services and alternative placements not to
mention the human resources that go into preparing and executing a due process,
mediation, or legal case. The six provisions included in IDEIA (2004) were a free and
appropriate public education (FAPE), least restrictive environment (LRE), individualized
program development or individualized education plan (IEP), procedural safeguards and
due process, non-discriminatory evaluation, and parental participation. These provisions were the bases of the cases that were studied.

Cases at the Federal Courts of Appeals and above beginning in January of 2001 and ending before December 2007 were analyzed in this study. Between July 2001 and March 2003, parents were favored in the six cases that were analyzed. Starting in April of 2003, schools were favored in 80 percent, or all but four cases that were analyzed. It is interesting that since IDEIA (2004) passed into law in December of that year, only three of the fourteen cases heard by the Courts of Appeals and the Supreme Court decided in favor of the parents. Though a relatively small timeframe was studied, it would appear that starting in April of 2003 the courts began to favor the schools. The reauthorization of IDEIA might have had an impact on the outcomes of cases. Perhaps the turn to research-based interventions gave the schools a better chance to prevail because, if utilized, the research base would give credence to the schools' attempts at providing an appropriate education. It is possible that the shift to research based interventions also forced school districts to include parent preferred interventions such as applied behavior analysis, which had been the basis of some earlier cases according to Yell and Drasgow (2000). Also, schools might have started to correct some of the earlier mistakes that were made in which courts found in favor of the parents in the previous years. The findings of this study were similar to Zirkel (2002) in that the cases reviewed tended to favor the schools.

Location of Cases

Location of cases was intriguing. Most of the cases included, nearly 36 percent, were heard in the 4th circuit. This includes the states of Virginia, North Carolina, South
Carolina, Maryland, and West Virginia. Six of the ten cases were heard in Virginia alone. Certainly it would be interesting to determine if there is a reason that more cases were heard in this region. This was not included in this study, but would be an area for future research. Also, when the location of the circuits was determined, it became apparent that most of the litigation occurred on the coasts and primarily the eastern coast and into the states of Wisconsin, Illinois, and Indiana, which comprises the 7th Circuit. It was difficult to speculate on why this might be the case but again, a possible area for future research.

Demographics

Demographics were gathered during the study on gender and age of the students involved in the cases. Often the ages were not provided. However, the median age was 10 years old for all students whose age was included. Possible reasons for this might be because around 10 years old is when a lot of students are getting ready to leave elementary school and move to middle school where curriculum often goes faster. Also, students in middle school begin to be pickier about their friendships and search for people who share common interests and students with ASD often lack strong social skills so they may have great difficulty in this area. Additionally, autism was only first included as a categorical label in the 1990 version of the IDEA. Perhaps the increase that has been seen with older students has been because enough time has gone by where the courts were starting to see such cases. It may also just be that it takes time to reach a federal court of appeals after going through the administrative remedies and the lower courts.

Gender of the students was collected as well. There were 19 male and 7 female students in the included cases. Griffin, et al. (2006) reported boys were three to four
times more likely than girls to have an ASD. It was not surprising that there were almost three times more boys than girls represented in the cases that were included. This corresponds with the national statistics that have been reported for gender for students with ASD found by Griffin, et al.

**Provisions**

*FAPE.* A free and appropriate public education (FAPE) was the provision that was found most prevalent for the basis of the decision in the cases reviewed. Just as in the Yell and Drasgow (2000) findings, the reason for that revolves around the word appropriate. There have been cases in every disability category regarding the appropriate education for students. However, the effectiveness of interventions for students with ASD has been largely undetermined (Simpson, 2003). Parents and schools often have a distinctly different view on what is appropriate for students with ASD and given the research base is not solid for effective interventions and the wide variability in student needs, it was not surprising that this was a great area of conflict between schools and parents. However, in two thirds of the cases, the courts favored schools. Perhaps this was because the courts assumed that professionals do try to make the best decisions for students, and that parents may not have the same knowledge that school professionals have. McCabe-Cambron, et al. (2006) explained courts lack the specialized knowledge and experience regarding the questions of education. This was seen in a couple of the cases reviewed where the cases were remanded to lower courts or hearing officers to show greater deference to specific evidence or professional opinions.

