

To the Graduate Council:

I am submitting a dissertation written by Michael B. Shuran entitled “Characteristics of Special Education Due Process Cases in Tennessee: Implications and Recommendations for Policy.” I have examined the final electronic copy of this dissertation and recommend that it be accepted in partial fulfillment of the requirements for the Doctor of Education, with a major in Learning and Leadership.

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CHARACTERISTICS OF SPECIAL EDUCATION DUE PROCESS CASES IN  
TENNESSEE: IMPLICATIONS AND RECOMMENDATIONS FOR POLICY

A Dissertation  
Presented for the  
Doctor of Education Degree  
The University of Tennessee at Chattanooga

Michael B. Shuran  
May 2010

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## **Dedication**

This research project is dedicated to my beautiful wife, Wendy. You have stood by me through this lengthy process and have always supported me in my endeavors. It is now my turn to follow you in whatever direction you choose. I love you!

This project is also dedicated to our outstanding children, Colin and Emilee. You make me so proud! Every hug, kiss, and smile helped me to accomplish this goal in my life. I look forward to seeing great things in your lives. I love you very much!

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My brother, Luke, I know you have what it takes to fulfill your dreams and goals. Go for it!

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## **Abstract**

This study focused on the problem of an increasing number of special education-related lawsuits against school districts. The purpose was to identify information in past special education due process cases and current school system practices that may help reduce or prevent a school system's likelihood of facing potential litigation in special education. Research questions were: (1) What percentage of the collection of final orders (CFO) cases fall into each descriptor of the following categories: sex, disability type, school system size description, age, prevailing party, filing party, and issues? (2) Are there noticeable differences between the CFO and the population at-large in any descriptor category, in terms of percentages of cases? (3) Are there any descriptor variables or combinations of variables that reliably predict an outcome in favor of the system in CFO cases? (4) Based on a content analysis of responses from special education directors, what are common themes of district-level practices that have been put into place to prevent cases from going to due process?

A mixed-methods approach was used in this study to provide a more complete perspective on current conditions in special education litigation and strategies to prevent it. Quantitative methods were used to analyze characteristics of the CFO found at the Tennessee Department of Education website. First, frequencies and percentages were calculated for each descriptor obtained from the CFO. Percentages from the CFO were compared with the current special education population of Tennessee. A logistic regression was done to determine if any variables predicted an outcome in favor of the

school system. Finally, Tennessee special education directors were interviewed, and their comments were analyzed to determine trends in perceptions.

Findings showed that three disability types were over-represented in the CFO: mental-retardation, emotional disturbance, and autism. Two disability types were found to contribute to an outcome in favor of the school system, though results had low reliability for future prediction. Interviews of special education directors in Tennessee identified: issues involved in special education, disability types that present special challenges, and recommendations to help prevent future litigation. Recommendations to school systems are given based on these findings.



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## Chapter 1: Introduction to the Study

The laws and court cases dealing with children with disabilities have become issues of major concern to public schools. “There is, perhaps, no area of educational law that has been more highly litigated than the education of students with disabilities” (Katsivannis, Yell, & Bradley, 2001, p. 326). It is the role of educators to provide a free and appropriate public education (FAPE) for all students, including those with disabilities, no matter how limiting those disabilities may be. Yet school systems are faced with an increasing number of situations that lead to litigation due to a conflict between parents of children with special needs and the schools tasked with meeting those needs. Due to the increasing numbers of laws, statutes, regulations, court cases, more knowledgeable parents and advocates, and the need for schools to improve their strategies for meeting the needs of students, districts cannot afford to ignore the mandates provided for those students.

Prior to the implementation of federal mandates, children with disabilities were not consistently provided the same education as regular students. After two landmark court cases, *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* (1972) and *Mills v. Board of Education* (1972), the pattern began to change. Both cases resulted in a reexamination and an increased awareness of how children with disabilities should be educated. Following those two court cases, other lawsuits developed. Federal intervention followed in the form of Public Law 94-142 (Education for All Handicapped Children Act, 1975), and later in what we know as Individuals with Disabilities Education Act (1990). Additionally, there are other federal

laws associated with the education of children with disabilities such as the Elementary and Secondary Act (1965), the Americans with Disabilities Act (1990) and Section 504 of the Rehabilitation Act (1973).

### **Statement of the Problem**

A school system's involvement in due process cases for special education can be costly and time-consuming. Due to increasing budget pressures and the negative public opinion that is associated with special education cases, it would be beneficial for a system to know specific characteristics of past special education due process cases and policies and procedures that may have been associated with frequent litigation. However, at this time the literature offers little information on or analysis of these characteristics. Because this information is limited, school systems do not have access to strategies or recommendations that may result in fewer due process cases and/or litigation. This information could save school systems valuable time and money while providing appropriate support for the student with disabilities.

### **Significance of the Study**

The purpose of this study was to determine if there were any specific characteristics that seem to be disproportionately represented in special education due process cases and to determine information and school system practices that may help in reducing or preventing a school system's likelihood of facing potential litigation in special education. Due to the costs associated with legal issues and the potential negative public opinion, it was believed that information provided from the research would be helpful to Tennessee school systems in their efforts to solve problems at the level nearest

the student and stay out of the courts. By decreasing the dollars spent and the time consumed on litigation in special education, school systems may be able to resolve some of the negative public opinion, as well as provide a better education to all students.

### **Definition of Terms**

The topic of special education law reflects several terms that are specific to the field. Since knowledge of these terms is essential to understand the information discussed here, the following definitions of terms are provided to assist the reader.

**Administrative hearing.** A meeting involving representatives of the public school, an impartial hearing officer or administrative law judge, and the person(s) representing the child to resolve disputes in special education.

**Administrative law judge.** A federal or state hearing officer who hears and makes decisions on administrative matters for a federal or state agency (Weber, Mawdsley, & Redfield, 2004).

**Americans with Disabilities Act of 1990 (ADA).** Federal law prohibiting discrimination against individuals with disabilities.

**Child (Student) with disabilities.** A child with the following characteristics:

- (A) With mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbances, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (B) Who, by reason thereof, needs special education and related services (IDEA, 2004).

- (C) Tennessee’s definition of disability includes: a child with mental retardation, hearing impairments, speech or language impairments, visual impairments, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disability, developmental delay, functional delay, and the intellectually gifted (TCA 49-10-102)

**Due process hearing.** A meeting or hearing with representatives from the public school and an impartial hearing officer or administrative law judge to resolve disagreements resulting from special education complaints.

**Education for All Handicapped Children Act (EAHCA).** Enacted in 1975, Public Law 94-142, predecessor to current IDEA federal special education legislation (Weber, Mawdsley, & Redfield, 2004).

**Elementary and Secondary Education Act (ESEA).** Major federal legislation focused on K12 education, initially the Elementary and Secondary Act of 1965 and variously amended since then. ESEA provides large amounts of federal aid to states and local districts. The most recent authorization of the ESEA is the No Child Left Behind Act enacted in 2001 (Weber, Mawdsley, & Redfield, 2004).

**Free Appropriate Public Education (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, or secondary school education in the State involved; and
- (D) Are provided in conformity with the individualized education program required under section 614(d) [20 U.S.C. § 1414(d)] (IDEA, 2004).

**Individual Education Plan (IEP).** A single written document detailing the plan for special education and related services for a student with disabilities. This term is defined by statute and regulation, 20 U.S.C. § 1401(11); 34 C.F.R. §§ 300.340-300.350, (IDEA, 2004).

**Individuals with Disabilities Education Act (IDEA).** Federal special education legislation.

**Local Education Agency (LEA).** Public board of education or authority that administers education in various political subdivisions. This term is defined by statute and regulation, 20 U.S.C. § 1401(15), 34 C.F.R. § 300.18, (IDEA, 2004).

**Mediation.** A process where a neutral third-party helps to facilitate a solution to a problem between or among other parties. Mediation is part of the dispute resolution procedures referenced by IDEA, 20 U.S.C. § 1415(e); 34 C.F.R. § 300.506, 303.419.

**No Child Left Behind (NCLB).** Reauthorization of the Elementary and Secondary Education Act (ESEA), the major federal funding legislation for public schools, enacted in 2001.

**Section 504.** Section 504 of the Rehabilitation Act of 1973; federal law that prohibits discrimination against individuals with disabilities.



**Special education.** Specifically designed instruction, at no cost to parents, to meet the unique needs of a child with a disability (IDEA, 2004).

**State Education Agency (SEA).** The State Board of Education or other similar state-level agency responsible for implementing education law and policy. This term is defined by statute, 20 U.S.C. § 1401(28) (IDEA, 2004).

### **Research Questions**

The purpose of this study was to examine the collection of final orders (CFO) of the due process cases in Tennessee in order to determine characteristics of cases that have resulted in litigation. Also, data from interviews of Tennessee special education directors provided insight as to whether or not there are formal, documented procedures and/or informal practices among systems that contribute to decreased litigation. In order to provide evidence that could shed light on these matters, the study focused on the following four research questions. The first three questions were addressed using quantitative data-gathering methods while the remaining question was answered with qualitative data from the interviews. Each question is presented here in the following format. The first is an informal statement that gives a practical view of the question. The second part is a brief summary of how the question relates to the review of literature. Lastly, a formal version of the research question clarifies the methodology that was used to answer the question.

1. What are descriptive statistics across case descriptors in the CFO? Although the CFO cases do not represent every school district or student with a disability in Tennessee, they provide documentation on a subset of due process complaints that go to

litigation. Since the due process hearing is one of the last resorts in resolving conflicts between school districts and parents, it should be informative to know what descriptors are characteristic of these cases. Therefore, the first research question is: What percentage of the total collection of final orders (CFO) cases fall into each descriptor of the following categories: sex of students, disability type, school system size description, age of students, prevailing party, filing party, and issues of the cases?

2. Do the percentages of CFO characteristics reflect the percentages in the special education population in Tennessee at-large (i.e., CFO characteristics compared to state averages)? By examining these percentages, it is possible to see if there are any areas of special education that are under-represented or over-represented in the CFO. For example, it would be helpful to know if there is a mismatch between these two sets of figures (state and CFO). For example, if CFO percentages showed a large percentage of autistic cases, whereas the percentages of autism in the special education population of Tennessee showed a small representation, this may indicate that autistic cases present special challenges that may need to be better addressed in the future. The literature does not shed light on this aspect of special education litigation, so more needs to be known about areas that seem to present special challenges to school district administrators. To address this need, the second research question is: Are there noticeable differences between the CFO and the population at-large in any descriptor category in terms of percentages of cases?

3. Are there any characteristics of cases that result in decisions in favor of the parent in CFO cases that distinguish them from cases where the district prevails? Using the percentages from the CFO, the data will be examined to determine if there are common characteristics that result in a favorable decision for the parent. If a school system is involved in a due process case, the commonalities could suggest the likelihood of success the school system has in the litigation process. According to the literature, due process cases can lead to negative feelings among all parties, as well as increased cost to the district. If the system sees the likelihood of losing a due process case based on the commonalities found, the system may want to focus more on resolving the case through mediation and avoid due process. Although the overall goal is to avoid due process, in some cases it is necessary to resort to litigation. If the outcome has a significant chance of favoring the parent, the school system may choose not to resort to litigation, despite their desire to do so. The increased attention may also allow the school system to examine better ways to handle similar special education issues in the future. For this part of the study, the research question is: Are there any descriptor variables or combinations of variables that predict an outcome in favor of the system in CFO cases?
4. What district-level formal procedures and informal practices are in place to prevent cases from going to due process? Due to state and federal regulations, most if not all school systems must follow the same minimal policies and procedures in regard to special education. However, some school districts may have developed additional successful procedures and practices that are unique to their systems. A school system

that provides regular professional development and/or training opportunities that are relevant to special education regulations may help reduce the rate of complaints. It would be beneficial to districts to be able to review other school systems' procedures and practices, thus allowing all systems to add helpful tools in educating their employees on how to handle special education cases. The last research question is: Based on a content analysis of interview responses from special education directors what are common themes of district level practices that have been put into place to prevent cases from going to due process?

### **Summary of Introduction**

Chapter 1 opened with a discussion of the specific laws and several landmark court cases that specifically addressed educating children with disabilities. Perhaps no area in education is more litigated than special education. Because of this, the increased knowledge of parents, and up-to-date information provided by special education advocacy groups, it is important that school systems keep current on laws pertaining to special education. The purpose of this study was to determine if there were common characteristics in the due process final orders in Tennessee that have resulted in litigation. In addition, it sought to identify specific preventative strategies that have been successful in preventing litigation in special education. The next chapter examines literature that pertains to the history of special education law, historic cases and laws in special education, current court cases and laws in special education, the implications of due process cases, special education laws and regulations specific to Tennessee, and training administrators to increase knowledge of special education law.

## **Chapter 2: Review of Literature**

### **Introduction**

Although there currently are no studies that showed characteristics or procedures that may lead to or prevent litigation in special education, there is considerable literature that discusses the background of special education and the laws that have helped to define and develop programs in the United States. The history of special education is fairly new. The federal regulations are specific on the requirements of school systems. This review of literature examines the history of special education as well as the federal laws, regulations, and specific case law that have guided special education in the United States. To better understand the characteristics and procedures that may lead to or prevent litigation in special education, the following bodies of literature are represented: the history of special education laws, steps in resolving disputes in special education, special education laws and regulations specific to Tennessee, and training administrators in the laws of special education.

### **History of Special Education Laws**

**The beginning of special education in the United States.** Children who had disabilities in the United States prior to the increased awareness of civil rights and equity in education received very little attention in regard to formal education. From the creation of the United States, well into the 20<sup>th</sup> century, children with disabilities were largely pushed aside to make way for the “productive” citizens of society. According to Scott & Santos de Barona (as cited in Bursztyn, 2007), “Although all school-age individuals in

the United States are currently entitled to an education, the right of those with disabilities to receive a free and appropriate education is a relatively recent development” (p. 5).

During agrarian times in the United States, an importance was placed on producing goods for the family and local community. Farming was a way of life and education was not necessary to survive. All of that began to change as the United States went through a vast transformation. Industrialization and urbanization led people to seek a better life. Eventually that translated into more education but until certain reforms took place, education was still low on the priority list. Those who had cognitive or physical disabilities received even less attention. Societies have acknowledged people with disabilities for many generations. According to Scott & Santos de Barona (as cited in Bursztyn, 2007), “Depending on the era and the culture, persons with disabling conditions have been demonized, deified, ignored, persecuted, protected, or isolated and exterminated” (p. 6). Granted, attention was given to people with disabilities but until recently it was mostly negative. “By 1850 or so, much of the current structure of public education had been defined, if not implemented” (Stout, 1993, p. 301). In the later 1800s and early 1900s, the basic formal education structure that we have today already existed. American tax dollars were used for the education of all children. However, all children did not get educated. Children with disabilities were excluded from the education structure until the 1950s. During the 20<sup>th</sup> century, institutions not supported by the federal or state governments, began to fill up with people who had disabling conditions, especially the deaf, blind, and those classified as being mentally retarded.

The limited educational reform that took place in the 19<sup>th</sup> and early 20<sup>th</sup> centuries universally excluded populations with handicapping conditions. Very little education reform took place in the 19<sup>th</sup> century and early 20<sup>th</sup> centuries in the United States. If a person was deemed as having a cognitive or physical disability he or she was most likely institutionalized. The purpose of the institutions at first was to house those with disabilities but some reformers felt training in life skills was important. According to Osgood (2008), “Most of these institutions followed fairly rigid daily schedules in the belief that routine and regimentation would contribute to more orderly behavior and effective instruction” (p. 28). Most likely the training was less academic and more vocational. Academic work was usually reserved for only the most capable children (Osgood, 2008).

In the early 20<sup>th</sup> century, a group known as the Progressives, looked at people with disabilities as one part of its social reform agenda. According to Osgood (2008), during the early part of the 20<sup>th</sup> century, looking at how to help those with disabilities became a key target for progressive reform. Two of those major reforms were the laws forbidding child labor and laws establishing compulsory education. “It was not until 1918 that all states had compulsory education laws; prior to this time, children in many places, including those with disabilities, were not required to attend school” (Scott & Santos de Barona, as cited in Bursztyn, 2007, p. 5). However, people with disabilities were still institutionalized in the United States into the mid 1960s. If they were not institutionalized, they were segregated from the general population by simply keeping them at home. By separating the children with disabilities from those who were

functioning normally, reformers of the time argued that they were attending to the needs of both the disabled child as well as the protection of the “normal” child (Osgood, 2008).

The practice of separating children most likely led to advocates using the Civil Rights Movement as a springboard to special education reform. According to Skiba, Simmons, Ritter, Gibb, Rausch, Cuadrado and Gibb (2008), special education was born out of and owes a debt to the civil rights movement (p. 264). Cases such as *Plessy v. Ferguson* (1896) and *Brown v. Board of Education* (1954), paved the way for integration of schools and equality in education. Although those cases focused on the rights of African Americans, advocates for special education could use the arguments for the benefit of their cause. “The evolution of a more inclusive education policy at the federal level is a recent phenomenon that is rooted in the 14<sup>th</sup> Amendment of the United States Constitution and manifested through the Civil Rights Movement of the 1950s and 1960s” (Hardman, 2008, p. 5).

Advocacy groups such as the National Association for Retarded Children and the Council for Exceptional Children, begin to focus more on the education of children with disabilities. “The National Association for Retarded Children, which changed its name to the National Association for Retarded Citizens in 1973, and the Council for Exceptional Children (CEC) assumed leading roles in efforts to lobby, mediate, and otherwise advocate for disabled children in a variety of public and private arenas” (Osgood, 2008, p. 102). The increased awareness by reformers and advocates ultimately led to local, state, and federal intervention.



**Laws prior to P.L. 94-142 (Education for All Handicapped Children Act, 1975).** Since the Civil Rights Movement in the United States, policy makers, educators, advocates, and parents began to examine the education of children with disabilities. Prior to this time, children with disabilities were not given the same opportunities at education as their regular education counterparts.

Prior to 1975, access for students with disabilities to education opportunities was limited ... many students were completely excluded from public school ... more than three million students with disabilities who were admitted to school did not receive an education that was appropriate to their needs (Katsivannis et al., 2001, pp. 324-325).

Several early court cases led to the scrutiny of the way children with disabilities were treated. It was these cases that paved the way for federal mandates that addressed providing education for all school-age children. Most importantly, P. L. 94-142 (Education for All Handicapped Children Act, 1975), a federal law mandating the way children with disabilities were educated, led the federal involvement in this dramatic change.

“In 1972, two landmark court cases, *Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania* (1972) and *Mills v. Board of Education* (1972), began the nationwide establishment of the right of students with disabilities to receive a public education” (Katsivannis et al., 2001, p. 325). Keogh (2007) stated, “In 1972, the Pennsylvania Association for Retarded Citizens (PARC) sued the Commonwealth of Pennsylvania arguing that every child, regardless of disabling

condition, was constitutionally guaranteed the right to a free and appropriate public education” (p. 66). Both cases began to open the eyes of educators and advocates. More parents and advocates filed cases on behalf of students once these two set the precedent. According to Melnick (as cited in Itkonen, 2007), “By 1973, 27 right-to-education lawsuits were pending or a decision had been recently rendered in 21 states” (p. 8). According to Turnbull & Turnbull (as cited in Katsivannis et al., 2000), “Beginning in the early 1970s, advocates for students with disabilities began to sue states, claiming that exclusion and inappropriate educational services violated students’ rights to equal educational opportunity under the U.S. Constitution” (p. 325). Prior to the 1970s, many children with disabilities were not even given the opportunity to attend school. Those who did attend were not given the same opportunities as those without disabilities. “In the early 1970s, U.S. schools educated only 20% of children with disabilities” (Katsivannis et al., 2001, p. 325). Most of the cases argued that denying the child the right to an appropriate education was a violation of due process law under the U.S. Constitution (Itkonen, 2007).

The Pennsylvania Association of Retarded Children filed suit on behalf of thirteen individual mentally retarded children who represented the mentally retarded children of the state (Weber, Mawdsley, & Redfield, 2004). According to Weber et al. (2004), “In a case challenging exclusion of mentally retarded students from Pennsylvania public schools, the court entered a consent judgment providing extensive rights to due process and a free, appropriate public education” (p. 4). In the second case, *Mills v. Board of Education* (1972), a civil action was brought on behalf of seven school age children due

to their exclusion of those students from public schools (Weber et al., 2004). The court ruled that the District of Columbia cannot continue to exclude those who have been labeled as behavior problems, mentally retarded, emotionally disturbed or hyperactive (*Mills v. Board of Education*, 1972).

The *PARC v. Pennsylvania* (1972) and *Mills v. Board of Education* (1972) cases paved the way for legislative reform in special education. They changed the way people looked at educating and treating children with disabilities. Between the conclusion of the two major landmark cases and the implementation of IDEA and ADA, many cases throughout the United States set precedents for the interpretation of the special education laws. The cases ranged from violations of free and appropriate education (FAPE), reimbursement of fees, timelines of hearings, failure to follow IEP, and the qualifications of hearing officers, to name a few.