Many of the cases regarding FAPE dealt with parents seeking reimbursement for private placement settings. Schools tended to argue that they were providing appropriate
services in the public school setting, whereas parents argued the private placement settings were more appropriate. This may be worth further exploration and study. First, there is an issue of LRE and schools appear to be trying to observe this mandated provision, whereas parents do not seem to be as concerned with LRE. Second, in the cases where schools prevailed on the reimbursement issue, it was typically because they could show they provided similar services as the private settings or that the IEP was reasonably calculated to provide the student with educational benefit. This finding was similar to that of Yell and Drasgow (2000) in that when schools can show appropriate services are being provided and that students are making progress, they are more likely to prevail.

**Procedural safeguards.** Procedural safeguards and due process was the next greatest area of dispute. The courts were split approximately in half for who was favored in the cases decided with schools being favored in six cases and parents being favored in seven. It is important to note the methodology that courts tend to follow when deciding cases. Courts will not tend to make broad generalizations. Therefore, courts will not “anticipate a constitutional question or decide a case on constitutional grounds if there is some other basis for resolving the dispute (Cambron-McCabe, et al., 2004, p. 18). Similarly, if the court can determine the outcome on a regulation rather than legislation, they will tend to do so. Additionally, if a court can make a decision based upon a procedural issue rather than a substantive one, they will likely do so (Cambron-McCabe, et al.). Therefore, one limitation of the study could be that although there were substantive issues brought to the court, in most cases, the issues with procedural safeguards might have been the determining factor. This is especially important because
the second greatest number of cases was decided upon the procedural safeguards provision and this number may have been inflated for this reason.

One big area that stood out in these cases was the issue of providing notice to parents. Schools are required to provide parents with their rights as well as notice for many actions that they take regarding students with disabilities. Most specifically, there was more than one case that centered on providing notice to parents of the statute of limitations for filing a due process. The Courts of Appeals were agreeing with the schools that it is appropriate to apply a statute of limitations to file a due process granted the schools provide notice to parents. However, it should be noted that there were some mistakes made on the part of schools in following the procedural safeguards and many of these, including providing notice, could perhaps have been avoided with proper materials and training in this area for school personnel. When schools committed procedural violations, they were much more likely to lose the case and this is consistent with the findings of Yell, et al. (2003).

IEP. The individualized education plan (IEP) was the third highest provision that was disputed. Seven cases favored the school and four favored the parents in this area. Again, perhaps this was because the courts do assume professionals try to make the best decisions for students and parents may not have the same knowledge that school professionals have. In the cases where the parents were the prevailing party, it appeared that either the school wasn’t following the IEP as it had been written, or there was a question as to whether the IEP was appropriate. Again, with proper training in this area for school personnel, perhaps some of these cases could have been avoided.
In 2003, Etscheidt studied cases about students with ASD and IEP issues from 1997 to 2002. She found many of these cases dealt with creating IEP goals based on evaluation data, team member qualifications, and program validity. The current study did not show similar findings with the exception of program validity. Etscheidt found that methodology was a matter of conflict in cases as well and recommended personnel be familiar with the literature on effective programs for students with ASD. The cases decided upon IEP in the current study further dealt with some of the procedural issues of the IEP, including the need for greater specificity in the IEP. There were also some cases that were about specific services, such as the related services of speech and occupational therapy.

*LRE.* One area of interest in this study was the least restrictive environment (LRE) cases. There were only three included in the study, but all three were found in favor of the schools. Considering many of the FAPE cases dealt with reimbursement for private placements, it is interesting that the schools were favored in LRE. Schools are charged with serving students with disabilities in their least restrictive environment. However, many parents of students with ASD have brought suit against schools in search for private placement reimbursements. A private placement is a more restrictive environment on the continuum of services. Though there are only a few cases and probably not enough to make statements with any certainty, it would seem that courts are finding that schools are trying to serve students with ASD in their least restrictive environment.

This was not similar to the findings of Etschedit (2006) or Yell (1995) in regards to LRE and students with learning disabilities. Yell (1995) cited LRE and the idea of
inclusion as “the most widely and hotly discussed topic in special education” (p. 389). Many advocates have pushed for students to be more fully included with their general education peers. Etscheidt (2006) found similar findings related to children with hearing impairments, stating courts have found students with such impairments need language models and so should be included with general education peers. However, this is not an apparent conflict for students with ASD and the schools that serve them.

When compared to students who present with other disabilities, the issues of dispute surrounding students with ASD are not necessarily those typically seen. Certainly FAPE continues to be an area of dispute in special education. There is not, and most likely will never be, a clear definition of appropriate in the legislation. However, the issue of LRE does not seem to be of a great concern to parents of students with ASD. In fact, from the cases studied, it appeared that parents of students with ASD preferred their children to be placed in more restrictive settings.

Court holdings. One final area to review was the holdings of the U.S. Circuit Courts and U.S. Supreme Court compared to the lower courts. Eleven of the cases were affirmed. Of the 18 that were left, ten were remanded. The final seven cases were mixed decisions in that parts of the cases were affirmed and parts reversed and remanded.

Those cases reversed and remanded may have been reversed because the lower courts were more likely to show greater caution in their decisions so as not to make broad generalizations and provide further stare decisis. The cases that were mixed decisions typically affirmed the more substantive issues such as FAPE or IEP but reversed the procedural issues such as attorney’s fees or the requirements of providing notice. This
may be because courts are less likely to base their decisions on the substantive issues, but rather are more likely to decide upon the procedural issues.

Limitations and Cautions

*Issues with Legal Research*

Researching legislation and case law can be challenging even for an experienced attorney with great knowledge of legal research tools. The study was limited to a very specific set of cases which can certainly guide in further research, but are not all encompassing. The cases that were included were only those that rose to the United States Courts of Appeals or the United States Supreme Court. Many cases have been disputed regarding students with ASD and their education that have been decided in lower courts. These holdings would not be included in the findings of this study.

Also, many disputes between parents and schools are determined by a local hearing officer or are otherwise settled prior to adjudication. These disputes were not included in this study. Though these disputes may further guide a locality or region, they would not generally have a great impact on schools across the country because disputes settled in this manner do not become case law.

Finally, cases dealing with students with ASD that were adjudicated from January 2001 through December 2007 were included. Cases that were adjudicated prior to or afterwards were not considered or analyzed as part of this study. Presumably the most recent cases would dictate the practices of schools and educators in how they educate students with ASD. It is possible, however, that an older case may still be significant to the education of students with ASD and this was not included. It is also quite probable
that previous cases which did not include students with ASD as a party in the case would have an impact on how students with ASD are educated such as the *Brown v. Board of Education of Topeka, Kansas* (1954).

**Recommendations**

*Recommendations for Schools*

This study focused on the legislation and litigation affecting the education of students with ASD. A few recommendations for schools are suggested to assist in hopefully avoiding further disputes and court cases. The following recommendations give suggestions on how to assist with making parent participation more meaningful and aid schools in working with parents.

*Legislative Recommendations*

Schools are now charged with the dual responsibility of educating students with disabilities on an individual basis to be in compliance with IDEIA (2004) and on a standardized basis to be in compliance with NCLB (2001). This dual focus can cause concern for schools and school personnel. In regards to students with ASD, school personnel need to know the literature base on students with ASD as both laws call for research or scientifically-based instruction. When schools have research and data to rest on, they are more likely to prevail in court proceedings. Schools also may want to consider hiring personnel that have experience and knowledge about students with ASD (Etscheidt, 2003; Yell, et al., 2003).
Procedural Safeguards

In 2002, the President's Commission on Excellence in Special Education provided recommendations for the reauthorization of IDEIA (2004) concerning dispute resolution. The following are those recommendations.

Prevent Disputes and Improve Dispute Resolution. IDEA should empower parents as key players and decision-makers in their children's education. IDEA should require states to develop processes that avoid conflict and promote individualized education program (IEP) agreements, such as IEP facilitators. Require states to make mediation available anytime it is requested and not only when a request for a hearing has been made. Permit parents and schools to enter binding arbitration and ensure that mediators, arbitrators and hearing officers are trained in conflict resolution and negotiation (A new era, p. 35).

These recommendations are particularly applicable to the education of students with ASD. Developing processes to avoid conflict while promoting IEPs would assist with preventing disputes to reach the courts, which hopefully would help these disputes to be settled in a timelier and less confrontational manner. Allowing for mediation at any point, and the option of binding arbitration, are means to this end. Thus, one recommendation for schools would be to promote mediation and binding arbitration as alternative options to formal due process procedures and going to court. Certainly promoting a climate of collaboration also would be quite preferable even to using administrative remedies.
Clearly, before reaching the level of having a dispute, a recommendation for schools would be to provide parents with clear procedural safeguards that make parents aware of their rights when they have a special education student served under the label of autism. Parents most likely did not go to school to learn about special education and, therefore, may not know the procedures for IEPs and especially for resolving disputes. Schools bear a responsibility to share those procedures with parents in a manner that makes them understandable. Accompanying this recommendation is a requirement specifically to make parents aware of the statute of limitation to file due process when applicable. According to IDEIA (2004), parents have the right to be included in developing the IEP for their child with ASD and this is one way that schools must ensure that parents participate.