The Elementary and Secondary Act of 1965 was the beginning of the federal response for children with disabilities. “This law, which was the first law in which the federal government offered direct aid to states for educational purposes, provided the federal money to assist states in educating students whose families were below the poverty line (Katsivannis et al., 2001, p. 325). After the passage of that law and the legal court cases throughout the United States, education began the steps towards special education reform.

**P.L. 94-142 (Education for All Handicapped Children Act, 1975) and subsequent legislation.** Two laws resulted in part from previous litigation and reform as well as the two key landmark cases mentioned above, the Rehabilitation Act (1973) and

the Education for All Handicapped Children Act (EAHCA) (1975). The Education for All Handicapped Children Act (1975) and the Rehabilitation Act (1973) came about because of the two major landmark cases, *PARC v. Pennsylvania* (1972) and *Mills v. Board of Education* (1972). Itkonen (2007) states, “In both cases, parents of children with disabilities challenged the school systems in an effort to gain access to public education for their children” (p. 7).

Originally an act concerned with training and job placement for people with disabilities, Section 504 of the Rehabilitation Act (1973) eventually became a key component of the special education reform. Then, on November 29, 1975, President Gerald Ford signed into law the Education for All Handicapped Children Act (EAHCA) (1975). Also known as P.L. 94-142, the Education for All Handicapped Children Act (1975), provided the backbone for federal reform in special education. “P.L. 94-142 fundamentally changed the lives of children with disabilities, families, and professionals by opening doors for all children, regardless of the type or degree of their disability” (Itkonen, 2007, p. 7). P.L. 94-142 (EAHCA, 1975) included specific information that provided a basis for the special education laws we are familiar with today.

P.L. 94-142 contained specific language guaranteeing many things we now take for granted: a free and public education, due process, nondiscriminatory assessment, and an Individual Education Plan (IEP) for every child. It also stipulated that as much as possible educational services should be provided in the least restrictive environment (Keogh, 2007, p. 67). P.L. 94-142 (EAHCA, 1975) also included specific requirements in

regards to due process, including the right to notice and consent and the right to a due process hearing (Smith, 2005, p. 317).

The Rehabilitation Act (1973) and the Education for All Handicapped Children Act (1975), governed the way schools in the United States provided education for children with disabilities up until additional major changes began in the 1990s. “P.L. 94-142 was landmark legislation as it assured access to public education for all children, without regard to disabling condition” (Keogh, 2007, p. 67).

In addition to the two key landmark cases mentioned above, other cases regarding special education had an impact. One case that played a role in interpreting the laws of special education was *Board of Education of the Hendrick-Hudson Central School District v. Rowley* (1982). In this case, the U.S. Supreme Court reversed a lower court decision that stated the system had not provided the appropriate services for a disabled student. The decision stated that the Education for All Handicapped Children Act (1975) was not intended to provide a guarantee to a certain level of education but merely open the door of education to children with disabilities through special education (*Board of Education v. Rowley*, 1982). Basically, the decision stated that it is not the requirement of the state to increase the potential for children, but to simply provide access to educational services. Although the Rowley decision reversed the lower decision, the Supreme Court still held that FAPE was a right of all students in special education (Yell & Drasgow, 2000).

In *Florence County School District IV v. Shannon Carter* (1993) and *Burlington School Committee v. Massachusetts Department of Education* (1985), the issues of due

process timelines and fee reimbursement were addressed. In *Burlington v. Massachusetts Department of Education* (1985), the courts first examined the issue of timelines in hearings. In *Burlington*, the Supreme Court concluded that the special education due process hearing and review had lasted longer than they should; they sometimes lasted a year or more (*Burlington v. Mass. Dept. of Ed.*, 1985). The *Burlington* case also permitted the courts to provide retrospective relief in the form of tuition reimbursement (*Burlington v. Mass. Dept. of Ed.*, 1985). The Florence County case elaborated on the *Burlington* decision of tuition reimbursement by stating that tuition reimbursement could be provided for private schools that are not found on the state-approved placement lists (*Shannon Carter and Burlington v. Mass. Dept. of Ed.*, 1993). In order for tuition reimbursement to be granted, it had to be proven that the school system did not provide FAPE for the student.

In *Smith v. Robinson* (1984) and *School Committee of the Town of Burlington v. Department of Education of Massachusetts* (1985), the issue of reimbursement was addressed. In *Smith v. Robinson* (1984), the school system decided to no longer provide services for a student with multiple handicaps. The parents filed suit claiming that their child was denied a free and appropriate public education (FAPE) and requested attorney's fees from the school district as well as the state department of education. The Supreme Court denied the attorney's fee petition against the state department. In *School Committee v. Massachusetts* (1985), the father of a student with severe handicaps felt the individualized education plan (IEP) for his child did not provide a free and appropriate public education (FAPE). The father enrolled the child in a private school and sought

reimbursement for the cost of tuition. The Supreme Court granted tuition reimbursement to the parent.

Two more Supreme Court cases dealt with the issue of related services, or supportive services (including medical) that are necessary for a student to participate and receive a free and appropriate public education (FAPE). In *Irving Independent School District v. Tatro* (1984), a child with multiple disabilities required catheterization multiple times throughout the day. The school district was required to provide this service in order to provide a free and appropriate public education (FAPE) for this child. The district did not include the catheterization services in the IEP. The parents filed suit and requested relief and attorney's fees. The Supreme Court ultimately affirmed the decision of the District Court and stated that the district had to provide the service but did not award the attorney's fees. In *Cedar Rapids Community School District v. Garret* (1999), a similar decision was made. The student required nursing services during school hours. Despite the potential cost-burden for the school system, the Supreme Court decided that the school district had to provide the services during school hours.

In *Honig v. Doe* (1988), two emotionally-disturbed students were suspended indefinitely for violent and disruptive conduct. Both students filed suit and stated that their right to FAPE had been denied. The decision in this case guided the process for the suspension of special education students. Ultimately, the Supreme Court stated that special education students cannot be suspended for more than 10 days or expelled for behaviors that are related to their handicaps.

There were many other cases that occurred at the lower court level that had a great impact on the interpretation of regulations from Education for All Handicapped Children Act (EAHCA) (1975) and Individuals with Disabilities Education Act (1990). The EAHCA, as mentioned above, was a federal law enacted in 1975 that addressed the education rights of children with disabilities. The Individuals with Disabilities Education Act (IDEA) (1990) was a federal law first enacted in 1990. This law's focus was providing a free and appropriate public education (FAPE). Since its inception, IDEA has been reauthorized two times.

In *Timothy W. v. Rochester, New Hampshire School District* (1989), the issue of providing a free and appropriate education (FAPE) arose in yet another context. The court addressed the issue of whether or not school systems could require a child to demonstrate that he or she would benefit from special education prior to qualifying for special education services (*Timothy W. v. Rochester*, 1989). The district court originally decided that since the student would not benefit from special education services, that student did not qualify for special education. The First Circuit Court reversed the district court's decision and revisited the idea of what constitutes an appropriate Individual Education Plan or IEP (*Timothy W. v. Rochester*, 1989). Simply stated, the First Circuit Court ruled that the school system cannot deny the student an educational program because of his or her disability. The law recognizes that education for children with disabilities not only includes academic skills, but also basic life skills. According to *Timothy W. v. Rochester* (1989), it is the school district's responsibility to keep up-to-date with the constantly evolving and improving methodologies that constitute what is



represented by academic skills and basic life skills. Therefore, it is the school system and parents who must decide the appropriate IEP for the student with a disability. In the case of this school system, they had interpreted the law to mean they could provide no educational program due to the severity of the handicap, and that the child would not benefit from the services provided by the school system. Therefore, the circuit court decided the school system was in error and had to provide the appropriate educational placement to all children with disabilities, regardless of the severity of their handicap.

**Recent special education laws.** In 1990, two major laws, the Americans with Disabilities Act (1990) and the Individuals with Disabilities in Education Act (1990), were enacted to support the education of children with disabilities. The Americans with Disabilities Act (1990) and the Individuals with Disabilities in Education Act (1990) were both implemented in an effort to allow for people with disabilities to have equal opportunities in life and education. In the 1990s, the focus in educating children with disabilities changed from an access model to more of an outcomes model, concentrating on standards-based reform and accountability (Itkonen, 2007). Like the Rehabilitation Act of 1973, the Americans with Disabilities Act (1990) was a major legislative act designed to protect the civil rights of individuals with disabilities (Smith, 2004). The American with Disabilities Act (1990) protected people in all aspects of life, including education.

Like Section 504 of the Rehabilitation Act of 1973, the ADA is a civil rights legislation for individuals with disabilities. Unlike Section 504, the ADA applies to almost every entity in the United States, regardless of whether it receives federal funds;

churches and private clubs are the only two entities that are exempt from the ADA (Smith, 2004, p. 336).

The Individuals with Disabilities Education Act (1990) was an amendment to the Education for All Handicapped Children Act (1975). IDEA was reauthorized in 1997 and again in 2004. In the 2004 reauthorization, the law was again amended and renamed the Individuals with Disabilities Education Improvement Act (2004). Significant changes were made in the amendment, but the act is still referred to as IDEA. The overall general changes included a change in philosophy from an emphasis on the process to more of an emphasis on the results. Other changes included focusing on an early intervention model and more of a focus on student achievement rather than compliance only. Zirkel (2005) included his top five changes in the new law which included: (a) using a response to intervention model for identification, (b) limiting a district's liability in refusal to consent issues, (c) streamlining the manifestation determination process, (d) allowing IDEA funds for pre-referral strategies, and, (e) enacting a statute of limitations on filing for a due process hearing. According to Zirkel (2005), the use of the IQ discrepancy model from the previous law is replaced by a more stringent response to intervention model (RTI), which requires continuous data monitoring to determine if a student qualifies for special education.

Like the previous laws enacted for individuals with disabilities, IDEA (2004) emphasizes the need for school systems to provide a free and appropriate public education. "The basic requirement of IDEA – to provide a free, appropriate public education to children with disabilities – has not changed" (Smith, 2005, p. 318). In

addition, the focus on least restrictive environment and the Individual Education Plans (IEPs) are included in the updated laws. Also, procedural safeguards that allow schools and parents to seek in a students' IEP have been included in the form of due process. "IDEA continues to require that schools obtain consent prior to initial evaluation and placement....if parents refuse their consent for initial evaluation, schools may pursue this denial through due process" (Smith, 2005, p. 317). Also, parents can seek a similar route if it is believed their child's IEP is not being met.

The intent of the laws above is to cover any student regardless of his or her disability. If a student's disability is not covered under one law, it is likely covered by another.

Because the definition of disability and the requirements for eligibility under IDEA are more restrictive than those used in Section 504 and the ADA, all children eligible for services under the IDEA are eligible for protection under Section 504 and the ADA. However, there are many children eligible for services and protections under Section 504 and the ADA who are not eligible for services under the IDEA (Smith, 2004, p. 338).

In between the initial authorization of IDEA (1990) and the reauthorization of IDEA (2004), President George W. Bush also enacted the No Child Left Behind Act (NCLB) (2001). This act supplemented the IDEA (2004) with an emphasis on an accountability model for all students, including those with disabilities. "With the recent reauthorization of Individuals with Disabilities Education Improvement Act of 2004 and No Child Left Behind (NCLB), special education is slowly being re-framed from a civil rights statute to an education law" (Itkonen, 2007, p. 13).

**Current U.S. Supreme Court cases and special education.** “In the 30 years since the passage of the IDEA, from 1975 to 2005, the Supreme Court had only heard seven cases that directly involved students with disabilities and the IDEA” (Yell, Ryan, Rozalski, & Katsiyannis, 2009, p. 68). From 2005 to 2007, the Supreme Court heard four cases and issued rulings on three of them. The four special education cases that went to the Supreme Court during this period included: *Schaffer v. Weast* (2005), *Arlington Central School District Board of Education v. Murphy* (2006), *Winkelman v. Parma City School District* (2007), and *Board of Education of the City School District of New York v. Tom F.* (2007). As mentioned above, the Supreme Court ruled on three of those cases. All four of the cases involved issues with reimbursement; however one, *Schaffer v. Weast* (2005), focused on the issue of the burden of proof.

In the *Schaffer v. Weast* (2005) case, the parents sued the school system over what they believed to be an inappropriate IEP. The parents were awarded tuition reimbursement for private school. The school system disagreed and ultimately ended up in the U.S. Supreme Court. The issue in the Supreme Court was not the issue of reimbursement but that of who holds the burden of proof. Until this case, the IDEA did not provide guidance on who held the burden of proof in a case. However, the Supreme Court’s decision stated that the burden of proof lies with the party that files the suit. Yell et al. (2009), discussed the Supreme Court’s decision, “... if the burden of persuasion always fell on school districts, this would in effect declare every IEP developed to be invalid until a school district could demonstrate that it was not” (p. 71).

In *Arlington Central School District Board of Education v. Murphy* (2006), *Winkelman v. Parma City School District* (2007), and *Board of Education of the City of New York v. Tom F.* (2007), the issues discussed were reimbursement of payment for services and/or private school. In *Arlington v. Murphy* (2006), the parents filed suit over the reimbursement of fees paid to experts that they used for their child with disabilities. The expert fees in this case involved the use of consulting fees and legal consultation provided by an advocacy group. The Supreme Court ultimately ruled that the fees for experts did not fall into the guidelines of providing compensation for attorney's fees. The Court awarded expert fees for the consulting services but not for the legal consultation, because the advocate was not formally trained as an attorney. *Winkelman v. Parma City* (2007) also involved a reimbursement issue for private school. The parents claimed the special education program of their child was inadequate. The U.S. Supreme Court rendered a decision in favor of the parent. The last case mentioned, *Board of Education v. Tom F.* (2007), again involved an issue of reimbursement. The student had never enrolled in a public school but the parents felt that the programming would not be adequate. One of the justices recused himself and the others remained deadlock. The result was that the decision was reverted back to the Circuit Court who ruled in favor of the parents. The implications of these four cases are that the Supreme Court has consistently found in favor of the parents in the most recent cases. Yell et al. (2009) listed four principles which arose from the cases:

- (1) Ensure that parents are meaningfully involved in the development of their children's special education plan,
- (2) Ensure that teachers and administrators

understand their responsibilities under the FAPE requirements of IDEA, (3) Ensure that special education teachers understand how to develop educationally meaningful and legally sound IEPs, (4) Ensure that special education administrators and teachers receive meaningful and sustained in-service training programs in new research-based practices and other developments in special education. (pp. 74-75)

These four principles can provide guidance for the school systems in avoiding potential legal issues when dealing with special education.

### **Steps in Resolving Disputes in Special Education**

**The procedural safeguards in special education.** Based on P.L. 94-142 (Education for All Handicapped Children Act, 1975), IDEA (2004), ADA (1990), and Section 504 of the Rehabilitation Act (1973), procedural safeguards are in place to protect the rights of the parents and students as well as protect and provide guidance to the state education agency (SEA) and local education agency (LEA). A main consideration in the safeguards includes the idea of providing a free and appropriate education (FAPE) for all students. According to Yell and Drasgow (2000), “FAPE is defined as special education and related services that are provided at public expense, meet the standards of the SEA, include an appropriate pre-school, elementary, and secondary education, and are provided in conformity with the IDEA” (p. 206).

According to Zirkel (2007), when a dispute arises concerning the eligibility of a student, or placement of a student under the IDEA (2004), the parent has two alternatives to attempt to resolve those disputes: including an adjudicative or court-like process or an

administrative or investigatory process. The first method involves the use of an impartial hearing officer or administrative law judge who determines an outcome and resolution for the parties involved. The second process can also involve an impartial hearing officer, but these are usually conducted in a mediation format where the two parties sit down and discuss a possible resolution. Both methods result in an agreement that is legally-binding and must be followed.

According to Katsiyannis, Yell, & Bradley (as cited in Getty & Sweeney, 2004) “Due process hearings are the principal vehicle for resolving disagreements between school districts and parents of children with disabilities...” (p. 40). Both the school and parents can request a due process hearing based on the requirements of the IDEA (2004). “The right to due process ensures children with disabilities equal treatment as compared to that of their peers without disabilities, as needed by law” (Getty & Sweeney, 2004, p. 40). In most cases, prior to a due process hearing, mediation occurs to attempt to resolve the dispute prior. If an agreement is not agreed upon during mediation, the parent or school system can seek a due process hearing. Based on 34 C.F.R. 300.153 of the IDEA (2004), a SEA is required to resolve any complaint alleging that a public agency failed to provide FAPE. That requirement is also addressed in state and local laws providing that the Local Education Agencies attempt to resolve disputes prior to a due process filing (OSERS, 2007).

The IDEA (2004) specifically lists procedural safeguards for use by the parents, SEAs and LEAs to use to ensure that the law is being implemented properly. According to Getty & Sweeney (2004),

The primary procedural safeguards of the IDEA include: (a) the right of parents to examine their child's records; (b) the responsibility of the school to notify and include parents in the educational meetings; (c) the right of parents to pursue mediation or a due process hearing. (p. 40)

According to Morris and Thompson (2008), "These safeguards help to ensure parents are involved in the special education process as well as to ensure that parents are notified and/or give consent when a change of placement occurs." (p. 184)

**Steps involved in due process hearings.** The due process hearing is not the first step taken when a complaint is filed. The IDEA (2004), as well as the SEA regulations gives specific guidelines on the appropriate steps and timelines for due process claims. The first step involves the parent filing an administrative complaint with the state department's special education office. If the complaint is verified by the state department, the school system is provided notice and is expected to attempt a resolution prior the next steps. The U.S. Department of Education Office of Special Education (2006) states that within fifteen days of receiving notice, the LEA must convene a meeting with the parents and relevant members to discuss the complaint and attempt to resolve the dispute. The procedure for filing an administrative complaint is typically state specific.

Mediation is the next step. According to Lortella (2008), "Mediation is a form of assisted dispute resolution in which participants come together to resolve their differences with the assistance of a neutral third party, in this case, a mediator" (p. 57). Based on the regulations at 34 C.F.R. 300.506, "the public agency is available to allow parties to dispute matters, including matters prior to the filing of a due process claim, to



resolve disputes through the mediation process” (IDEA, 2004). The mediation enables the parties involved to attempt to find a resolution to the problem.

The IDEA (2004) provides a specific timeline for the resolution to occur. According to 34 C.F.R. 300.532(c)(3) unless the parents and LEA agree in writing, a resolution meeting must occur within seven days of receiving notice, and a due process hearing may proceed if the issue has not been resolved within fifteen days (IDEA, 2004). Based on 34 C.F.R. 300.510(b)(5), if the LEA fails to reach a resolution or is unable to get the participation of the parent, the hearing officer will make a decision on whether to dismiss the case or begin the due process hearing (IDEA, 2004; U.S. Department of Education Office of Special Education, 2006). If a resolution is agreed upon at the meeting, the parties involved must sign a legally binding agreement. Based on 34 C.F.R. 300.150(d), the agreement must be signed by both the parent and a representative of the public agency and is enforceable in any state or district court (IDEA, 2004; U.S. Department of Education Office of Special Education, 2006; Lortiella, 2008). If a resolution is not agreed upon, or the timelines are not met, the next step is a due process hearing (Lortiella, 2008).

According to the Tennessee Department of Education Division of Special Education (2008) and U.S. Department of Education Office of Special Education (2006), based on [34 C.F.R. 300.507(a)(2)][20 U.S.C. 1415(b)(6)(B)] (IDEA, 2004), the due process complaint procedures must follow these guidelines: (a) the violation must have happened within a two-year period; (b) the party must submit a formal due process complaint; (c) a meeting must convene with all parties to discuss the complaint and

possible resolutions; and (d) the student must stay in his or her current placement until a decision is rendered. In addition to the above procedures, a timeline for a decision must also be followed. Ultimately, if either party is not satisfied with the outcome or a resolution is not reached, the next steps would include civil litigation. In all cases, the resolutions must be signed by all parties and is legally binding.

The due process hearing is the final step prior to civil litigation. Once a due process request has been made, only a hearing officer can refuse to proceed with the hearing (IDEA, 2004). According to the U.S. Department of Education Office of Special Education (2006), the hearing may not continue until the initiating party, or the attorney of that party, files a due process complaint that meets the requirements of 34 C.F.R. 300.508(b). The timelines are still enforced during the due process proceedings. Based on 34 C.F.R. 300.532(c)(2), the SEA or LEA is responsible for expediting the hearing which must occur within twenty school days (IDEA, 2004; U.S. Department of Education Office of Special Education, 2006). The final determination must be rendered within ten school days after the hearing (U.S. Department of Education Office of Special Education, 2006). Once a decision is rendered the parties involved can accept the agreement and take steps toward following the decision or appeal and seek civil action. “A decision made in due a due process hearing is final, except that any party involved in the hearing may appeal the decision by bringing a civil action” (Tennessee Department of Education Division of Special Education, 2008, p. 26).