Schools also need to provide training and professional development to their personnel about knowing and following procedural safeguards. There are many regulations and procedures that need to be followed when developing an IEP and providing students with an education based on the IEP. There are also many ways to not be in compliance without any malicious intent. It is important for schools to recognize that mistakes can happen all too easily. However, with practice and procedures, this could happen less. Schools may want to think about working with teachers in areas such as facilitating an IEP meeting, providing prior written notice, and how to appropriately make refusals and document them for example. Allowing teachers to practice these skills allows for them to ask questions and gain confidence in these skills.

Perhaps schools need to look at better ways to ensure that parents are aware of their rights and their administrative remedies, such as due process hearings, mediation,
and binding arbitration. Typically schools provide a book or pamphlet to parents explaining what their rights are. However, there is often a challenge in how to make the language of these materials parent friendly but still contain all of the legal information that is necessary. Schools may want to look at additional ways to ensure parents are fully aware of their procedural safeguards. Perhaps providing an opportunity for questions and answers through a parent resource center or other such forum would assist in this matter. By at least making it available to parents, it shows a good faith effort on the part of the school to involve parents and provide notice regarding procedural safeguards.

*Scientifically-Based Instruction and FAPE*

Though there is still no one particular intervention that has been shown to always be effective for students with ASD, and there may never be one, there are studies that show promising practices and studies that do discredit specific interventions. It is important for schools to know what the research says. It is all too easy for a parent to find one study that may or may not be scientifically-based and say that is what the research says. If schools are not aware of the research base, they are not in a good position to make appropriate decisions for the IEP and provide students with FAPE.

It is worth mentioning that many efforts are being made to gain more information and research on ASD and effective interventions. The Combating Autism Act (2006) is one such effort. The Act offers funding for research in many areas, including education. The United States Department of Education also offers grants to conduct research to determine and evaluate effective interventions for students with ASD. Other agencies that offer grants for the diagnosis, intervention, and training of personnel include the National Institutes of Health and the Centers for Disease Control, among others.
Another consideration for schools is to take into consideration their own data. If no research study has been done to validate or invalidate an intervention, it would be important for schools to collect data to assist in making data driven decisions. It would seem that a court would be more likely to favor the school in a case about methodology if the school had valid and reliable data to corroborate their decisions and practices. This also aids in showing progress, educational benefit, and a good faith effort, which can be at the center of cases where parents are stating that their child did not receive FAPE. Schools also should base decisions regarding related services such as speech, occupational therapy, and assistive technology, for example, on concrete data and research as specific to students with ASD as possible.

Finally, it is important for school professionals to know the research of their craft. Working with students with ASD can include many challenges. Each student with ASD can be very different. Though the research base is still evolving, there is research surrounding interventions and working with students with ASD and it is extremely important for teachers and other school professionals to know what that research says. When professionals know the research base, they are in a better position to teach children with ASD and to make decisions that will lead to FAPE.

**Recommendations for Parents**

Parents play a significant part in developing an individualized educational plan for their students with ASD and it is important for their participation to be meaningful. The following recommendations give suggestions on how to assist with making parent participation more meaningful and aid parents in working with schools.
Procedural Safeguards

It is important for parents to know what rights they have when they have a child with ASD. Upon receiving the book or pamphlet that states all the regulations and procedures, many parents may be confused. It is extremely important for parents to ask questions about their rights. While remembering it isn’t an interrogation, parents should feel free to ask what regulations mean or how to go about a specific procedure such as asking for an independent education evaluation or how a student is found eligible to receive a specific related service.

Additionally, it is important for parents to understand that they too are held to timelines and statutes of limitations set forth by the legislation and case law. If they have questions about these, they should ask. Many states have their own timelines that have been tried in court and upheld through the United States Courts of Appeals. Sometimes these timelines and statutes of limitations are not very long and there are procedures and paperwork that must be followed.

Data Driven Decisions

Parents, too, need to look at the data regarding their child. Schools are mandated to make data driven decisions based upon research based interventions and parents should look at the data with the IEP team to meaningfully participate in their child’s IEP meeting and collaborate with educational professionals so that they can make decisions for their child’s education. This is especially important because of two main reasons. First is perception. Data can actually show a very different picture than what the team’s perception may be. Second is generalization. Children with ASD may have a difficult time with generalizing skills across settings, such as from home to school, and across
people, such as from a teacher to a parent. Data can show progress in one setting while not in another and can lead to different educational decisions for students with ASD.

Recommendations for Teacher Preparatory Programs

It appears appropriate to discuss a possible recommendation to programs that prepare future teachers. People who wish to become teachers must be licensed by the state in which they wish to teach. Even with alternate routes to licensure, there is a preparatory program that people must go through. It would be prudent during this period for students going into both special and general education to learn the basics of education law and special education law. Additionally for special education teachers it would make sense for them to practice the skills they would be using in the field in the relatively safe environment of the classroom. Examples of skills should include facilitating an IEP meeting, writing an IEP, providing notice to parents, collecting and using data, and using research-based interventions. Many of these may be included in some programs, but there may still be gaps.

Future Areas of Research

The prevalence of students with ASD is growing. Parents and schools are still having discord as to how to best educate this population of students. This study gave brief insight into what higher courts were deciding regarding students with ASD and their education. However, the limitations of this study have been noted.

Future research may want to look at the decisions of the lower courts that have affected the education of students with ASD. Also, future research probably wants to
look at a longer time frame to provide a historical overview of the impact of legislation and case law on the education of students with ASD. It was previously mentioned that cases about other disability categories probably affect how students with ASD are educated. To further broaden the criteria, future studies may want to focus on due process hearings and the extent of their impact on educating students with ASD. Looking at broadening the criteria for cases included can give greater insight into how to provide an appropriate education for students with ASD.

Another area of future research may want to focus on the demographics of the participants involved in the legal disputes. For example, does the location of the cases relate to any particular factor such as prevalence, socioeconomic status, or political climate? Are cases that involve younger children more likely to be settled out of court and for what reasons? Are there issues that are more prevalent for younger children versus older children or males versus females? Looking at demographic information could yield greater information for schools in how to possibly avoid legal disputes in the future.

In conclusion, the education of students with ASD has been at the heart of many legal disputes during the past few years. Overall, these cases have generally favored schools, but not always. It is worth mentioning that when schools and parents disagree and must use legal remedies to come to a conclusion, it damages the working relationship between the school and the parents. Ultimately, the goal of IDEIA (2004) was to bring parents and schools to the same table to make appropriate decisions that would provide educational benefit for students with disabilities. Students with ASD bring their own
unique challenges to the table. However, by working together to resolve conflicts, a
tbetter end can occur to make the difference for students.
References


King v. Floyd County Board of Education, 228 F.3d 622; 2000 U.S. App. (United States Court of Appeals for the Sixth Circuit, October 2, 2000).


Appendix A

DSM-IV Criteria for Autism

A. A total of six (or more) items from (1), (2), and (3), with at least two from (1), and one each from (2) and (3)

(1) qualitative impairment in social interaction, as manifested by at least two of the following:

   (a) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction

   (b) failure to develop peer relationships appropriate to developmental level

   (c) a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest)

   (d) lack of social or emotional reciprocity

(2) qualitative impairments in communication as manifested by at least one of the following:

   (a) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime)

   (b) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others
(c) stereotyped and repetitive use of language or idiosyncratic language

(d) lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level

(3) restricted repetitive and stereotyped patterns of behavior, interests and activities, as manifested by at least two of the following:

(a) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus

(b) apparently inflexible adherence to specific, nonfunctional routines or rituals

(c) stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements)

(d) persistent preoccupation with parts of objects

B. Delays or abnormal functioning in at least one of the following areas, with onset prior to age 3 years: (1) social interaction, (2) language as used in social communication, or (3) symbolic or imaginative play

C. The disturbance is not better accounted for by Rett Disorder or Childhood Disintegrative Disorder.
Appendix B
IDEIA Evaluation Procedural Requirements

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(6) Procedural safeguards.--

(B) Additional procedural safeguards.--Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this title will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

SEC. 614. <<NOTE: 20 USC 1414.>> EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

"(a) Evaluations, Parental Consent, and Reevaluations.--

"(1) Initial evaluations.--

"(A) In general.--A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.
``(B) Request for initial evaluation.--Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

``(C) Procedures.--

``(i) In general.--Such initial evaluation shall consist of procedures--

``(I) **<<NOTE: Deadline.>>** to determine whether a child is a child with a disability (as defined in section 602) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

``(II) to determine the educational needs of such child.

``(ii) Exception.--The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if--

``(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 602), but only if the subsequent
local educational agency is making sufficient
progress to ensure a prompt completion of the
evaluation, and the parent and subsequent local
educational agency agree to a specific time when the
evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses
to produce the child for the evaluation.
Appendix C

Data Collection Summary Sheet

Case Title:

Court:

Plaintiff's Claim:

Based upon?