**Implications of due process hearings.** “Due process hearings are a last resort to resolve conflicts or problems between school districts and parents” (Getty & Sweeney,

2004, p. 40). The ideal situation is to resolve disputes prior to the due process hearing or civil litigation. Getty and Sweeney (2004), state three reason due process claims occur: “denial of FAPE, reimbursement for outside services, and the recovery of attorney fees” (p. 40). Yell and Drasgow (2000), state that procedural violations were the most common errors leading to school district losses mainly due to failing to offer FAPE for the children with disabilities. Districts must continue to respond to requests, develop appropriate IEPs, and address all of the needs of their children with disabilities (Yell & Drasgow, 2000).

Due process hearings can have an adverse effect on all parties involved. “Educational professionals may develop negative and cautious attitudes towards the student and his parents, as well as develop feelings of distrust and anger” (Getty & Sweeney, 2004, p. 41). These attitudes can also exist among the parents, teachers, and others involved in the disputes. According to Getty and Sweeney (2004), the course of due process hearings can have many emotional ramifications for all parties including: the countless dollars spent, negative feelings, distrust, and personal and professional ramifications. Although it is universally agreed that the best way to avoid and resolve the disputes is through informal communication and cooperation between parents and school officials, litigation and other legal activity for resolving disputes have increased significantly in the past thirty plus years (Zirkel, 2007).

### **Special Education Laws and Regulations Specific to Tennessee**

The IDEA (2004) requires the states to develop their own set of procedures based on the guidelines provided. According to Tennessee Code Annotated 49-10-604, “The

department of education shall promptly investigate complaints filed regarding the services to disabled students and shall enforce the IDEA compiled in 20 U.S.C. 1400 et seq., and state special education laws” (Tennessee Code Annotated, 2008). According to the Tennessee Department of Education Division of Special Education (2008), the Tennessee Department of Education will investigate the failure to provided appropriate services for all children with disabilities. According to the Tennessee Department of Education (2007), the Tennessee Board of Education rules and regulations state that there are three dispute resolution options available: administrative complaint, mediation, and the due process hearing. As with the federal regulations, the parties involved also have the right to seek civil action if not satisfied with the outcome.

According to Tennessee Code Annotated (2008, §49-10-604), “The department of education shall promptly investigate complaints filed regarding services to disabled students and shall enforce the Individuals with Disabilities Education Act, compiled in 20 U.S.C. § 1400 et seq., and state special education laws.” Tennessee Code Annotated (2008, § 49-10-604) requires that a complaint form be provided on the state website as well as in written form. In addition, the state department must begin the investigation to determine if the complaint has a basis in fact. If it does, the state submits the findings to the school system and allows ten days for the system to correct the infraction.

Following an administrative hearing, a second step may be the mediation process. The requirements for mediation are specifically described in Tennessee Code Annotated (2008, §49-10-605). According to Tennessee Code Annotated (2008, §49-10-605), mediation must be voluntary on the part of the parent or school district, it cannot deny or

delay the right to due process, and it must be conducted by an impartial mediator. If at any time the parties cannot reach agreement or if the parties refuse mediation, they can request a due process hearing.

According to Tennessee Code Annotated (2008, §49-10-606), due process hearings must be heard by an administrative law judge. Special education due process cases shall be heard by administrative law judges employed by the secretary of state and administrative law judges shall have the jurisdiction to hear complaints arising under the IDEA (2004)(Tennessee Code Annotated, 2008, §49-10-606). If the issue is not resolved in mediation, the administrative law judge must provide a written decision with 45 calendar days after the resolution period (Tennessee Code Annotated, 2008). As with the IDEA, the complaint may be brought in a state court or in a district court (Tennessee Code Annotated, 2008, §§ 4-5-322, 49-10-601).

### **Training Administrators in the Laws of Special Education**

“The Southern Regional Education Board (SREB) has claimed that preparing school leaders is not a high priority and that principal preparation programs are out of sync with demands for accountability” (Petzko, 2008, p. 224). In the review of literature, common themes emerged showing that the current principal preparation programs are not addressing areas that are pertinent to the successful preparation of future school leaders. According to Wakeman, Browder, Flowers, & Ahlgrim-Delzell (2006),

To be considered competent, principals should have fundamental knowledge of special education as well as knowledge of current issues in special education.

Unfortunately, research has also demonstrated that many principals are receiving little to no formal pre-service or in-service training. (p. 154)

Several studies show that institutions of higher education are examining these pertinent areas and are focusing on providing training that is beneficial to the modern school administrator. An example of this included the development of the Interstate School Leaders Licensure Consortium Standards. The Interstate School Leaders Licensure Consortium Standards (ISLLC), adopted by many states, has set forth performance areas for the education of future school administrators. Among those guidelines, several of the performance areas concentrated on the legal aspects of leadership such as legal issues impacting school operations, applying laws and procedures fairly and wisely, the knowledge of the law related to education, and the knowledge of using the legal systems to protect student's rights (Council of Chief State School Officers, 1996).

In a study cited by Garrison-Wade, Sobel, and Fulmer (2007), when teachers and administrators were asked things school leaders needed to know, both parties agreed that knowledge of special education law and disabilities was important. Several articles cited that principals lack specific knowledge of special education issues. According to Rhys (1996), and Nardone (1999) as cited in Garrison-Wade et al. (2007), "Additionally, many principals lack knowledge of special education legal issues, specifically in compliance and procedure requirements as legally mandated by IDEA" (p. 119). In a study by Farkas, et. al (2003), as cited in Hess and Kelly (2007) the author states that 67% of principals replied "typical leadership programs in graduate schools of education are out of touch with the realities of what it takes to run today's school districts" (p. 245). According to

Garrison-Wade et al. (2007), “Despite the implication for school administrators to be trained in special education laws and policies, many received little in their training” (p. 120). “Licensing programs for administrators may need to reevaluate program requirements to include information in special education” (Wakeman, et al., 2006, p. 169).

Many of the studies attempted to determine the areas in need of increased preparation. A study involving 1,500 elementary, middle, and high school principals in Virginia looked at the areas principals felt needed to be priorities in professional development. The top five areas reported in this study included: special education law and implementation, increased student achievement on standardized tests, data-driven decision making, assessment using multiple criteria, and strategies for faculty and staff development (DiPaola & Tschannen-Moran, 2003, as cited in Petzko, 2008). Increased knowledge of school law showed up as a common theme in the studies. In a study by Petzko (2008), the author listed eight areas that graduate programs for new principals needed to focus on. Of the eight, one in particular, called for the need of an increased emphasis on the preparation of new principals on special programs and student services. According to the new principals, preparation in special programs and student services were in the top half in regards to their importance but the bottom regarding the level of preparation (Petzko, 2008).

According to Militello, Schimmel, and Eberwein (2009), many of the professional organizations, including the National Association of Secondary School Principals, felt legal knowledge is an essential competency in principal training programs (p. 29).

Several studies, including the NCPEA Connexions Project (NCPEA, 2007), list knowledge of school law as an important skill to be addressed in pre-service training programs and ongoing professional development (Petzko, 2008). “By knowing what principals know about school law and identifying gaps in how they obtain, maintain, and disseminate legal information, changes to policy and practice can be made to help principals confidently assume the role of chief law instructor in schools” (Militello et al., 2009, p. 28).

Although not all of the studies agreed on the specific areas that need to be addressed in principal preparation, it was agreed that more needs to be done to examine the areas to be addressed. “University preparation programs, school districts, and the profession must collectively begin to address the specific needs of beginning principals to provide maximum support for success” (Petzko, 2008, p. 225). Angelle and Bilton (2009) stated that providing a knowledge base of special education through coursework, even if it is minimal, can increase the beginning principal’s comfort level in dealing with special education and other issues. The increased acceptance of the ISLLC Standards and other studies by universities and professional organizations have begun to foster the awareness of what needs to be taught in pre-service training programs and on-going professional development for school administrators.

### **Issues in Special Education**

The research is limited on specific issues that arise in special education that could potentially lead a school system to litigation. However, several important issues are mentioned regularly in the literature. Although they were not linked to directly to



litigation, the problems mentioned could lead to difficulties within the school system and ultimately lead to due process complaints and litigation. “In numerous state (SEA) and local education agencies (LEA), the threat of due process hearings and litigation is viewed as a serious issue, such that practices and/or policies, while educationally sound, have been adapted specifically to avoid litigation” (Mandlawitz, 2002, p. 495). Those issues that emerged included: special education services, perceptions and concerns of parents, involvement of parents, teacher preparation, and the overall misunderstanding of autism spectrum disorder.

The viewpoint of the parents that emerged from the literature is that of confusion about the process. Special education can be difficult for trained personnel to understand, therefore, it is reasonable to think that parents would be confused as well. One such parental concern that arose was over the services that should be provided for the child. By law, school systems are to provide a student with a free appropriate public education (FAPE) in what is called the least-restrictive environment (LRE). Determining exactly what FAPE is has been an issue in many of the court cases mentioned previously. According to Mandlawitz (2002), “The parents allege that the district is responsible for provision of such programs because the program offered or provided by the LEA fails to provide a free and appropriate education” (p. 497). According to *Board of Education v. Rowley* (1982), *Doe v. Board of Education of Tullahoma* (1993), and *Springdale School District v. Grace* (1981), school systems must provide individualized education to enable students to obtain educational benefit, achieve passing grades, and advance from grade to grade, but school systems are not required to provide the best possible education for

children with disabilities under IDEA. This is sometimes referred to as not having to maximize the service.

“Upon entry into services, families described feelings of isolation, inadequacy, and hunger for information and guidance” (Applequist, 2009, p. 13). This overall feeling of parents was repeated throughout the literature. It is believed that this feeling of isolation and inadequacy is increased when the lines of communication are not left open. Trussell, Hammond, and Ingalls (2008) stated, “They continued to state that professionals can empower parents by using appropriate communication skills, language levels, encouragement, and concrete program suggestions for the child and family” (p. 21). “Alternately, when communication from professionals was limited or in some cases judgmental, parents felt they were not true partners in the process” (Applequist, 2009, p. 14). It was mentioned multiple times that successful interactions with parents and professionals involved open communication. According to Stoner, Bock, Thompson, Angell, Heyl, and Crowley (2005), “The key to this understanding is open communication, effective intervention practices, and service delivery that meet the needs of the child” (p. 49). Despite the multiple examples stating that communication is the key, interaction between parents and educational professionals is often fragmented and poorly integrated (Stoner, et al., 2005, p. 39).