Defendant's Claim:

Based upon?

Age of Student with ASD:  
Gender of Student with ASD:

Location of Case:

Outcome (who was favored?):

Based upon?
Appendix D

Map of United States Courts of Appeals and Circuits

Geographic Boundaries
of United States Courts of Appeals and United States District Courts

Map retrieved from:
### Appendix E

#### Comprehensive Summary of Data Collection

**Data Collection Summary**

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<th>Case Title</th>
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<th>Date</th>
<th>Plaintiffs' Claim</th>
<th>Defendants' Claim</th>
<th>Age</th>
<th>Gender</th>
<th>Location</th>
<th>Decision Favored?</th>
<th>Based Upon?</th>
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<td>CM v.</td>
<td>4th</td>
<td>February</td>
<td>Parents wanted reimbursement for Lovaas therapy based on 60 day limitation conflict with IDEA and no notice was received</td>
<td>Due process must be filed within 60 days</td>
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<td>Female</td>
<td>North Carolina</td>
<td>Parents</td>
<td>Both in part, FAPE, Procedural Safeguards</td>
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<td>21, 2001</td>
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<tr>
<td>Jaynes v.</td>
<td>4th</td>
<td>July 10,</td>
<td>Parents wanted a reinstatement of an award for private placement because they were deprived the opportunity to a due process hearing as they were not informed of their right based upon procedural safeguards and failure to receive rights</td>
<td>School claims that the statute of limitations was misapplied and the court should have afforded less deference to the LHO based upon procedural safeguards</td>
<td>Not</td>
<td>Male</td>
<td>Virginia</td>
<td>Parents</td>
<td>Procedural safeguards and FAPE</td>
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<tr>
<td>Newport</td>
<td>Circuit Court of Appeals</td>
<td>2001</td>
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<td>News School Board</td>
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<td>School</td>
<td>District of Wisconsin</td>
<td>7th June 28, 2002</td>
<td>School said the mental health facility the parents wanted was too restrictive based upon LRE</td>
<td>Parents claim ZS had been denied FAPE based upon procedural safeguards and FAPE because he could not be successful in a public school</td>
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<tr>
<td>MM v. Baker</td>
<td>School District of Greensville County</td>
<td>4th September 6, 2002</td>
<td>Parents asked for reimbursement for in-home Lovaas program based upon FAPE</td>
<td>School refused to pay for services and said parents had not exhausted their administrative remedies (procedural safeguards)</td>
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<tr>
<td>Van Duyn v. Baker School District 5J</td>
<td>9th September 6, 2002</td>
<td>Parents claimed the school failed to provide sufficient math instruction based upon IEP not being followed and asked for attorney's fees</td>
<td>School said the child was objecting to the implementation of the IEP and that the services the school was providing were not materially different from what was required in the IEP</td>
<td>Not provided</td>
<td>Male</td>
<td>Oregon</td>
<td>Parents</td>
<td>IEP, Procedural Safeguards</td>
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<tr>
<td>Georgia State DOE v. Cherry</td>
<td>11\textsuperscript{th} December 10, 2002</td>
<td>State refused to pay expenses due to statute of limitations</td>
<td>Parents wanted stay put provision while in due process and reimbursement for educational expenses based upon FAPE and Procedural Safeguards</td>
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<tr>
<td>G v. Fort Bragg Dependent Schools</td>
<td>4\textsuperscript{th} March 25, 2003</td>
<td>Parents sought reimbursement because school did not provide for a Lovaas-certified consultant based upon FAPE and IEP and sought attorney’s fees</td>
<td>School said IEP was appropriate</td>
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<tr>
<td>King’s Local School District BOE v. Zelazny</td>
<td>6\textsuperscript{th} April 7, 2003</td>
<td>Parents paid for private school and wanted reimbursement based upon FAPE, LRE, IEP, and parent participation</td>
<td>School said IEP was appropriate in public school to make progress based upon IEP and FAPE</td>
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<td>Case</td>
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<td>Summary</td>
<td>District</td>
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<tr>
<td>JH v. Henrico County Public Schools</td>
<td>4th Circuit Court of Appeals</td>
<td>April 21, 2003</td>
<td>Parents sought reimbursement for summer speech and OT services based upon FAPE</td>
<td>Not Male</td>
<td>Virginia</td>
<td>School</td>
<td>FAPE, IEP</td>
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<tr>
<td>RR v. Fairfax County Public Schools</td>
<td>4th Circuit Court of Appeals</td>
<td>July 29, 2003</td>
<td>Parents rejected the IEP saying they wanted 1:1 ABA and removed son from school seeking reimbursement for educational expenses based upon IEP, FAPE, and failure to notify under procedural safeguards</td>
<td>8 Male</td>
<td>Virginia</td>
<td>School</td>
<td>Procedural Safeguards</td>
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<tr>
<td>ME v. Buncombe County BOE</td>
<td>4th Circuit Court of Appeals</td>
<td>August 18, 2003</td>
<td>Parents felt the IEP was not appropriate based on IEP and FAPE</td>
<td>Not Male</td>
<td>North Carolina</td>
<td>School</td>
<td>Procedural Safeguards</td>
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<td>School said parents were time barred, past the statute of limitations and that they failed to prove their case based upon procedural safeguards and burden of proof</td>
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<tr>
<td>Case</td>
<td>Circuit</td>
<td>Date</td>
<td>Parents Requested</td>
<td>School Said</td>
<td>Gender</td>
<td>State</td>
<td>School</td>
<td>Procedural Safeguards</td>
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<td>Greenland School District v. Amy N.</td>
<td>1st Circuit Court of Appeals</td>
<td>February 23, 2004</td>
<td>Parents requested tuition reimbursement for private placement and said the school failed to find her eligible based upon FAPE and Child Find under non-discriminatory evaluations</td>
<td>School said FAPE wasn’t an issue at the time in question and the child enrolled in private school prior to question of eligibility based upon no notice being given under procedural safeguards and no opportunity to provide for FAPE</td>
<td>Female</td>
<td>New Hampshire</td>
<td>School</td>
<td>Procedural Safeguards and FAPE</td>
<td></td>
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<tr>
<td>Wikol v. Birmingham Public Schools BOE</td>
<td>6th Circuit Court of Appeals</td>
<td>March 10, 2004</td>
<td>Parents sought attorney’s fees, prejudgment interest, and costs on procedural safeguards</td>
<td>School said notice of appeal except attorney’s fees was untimely based upon procedural safeguards</td>
<td>Not</td>
<td>Female</td>
<td>Michigan</td>
<td>Parents</td>
<td>Procedural Safeguards</td>
</tr>
<tr>
<td>LT v. Warwick School Committee</td>
<td>1st Circuit Court of Appeals</td>
<td>March 18, 2004</td>
<td>Parents said IEP was inappropriate, there were procedural violations, and that their son was denied FAPE and thus sought reimbursement for private placement and sought attorney’s fees</td>
<td>School said IEP was appropriate and rejected private placement based upon FAPE and IEP</td>
<td>Not</td>
<td>Male</td>
<td>Rhode Island</td>
<td>School</td>
<td>Procedural Safeguards, FAPE, and IEP</td>
</tr>
<tr>
<td>Case</td>
<td>Circuit</td>
<td>Date</td>
<td>Summary</td>
<td>Defendant</td>
<td>Gender</td>
<td>State</td>
<td>Alleged Violation</td>
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<tr>
<td>Deal v. Hamilton BOE</td>
<td>6th Circuit Court of Appeals</td>
<td>December 16, 2004</td>
<td>Parents said school failed to provide FAPE</td>
<td>School said they did provide FAPE and there were no procedural or substantive violations of IDEA</td>
<td>9</td>
<td>Male</td>
<td>Tennessee</td>
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<tr>
<td>JH v. Henrico County School Board</td>
<td>4th Circuit Court of Appeals</td>
<td>January 20, 2005</td>
<td>Parents sought reimbursement for private speech and OT services</td>
<td>School offered both services but at a lesser amount than parents wanted based upon that amount would meeting the goals of the IEP and FAPE</td>
<td>Not</td>
<td>Male</td>
<td>Virginia</td>
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<tr>
<td>Henrico County v. ZP</td>
<td>4th Circuit Court of Appeals</td>
<td>February 11, 2005</td>
<td>School claimed the IEP was appropriate and the hearing officer failed to give proper deference to professionals</td>
<td>Parents claimed that IEP did not provide ZP with FAPE</td>
<td>Not</td>
<td>Male</td>
<td>Virginia</td>
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FAPE, Procedural Safeguards
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<tr>
<th><strong>Case</strong></th>
<th><strong>Court</strong></th>
<th><strong>Date</strong></th>
<th><strong>Summary</strong></th>
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</thead>
<tbody>
<tr>
<td>Linda T. v. Rice Lake Area School District</td>
<td>7th Circuit Court of Appeals</td>
<td>August 2, 2005</td>
<td>Parents wanted an independent consultant hire to train staff, attorney's fees, and that the IEP wasn't specific enough based upon FAPE, LRE, and IEP</td>
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<td>School said student's placement was appropriate based upon IEP</td>
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<tr>
<td>DF v. Ramapo Central School District</td>
<td>2nd Circuit Court of Appeals</td>
<td>November 23, 2005</td>
<td>Parents said IEP was inappropriate because it didn't include ABA at home and the IEP wasn't reasonably calculated to make progress based upon FAPE and IEP</td>
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<td>School said it provided ABA in the preschool program and meaningful progress was made based upon FAPE</td>
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<tr>
<td>Brown v. Bartholomew Consolidated School Corporation</td>
<td>7th Circuit Court of Appeals</td>
<td>March 29, 2006</td>
<td>Parents sought reimbursement for specialists who provided services to their son based upon FAPE and IEP</td>
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<tr>
<td>School said IEP was appropriate</td>
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FAPE, LRE, and IEP