In many cases, parents see the education professionals as being more knowledgeable than they are, leading to intimidation and an overall feeling of mistrust. According to Mandlawitz (2002), mistrust between schools and families is often fostered by external organizations, such as advocacy groups, but neither party should view the

other as enemies. Whether it is the lack of communication, lack of knowledge of services in special education, or the feelings of mistrust, parents and school systems cannot collaborate if they cannot trust each other. “Once reduction in trust occurred between the parents and the educational professionals, parents become increasingly watchful and diligent in their efforts to ensure that their children received all services they deemed necessary to meet the needs of their child” (Stoner, et al., 2005, p. 47). This is usually the point at which parents seek advocacy groups to help them gain the feeling of adequacy among the educational professionals. According to Wakeman et al. (2006), “Principals are expected to establish a climate that provides consistent and frequent opportunities for growth and development of all students” (p. 153). “Without a basic trust, the legal battles will rage on” (Mandlawitz, 2002, p. 503).

Another issue that came about in the literature was involvement of the parents in the process of educating their child with disabilities. “Despite the legal mandates and professional obligations, parental participation in the special education process has proven to be quite challenging within the field of special education” (Trussell, et al., 2008, p. 20). In many cases, parents feel they are not members of the team or that their participation is not respected or valued. “Parental involvement, which encompasses the patterns and nature of parent-professional interaction, has been identified as a key to building strong and effective educational experiences for children with disabilities” (Stoner, et al., 2005, p. 39). Parental participation encompasses more than just showing up to meetings, they need to be valued members of the IEP team who are allowed to contribute ideas and make decisions. According to Trussell et al. (2008), even though

parents are considered partners in the process according to the law, little has been done to prepare parents for that role.

Preparation of teachers in dealing with children with disabilities has also emerged as an issue in several of the resources. As with administrators, training for teachers in special education has been limited. Most of the training that occurs is from on-the-job experiences and consultations with veteran teachers with experiences in working with disabled children. "Preparation of personnel involved with the implementation of IDEA merits closer scrutiny" (Applequist, 2009). According to Mandlawitz (2002), hearing officers repeatedly have indicated that having a teacher that is adequately trained in working with children with disabilities is a plus.

Another issue that arose in the literature was the apparent increase in autism identification and the ambiguity of the disorder itself. The past few decades have shown a rise in autism identification and an increase in the prevalence of the disorder. Working with students with autism and their families has become increasingly difficult because of the ambiguity of the disability as well as the many different ways of providing services to those children. The costs for providing services to children with autism can be extreme. Many require one-on-one aides, certified behavioral analysts, and a variety of other services that prove to be expensive. Mandlawitz (2002) states, "In cases arising around the provision for young children with autism, there is a common theme: parents are seeking continuation of and/or reimbursement for parent-initiated applied behavioral analysis (ABA) or discrete-trial (DTT) programs conducted mainly in the home" (p. 497). When a school system hesitates to move forward with such intricate services, often

advocacy groups get involved and due process complaints and hearings occur. According to the literature, it is imperative that educational professionals as well as policy-makers become more knowledgeable about the needs of children with autism and their families.

When parents and school systems work together collaboratively, with an open-line of communication, complaints are limited. There are some complaints that cannot and will not be avoided. However, it is important that all parties involved remember what their common goal is – to provide the best possible education for these children (Stoner et al., 2005).

### **Summary of Findings from Literature**

The review of literature examined the background of special education laws, court cases, and federal and state mandates. The process of resolving special education disputes through hearings, mediation, and due process cases were also discussed. A focus on the implications of due process cases and the laws and regulations specific to Tennessee were also discussed. School administration preparation was examined in the literature to see what areas are currently being taught and the areas that need to be addressed in the future. Lastly, a look at special education issues provided current information on what might be causing difficulty for some school systems.

The next chapter focuses on the methodology of this study. It specifically looks at study methods that were used, the study design, setting and population, procedures, limitations and delimitations, assumptions, and the analysis of data. In addition, the research questions are summarized to provide the basis for the study. Also, a discussion

of the sampling technique for the interview process as well as an example of the sampling chart, are included.

## **Chapter 3: Methodology**

### **Introduction to the Methods of Study**

Chapter 3 provided a background on the methodology used in the study. An explanation of the reasons for using a mixed methods design as well as summaries of the research questions were also included in this chapter. The chapter continues with the description of the study design, the setting and population, the procedures, limitations, and the data analysis. The data analysis section focuses on each research question and the statistical methods used with a brief description of those methods.

### **Study Design**

The study used a mixed-methods approach to addressing the research questions. Much of the information for this study was gleaned from a quantitative examination of the collection of final orders. However, that information does not shed light on procedures and system practices that may help prevent litigation. This study obtained that information by interviewing authoritative personnel. Therefore, this study used a mixed-methods design to answer the following research questions:

(1) What percentage of the total collection of final orders (CFO) cases fall into each descriptor of the following categories: sex, disability type, school system size description, age, prevailing party, filing party, and issues of the cases?; (2) Are there noticeable differences between the CFO and the special education population at-large in any descriptor category in terms of percentages of cases?; (3) Are there any descriptor variables or combinations of variables that predict an outcome in favor of the parent in CFO cases?; (4) Based on a content analysis of responses from special education

directors, what are common themes of district level practices that have been put into place to prevent cases from going to due process?

“Qualitative findings may be presented alone or in combination with quantitative data” (Patton, 2002, p. 5). A mixed-methods approach is when a researcher combines both qualitative research methods and quantitative analysis. A content analysis was done on interview responses using a constant-comparison method to identify common themes from the data gathered from the fourth research question. The first three research questions were studied through descriptive analyses, a comparison of frequencies, and a logistic regression of the already-collected CFO data and special education population of Tennessee. The last question used a qualitative analysis of interview data. The data gathered from the quantitative analysis provided a glimpse as to what disability-types were highly-represented, the participants and issues in special education, and the parties that filed complaints and those that prevailed. However, in order to understand what the data meant and what caused issues in special education, interviews of special education directors were needed. The interviews of special education directors provided additional insight that complimented the already existing data. Therefore, a mixed-methods approach yielded a more in-depth picture of current practices with regard to special education cases and how school districts can improve those practices.

### **Setting, Population, and Sampling**

The setting of the study was in Tennessee, the home state of the researcher. Easy access to special education information in Tennessee, the convenience of interviewing subjects within the state, and the availability of an accurate, comprehensive database



made the setting of Tennessee the ideal choice for the study. The study focused on Tennessee due process cases based on information from the CFO from the Tennessee Department of Education website. Also considered in the study was information about the at-large special education population of Tennessee. In both circumstances, the descriptors of the CFO as well as the at-large special education population, followed the descriptions of a disability provided by the State of Tennessee. Those descriptions include: a child with mental retardation, hearing impairments, speech or language impairments, visual impairments, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disability, developmental delay, functional delay, and the intellectually gifted (TCA 49-10-102). Finally, information was obtained from special education directors throughout Tennessee.

The collection of final orders (CFO) found at the Tennessee Department of Education website is a summary of information on all of the due process final orders decided from the years 1996-2007. As part of 34 CFR 300.513d, any public agency must make the findings and decisions of due process final orders available to the public. The state of Tennessee goes beyond the federal regulations by stating “All decisions regarding special education due process hearings shall be published on the official web site of the department of education” (TCA 49-10-606h). This collection is designed to document all these final orders in one location and the website is updated in February of each year. The CFO on the Tennessee Department of Education website include cases that were not settled during the mediation or hearing phase and are heard by an administrative law judge rather than an appointed school official. The cases listed in the CFO begin with the

year 1996 and any new final orders are added in February of every year. Until July 1, 1997, the State of Tennessee allowed impartial hearing officers, consisting of a group of attorneys who had a desire to hear special education cases, to decide due process cases. In July 2007, the State of Tennessee required the cases to be heard by administrative law judges appointed by the Secretary of State of Tennessee.

Selected directors of special education in Tennessee were asked to participate in the interview portion of the study. There are approximately 130 special education directors in Tennessee public schools. Their role typically consists of providing public relations, disseminating special education information, and acting as a liaison to parents of children with special needs. They also provide the necessary training, personnel, equipment and supplies to enable special education staff to perform their duties. After the classroom teacher and the principal, the special education director is the first point of contact for the school system if a special education issue arises.

The interviewees for this study were determined by a purposeful sampling technique. The sampling technique used the school system size description determined by National Center for Education Statistics urban-centric locale categories (2007). The NCES description is explained in Table 3.1. Whether or not the system participated in the CFO from 1996-2007 was a determination. The information for participation in the CFO can be obtained from the due process final orders information found on the Tennessee Department of Education website. The region of the state was not a variable used in the sampling technique; however, it was a consideration in choosing participants. It was the

intent of the researcher to include participants from the three regions of the state of Tennessee: East Tennessee, Middle Tennessee, and West Tennessee.

Table 3.1

*NCES's Urban-centric Locale Categories, Released in 2006*

Locale	Definition
<b>City</b>	
Large	Territory inside an urbanized area and inside a principal city with population of 250,000 or more
Midsize	Territory inside an urbanized area and inside a principal city with population less than 250,000 and greater than or equal to 100,000
Small	Territory inside an urbanized area and inside a principal city with population less than 100,000
<b>Suburb</b>	
Large	Territory outside a principal city and inside an urbanized area with population of 250,000 or more
Midsize	Territory outside a principal city and inside an urbanized area with population less than 250,000 and greater than or equal to 100,000
Small	Territory outside principal city and inside an urbanized area with population less than 100,000
<b>Town</b>	
Fringe	Territory inside an urban cluster that is less than or equal to 10 miles from an urbanized area
Distant	Territory inside an urban cluster that is more than 10 miles and less than or equal to 35 miles from an urbanized area
Remote	Territory inside an urban cluster that is more than 35 miles from an urbanized area
<b>Rural</b>	
Fringe	Census-defined rural territory that is less than or equal to 5 miles from an urbanized area, as well as rural territory that is less than or equal to 2.5 miles from an urban cluster
Distant	Census-defined rural territory that is more than 5 miles but less than or equal to 25 miles from an urbanized area, as well as rural territory that is more than 2.5 miles but less than or equal to 10 miles from an urban cluster
Remote	Census-defined rural territory that is more than 25 miles from an urbanized area and is also more than 10 miles from an urban cluster

(National Center for Education Statistics, 2007)

## **Study Procedures**

The first part of the research involved collecting data from the CFO at the Tennessee Department of Education website and the percentages of the special population at-large in Tennessee. The first step in this process was to read the cases listed in the CFO and gather information including the sex of the student, the disability type, the size of the school system, and the prevailing party. As the cases were read, any other variables of interest were included, as necessary. The variables of interest included, for example, type of disability, sex of the students, school system size description, age of the students, prevailing party, filing party, and issues of the cases. These were charted on the Statistical Package for the Social Sciences (SPSS Inc.) file in the descriptor categories assigned by the researcher. The variables of interest were represented as columns on the SPSS file, and the cases were represented as the rows. As variables were added, columns to the SPSS file were also added. Once the data of the variables were identified, a descriptive analysis was run using SPSS software to determine the percentages of the variables.