FAPE, Procedural Safeguards

Dismissed as moot
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<thead>
<tr>
<th>Case</th>
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<th>Parties</th>
<th>School</th>
<th>State</th>
<th>School Type</th>
<th>Details</th>
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<tbody>
<tr>
<td>PT v. Jefferson County BOE</td>
<td>June 28, 2006</td>
<td>Parents said use of a harness on the bus violated FAPE, they were denied an IEE, confidentiality was breached, and there was a failure to provide prior written consent for observation based upon FAPE, non-discriminatory evaluation, and procedural safeguards</td>
<td>10 Female Alabama School</td>
<td>FAPE, Non-discriminatory evaluation, Procedural safeguards</td>
<td></td>
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<tr>
<td>Vives v. Fajardo</td>
<td>January 5, 2007</td>
<td>Parents said school reported them negligent in retaliation for filing a complaint regarding disability discrimination based upon the 14th amendment</td>
<td>Not Male Puerto Rico School</td>
<td>Lack of evidence of retaliatory animus</td>
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<tr>
<td>Mr. &amp; Mrs. I v. Maine School Administrative District #55</td>
<td>March 5, 2007</td>
<td>Parents sought reimbursement for private placement and compensatory education services</td>
<td>Not Female Maine School IEP, FAPE</td>
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<tr>
<td>Case</td>
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<tr>
<td>DP v. School Board of Broward County</td>
<td>11th</td>
<td>April 3, 2007</td>
<td>Parents said IEP should have been written; temporary IEPs were invalid based upon IEP and FAPE</td>
<td>4th</td>
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<td>School said IFSP services don't continue past age 3 and the triplets would have to enter a public school program based upon IEP</td>
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<tr>
<td>AK v. Alexandria City School Board</td>
<td>4th</td>
<td>April 26, 2007</td>
<td>Parents said the private school name was not written in the IEP based upon FAPE</td>
<td>7th</td>
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<td>School determined that 3 schools were appropriate and the parents refused based upon FAPE</td>
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<tr>
<td>BOE Township High School v. Ross</td>
<td>7th</td>
<td>May 11, 2007</td>
<td>Parents said school failed to include transition plans on FAPE and LRE</td>
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<td>School recommended special placement based upon FAPE</td>
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<td>Case</td>
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<td>Date</td>
<td>Description</td>
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<tr>
<td>Winkelman v. Parma City</td>
<td>United States Supreme</td>
<td>May 21, 2007</td>
<td>Parents sought reimbursement for private school. The 6th Circuit Court of</td>
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<tr>
<td>School District</td>
<td>Court</td>
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<td>Appeals denied hearing the case because parents didn't obtain counsel and</td>
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<td>said FAPE was for students, not parents. Parents appealed to the Supreme</td>
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<td>Court based upon Procedural Safeguards, Parental Involvement, and FAPE.</td>
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<tr>
<td>Gagliardo v. Arlington</td>
<td>2nd Circuit Court of</td>
<td>May 30, 2007</td>
<td>Parents sought tuition reimbursement for private placement based upon FAPE.</td>
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<tr>
<td>School District</td>
<td>Appeals</td>
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<td>School said IEP was appropriate to receive educational benefit based upon</td>
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<td>IEP and FAPE.</td>
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