The next step was to take the data from the CFO and compare it to the percentages of the special education population at-large in Tennessee. The percentages of the CFO and the current Tennessee special education population were charted on a spreadsheet. A comparison of frequencies was examined to see if any over-representations occurred. Lastly, a logistic regression was used with the previous CFO data to determine if there were any predictors that determined the outcome in favor of the school system.

Once the variables were charted, the sample of school districts from which interviewees were drawn were selected by the researcher, based on the information found during the sampling criteria review. The example of the sampling technique can be found in Table 3.2. A purposive sampling technique was used to identify potential candidates for the interviews. “When developing a purposeful sample, researchers use their special knowledge or expertise about some group to select subjects who represent this population” (Berg, 2007, p. 44). “What would be ‘bias’ in statistical sampling, and therefore a weakness, becomes the intended focus in qualitative sampling, and therefore a strength” (Patton, 2002, p. 230). In examining the examples of purposeful sampling provided by Patton (2002), it was determined that a typical case sampling is the most beneficial sampling technique for addressing this research question. Patton (2002), describes typical case sampling as one that selects based on the cooperation of key informants who can help identify who and what are typical. “When the typical site sampling strategy is used, the site is specifically selected because it is not in any major way atypical, extreme, deviant, or intensely unusual” (Patton, 2002, p. 236). Morse (as cited in Flick, 2009) defines general criteria for a good informant as having necessary knowledge of the issue or subject and having the capability to reflect and articulate the subject being discussed. Initially it was discussed to interview superintendents or special education teachers in Tennessee. However, after speaking with a superintendent and several special education teachers, it was decided that special education directors were the best candidates to speak on issues regarding special education.

Table 3.2

*Potential Interviewees of Special Education Directors in Tennessee*

	City	Suburb	Town	Rural
Participated in CFO	4	6	7	21
Did Not Participate in CFO	8	7	26	56

The interviewees were the special education directors of the school-districts selected. Interview questions were developed and administered with the intent to gather information that was specific to the district being interviewed. The initial target for interview participants was between eight and twelve special education directors. According to Patton (2002), there are no rules for sample size in qualitative inquiry; it all depends on what you want to know, the purpose, what is at stake, what is useful, the credibility, and what can be done with available time and resources (p. 244).

The purpose of the interviews was to examine if there were any district-level procedural practices in place that seemed to prevent due process cases for the school districts. Contact information was obtained through the listing of special education directors at the Tennessee Department of Education. Once the sample list was compiled, interviewees were contacted via telephone and/or email to find out if they were willing to participate. Those who chose to participate were sent an informed consent form through email. The participant returned the signed informed consent form prior to the interview. The response to the email indicated the willingness to participate. The email included a summary of the research, the purpose of the research, the expected duration of the interview, why this participant was selected, a description of the interview process, and where the interview would take place. Also, the interviewee was informed of any risks

involved, whom to contact concerning questions, and a statement that informed the participant that the study was voluntary and he or she may refuse to participate at any time.

Once participants returned the informed consent, a schedule of interviews was sent via mail or email. Based on the schedule developed, the interviews were conducted via face-to-face or over the phone. The researcher and participant made the determination of which method was preferred. Ten special education directors were interviewed. The interviewees represented all three regions of Tennessee, the four system-size descriptions mentioned in Table 3.1, as well as systems that did and did not participate in CFO cases.

### **Limitations**

This is a case study based on characteristics that are true for Tennessee. This state was chosen for the study due to the available and complete data regarding special education due process cases. The findings of this study cannot be generalized as valid findings for other states, unless state characteristics are similar. The findings could be representative of other states with similar demographics, but the findings of this study were limited to Tennessee. In addition to the demographics, the regulations from state to state could vary. Although the federal law requires each state to follow specific minimal guidelines, certain procedures may be state-specific. For example, Tennessee started using administrative law judges to hear due process cases in 1997. The federal regulations only require an impartial hearing officer. Other states may use similar means as Tennessee, but sufficient differences may remain to limit findings of this study to Tennessee. Also, the cases represented in the CFO are those that made it to the final

orders phase. Other court cases that did not make it to the final order phase are not represented in this study.

### **Assumptions**

It is assumed that the data collected in the CFO and the at-large special education population of Tennessee fit the descriptors described in the research questions. Also, it is assumed that the answers to the interview questions of the special education directors in Tennessee will be honest and complete.

### **Data Analysis Methods**

The first research question was addressed by analyzing characteristics gathered from the examination of the Collection of Final Orders (CFO) on the Tennessee Department of Education website. Specific characteristics of the due process final orders were gathered and placed in an SPSS file for analysis, including sex, disability type, school system size description, age, prevailing party, filing party, and issues of the cases. The data gathered was analyzed using descriptive statistics to identify the percentages along the descriptors described above. According to Hinkle, Wiersma, and Jurs (2003), “Descriptive statistics are used to classify and summarize numerical data; that is, to describe data” (p. 12). Since no inferences were made of the data, based on the first research question, it is important to simply look at the percentages of the categories presented.

The second research question involved using the percentages collected from the CFO as well as the percentages of the current, at-large special education population in Tennessee. The frequencies of the percentages in the CFO and the population at-large



were compared to see if there are noticeable differences between the two on any given descriptor(s).

The third research question involved using a logistic regression to see if any descriptors or combination of descriptors predicted the outcomes in favor of the school district. “Generally, logistic regression is well suited for describing and testing hypotheses about relationships between a categorical outcome variable and one or more categorical or continuous predictor variables” (Peng, Lee & Ingersoll, 2002, p. 4). According to Dayton (1992), the logistic regression analysis uses the techniques of multiple regression to research situations in which the outcome variable is categorical and predictions may be made for the dichotomous outcome of success/failure or improved/not-improved (§ 1). The logistic regression uses a two part process in which the first part, a prediction model, is generated and in the second part, it tests the model it created against all of the cases. The results are a classification table of how many of the cases the model successfully predicted. In the case of this research question, the idea is to see if any combination of variables from the analysis of the CFO predicts a successful outcome for the school districts in Tennessee.

The fourth research question was addressed using data from interviews of special education directors who are involved in the development and implementation of procedures and practices to help prevent legal issues in special education. A content analysis was done on interview responses using a constant-comparison method to identify common themes from the data gathered from the fourth research question. According to Thomas (2003), “The process of content analysis entails searching through one or more

communications to answer questions that the investigator brings to the search” (p. 57). Berg (2007) adds to that by stating, “Content analysis is a careful, detailed, systematic examination and interpretation of a particular body of material in an effort to identify patterns, themes, biases, and meanings (Leedy & Ormrod, 2005; Neuendorf, 2002)” (pp. 303-304). In this study, content analysis was of interview comments only.

Once the responses were gathered and transcribed, the content analysis was done. The transcriptions of the interview responses were analyzed for key thoughts or statements. The thoughts or statements identified were transferred onto index cards. The index cards were placed into piles based on common ideas. Once the ideas were grouped, themes of the idea groups were identified. Each group of index cards were sub-divided based on the major theme identified. The results of the analysis were reported by themes in the findings portion of Chapter 4.

### **Summary of Methodology**

Using a mixed-methods design, this study addressed four research questions. The first research question asked, “What percentage of the total collection of final orders (CFO) cases fall into each descriptor of the following categories: sex, disability type, school system size description, age, prevailing party, filing party, and issues of the cases?” Using descriptive statistics, the frequencies of specific descriptors of the CFO were collected. The second research question asked, “Are there significant differences between the CFO and the population at-large in any descriptor category in terms of percentages of cases”? A comparison of percentages was used to compare the CFO descriptors as well as the frequencies of percentages of the at-large special education

population. The purpose of this was to see if there were specific differences between the two on any given descriptor(s). The third research question asked, “Are there any descriptor variables or combinations of variables that predict an outcome in favor of the parent in CFO cases”? A logistic regression was used to the descriptors or combination of descriptors to predict outcomes that are in favor of the school districts. The fourth research question asked, “Based on a content analysis of responses from special education directors what are common themes of district level practices that have been put into place to prevent cases from going to due process”? A content analysis of interviews of special education directors in Tennessee was used to identify common themes that result in less frequent litigation of special education issues.

## **Chapter 4: Findings**

### **Overview of Study Results**

In the last several decades, the United States has become a more litigious society, and this tendency is reflected in the public education system. When school systems enter litigation, the costs can be high and the public opinion low. Resources that are normally allocated towards the classroom would be re-directed to pay for the costs of litigation. School systems would especially benefit from knowledge that would aid them in avoiding this costly activity. Since litigation in school systems frequently occurs in the area of special education, these systems may benefit by knowing specific characteristics and/or policies and procedures that may be associated with legal problems in this area. The purpose of this study was to determine if there are any specific characteristics that seem to be disproportionately represented in special education due process cases and to determine information and school system practices that may help in reducing or preventing a school system's likelihood of facing potential litigation in special education.

This chapter discusses the quantitative and qualitative findings of the research study that are based on the four research questions addressed in Chapter 1. This chapter reports the findings in the order of each research question, along with the methodology used to collect and analyze data. The research questions are as follows:

(1) What percentage of the total collection of final orders (CFO) cases fall into each descriptor of the following categories: sex, disability type, school system size description, age, prevailing party, filing party, and issues?; (2) Are there noticeable differences between the CFO and the population at-large in any descriptor category in terms of

percentages of cases? (3) Are there any descriptor variables or combinations of variables that predict an outcome in favor of the system in CFO cases? (4) Based on a content analysis of responses from special education directors, what are common themes of district level practices that have been put into place to prevent cases from going to due process?

### **Findings on Research Question 1**

The first research question was addressed by analyzing the descriptors found in the collection of final orders (CFO) on the Tennessee Department of Education website. The CFO is a collection of due process final order cases in Tennessee from the years 1996-2007. As required by state regulations, those findings are located at the Tennessee Department of Education official website. As part of 34 CFR 300.513d, the public agency must make the findings and decisions of due process final orders available to the public. According to Tennessee Code Annotated, “All decisions regarding special education due process hearings shall be published on the official website of the department of education” (49-10-606h). The CFO includes cases that went beyond the administrative complaint and mediation stages and were heard by administrative law judges in the state of Tennessee.

Each case found in the CFO was examined to determine specific descriptors including: sex of the student, disability type of the student, age of students, the filing party, the prevailing party, issues pertaining to filing, and the school system size description. The data collected were analyzed using SPSS software and descriptive

statistics were used to determine the percentages of the descriptors found in the CFO. Results are shown in Tables 4.1 to 4.8.

Disability type was based on the descriptions given in the Tennessee Code Annotated including: mental retardation, severely emotionally disturbed, other health impaired, learning disabled, autism spectrum disorder, speech and language, and low-incident disabilities. The low-incident disability category includes those disabilities that were represented by a low percentage of the Tennessee special education population including: hearing impairments, visual impairments, orthopedic impairments, deaf-blindness, multiple disabilities, traumatic brain injury, and developmental delay. All of the low-incidence disabilities represented 2% or less of the special education population, with the exception of developmental delay. This category represented 4% of the Tennessee special education population. However, this category is only represented in the Pre-Kindergarten population.

Special education-related issues categories were generated by identifying areas that were represented consistently in the analysis of the CFO entries. Those issues categories include: reimbursement issues, free and appropriate public education (FAPE) issues, evaluation issues, procedural issues, and behavioral issues.

The reimbursement issue involves a party that receives money towards the payment or re-payment of services provided by someone else. Reimbursement can be granted to either the school system or the parent and can include items such as tuition, pay for professional expertise, attorney's fees, and transportation. In cases that reflected the reimbursement issue, there was a dispute over providing additional services not

provided by the school system, private school tuition, evaluations by outside parties, and reimbursement of court costs, experts, and/or attorney fees.

A FAPE issue involves a disagreement over the services of a student with disabilities. According to Tennessee Code Annotated:

A free appropriate public education (FAPE) shall be available to all children with disabilities, ages three (3) through the school year the student turns twenty-two (22), including those children who have been suspended or expelled from school for more than ten (10) school days in a school year (TCA 0520-01-09-.05, 2004).

Usually when a particular service is withheld, the filing party will claim that the student's right to a free and public education (FAPE) has been denied.

Some of the cases involve an issue with evaluation. Those issues include instances when the school system feels a student needs an evaluation and the parent refuses, the parent feels that his or her child needs an evaluation and the school refuses, or the parent wants an independent evaluation at the school system's expense.

A procedural violation involves any infraction that goes against the regulations for serving a student with disabilities, such as an inappropriate individualized education plan (IEP), a lack of notice provide to the parent, or bypassing the procedural safeguards set in place by IDEA (2004).

Lastly, the school system size description was found on the National Center for Education Statistics website (2007). NCES's urban-centric locale categories were used for this study to identify the Tennessee school system size description. Based on the description given in the report by NCES (2007), each system is categorized in the

following locales: city, suburb, town, and rural. Table 3.1 in Chapter 3 explained the rationale for using the above descriptors.

The descriptors from the CFO were identified and entered as variables in an SPSS file. Once the file was complete, descriptive statistics were used to identify the percentages in each descriptor category of the CFO. Frequencies and percentages for each category are shown in Table 4.1. Males represented two-thirds of the CFO cases, while females and those whose gender was not specified represented the remainder of the cases. Nearly two-thirds of the cases involved students in the secondary level, and about a third were at the elementary level.

Table 4.1

*Sex and Age of Students in CFO cases*

	Frequency	Percent
<b>Sex of students</b>		
Male	73	65.2
Female	32	28.6
Not Specified	7	6.3
<b>Age of students</b>		
Secondary	66	58.9
Elementary	30	26.8
Not Specified	12	10.7
PreK	4	3.6

Numbers and percentages of students in each disability type in the CFO are shown in Table 4.2. The predominant disability types represented in the CFO include: autism spectrum disorder, low-incident disabilities, and specific learning disabilities. The lowest percent disability type represented was speech and language impairment. Also included in these percentages are those cases that were filed prior to the student being



identified as disabled. It should also be noted that several cases included students who were identified as having more than one disabling condition. This category is labeled as multiple disabilities.

Table 4.2

*Disability Type of Students in CFO Cases*

	Frequency	Percent
Autism Spectrum Disorder	21	18.8
Low Incidence Disabilities	21	18.8
Multiple Disabilities	21	18.8
Specific Learning Disability	19	17.0
Mental Retardation	17	15.2
Emotional Disturbance	12	10.7
Other Health Impaired	12	10.7
Prior to Identification	11	9.8
Speech or Language Disabilities	9	8.0

Table 4.3 lists the percentages of specific issues identified in the CFO cases. The most represented issue in the CFO was a FAPE issue with over three-quarters of the total cases. The least-represented issue in the CFO was behavior. As with the disability type, this descriptor category includes cases that identified multiple issues.

Table 4.3

*Types of Issues in CFO Cases*

	Frequency	Percent
FAPE	88	78.6
Multiple	56	50.0
Reimbursement	37	33.0
Evaluation	25	22.3
Procedural	18	16.1
Behavior	16	14.3

Table 4.4 identifies the frequencies and percentages of parties filing the due process cases and the prevailing party of each due process case found in the CFO. According to the percentages, nearly 90% of all the filings came from a parent of a special education student. The system and the Department of Children Services accounted for the remaining CFO filings. The percentages in the CFO showed that the system prevailed about two-thirds of the time. It should be noted that there were four cases in the CFO that resulted in neither side identified as the prevailing party.

Table 4.4

*Filing Party and Prevailing Party in CFO Cases*

	Frequency	Percent
<b>Filing Party</b>		
Parent Filed	97	86.6
System Filed	13	11.6
DCS Filed	2	1.80
<b>Prevailing Party</b>		
System	72	64.3
Parent	36	32.1
DCS	3	2.70

Table 4.5 identifies the school system size description in terms of frequencies and percentages of each descriptor category: city, suburb, town and rural. (The rationale for using these descriptor categories was given previously in Table 3.1.) The majority of the cases in the CFO were represented by systems described as rural. Also included is a category labeled for DCS. Five cases included students that were under state custody; therefore the system represented was the Department of Children Services.

Table 4.5

*School System Size Description of CFO Cases*

	Frequency	Percent
Rural	45	40.2
City	31	27.7
Suburb	21	18.8
Town	10	8.9
DCS	5	4.5

**Findings on Research Question 2**

The second research question also used the data collected from the CFO.

Percentages of the total Tennessee special education population found on the Tennessee Department of Education website were obtained and compared with CFO percentages.

The two data sets were placed in a spreadsheet file and percentages of the two data sets were examined to determine if any of the descriptor categories were disproportionately represented in the CFO as compared with the Tennessee special education population.

The descriptor categories compared included the disability types, sex of the student, and the grade-level of the student. During this comparison, several categories showed distinct differences. Results of comparisons are shown in Table 4.6.

Categories that showed an over-representation in the CFO as compared to the general special education population included: mental retardation, emotionally disturbed, autism, and low-incidence. Mentally-retarded students were represented in the CFO “population” at about twice the percentage found in the general population. Emotionally-disturbed students were seen in the CFO about four times the percentage found in the general populations. Students in the CFO were about four times as likely to be

categorized as autistic and about two times as likely to be low-incident students than those in the general population. The remaining categories showed an under-representation in the CFO as compared to the Tennessee special education population. This also included the category of speech and language that was almost four times as likely to be represented in the state’s special education population as compared to the CFO. The autism and emotionally-disturbed categories showed the largest percentage of over-representation in the CFO as compared to the Tennessee special education population. The male and female categories were each represented almost equally in both the CFO and the special education population.

Table 4.6

*Comparison of CFO Percentages with Tennessee Special Education Population*

	CFO	Tennessee Special Ed. Population
Mental Retardation	15.20	6.63
Emotionally Disturbed	10.70	2.89
Other Health Impaired	10.70	10.36
Learning Disabled	17.00	36.28
Autism	18.80	4.54
Speech/Language	8.00	28.40
Low Incidence	18.80	8.02
Male	65.20	67.44
Female	28.60	32.56
Pre-Kindergarten	3.60	7.93
Elementary and Secondary	85.70	89.20

### **Findings on Research Question 3**

Research Question 3 used the data collected from the CFO to determine if there were any significant descriptors that resulted in the system being the prevailing party. A

binary logistic regression was performed with prevailing party as the dependent variable. The purpose of a logistic regression is to help in predicting the likelihood of a particular outcome (dependent variable). In the case of this study, the dependent variable is whether or not any descriptors or a combination of descriptors will result in a decision favoring the school system. A logistic regression uses a two-part process. The first part of a logistic regression generates a prediction model based on any given variables selected by the person doing the analysis. In the second part, the logistic regression tests the model it created against all the cases and generates a classification table of how many of the total cases the model successfully predicted. The analysis also reports the Nagelkerke  $r^2$ , which is the percentage of variance explained by the model. This is used as a measure of reliability or the likelihood the model will find similar results in the future.

In the logistic regression, various combinations of variables were tried, including the disability types, age and sex of the student, school size description, the issues of the cases, the filing party, and a collapsed form of the disability types (cognitive/academic, medical/psychological, multiple) to obtain the best combination of predictors. The collapsed categories were formed based on the method of identification.

Cognitive/academic disability-types are identified by means of academic testing which is typically accomplished in the school setting. The medical/psychological disability-types typically required a medical or psychological diagnosis. In the analysis for this study, the best combination of predictors was a combination of two variables that contributed to the outcome. Single v. Multiple issues contributed significantly ( $p=.01$ ) and the medical/psychological contributed somewhat but not quite significantly ( $p=.08$ ).

The Nagelkerke  $r^2$  was .126. The results of the logistic regression are found in Tables 4.7 and 4.8. As Table 4.7 shows, the total of CFO cases correctly classified by the model was 67%. This demonstrated that the model does a fairly good job of predicting the system as the prevailing party, but not as good a job of predicting the parent as prevailing party.

Table 4.7

*Classification Table Results for Logistic Regression*

	<b>Predicted Fail</b>	<b>Predicted Pass</b>	<b>Totals</b>
<b>Actual Fail</b>	<b>54 (77.1%)</b>	16 (22.9%)	70 failed
<b>Actual Pass</b>	18 (55%)	<b>15 (45%)</b>	33 passed

67% of original cases correctly classified. (Obtain this by adding 54 + 15, or the number correctly classified, divided by the total sample of 103.)

Table 4.8

*Best Combination of Predictors from Logistic Regression*

	B	S.E.	Wald	df	Sig	Exp(B)	95% confidence interval	
							Lower	Upper
Single vs. multiple	1.136	.456	6.190	1	.013	3.113	1.273	7.615
Medical/ Psychological	.797	.462	2.973	1	.085	2.220	.897	5.495
Constant	-1.880	.475	15.644	1	.000	.153		

Logistic regression findings also indicate that when multiple disabilities are present and disabilities are medical or psychological, parents are twice as likely to win the case (see Table 4.9).

Table 4.9

*Likelihood of Parents vs. System Winning CFO Cases When Certain Combinations of Disabilities are Present*

Winning Party	Medical/Psychological Disabilities		Single vs. Multiple Disabilities	
	No	Yes	Single	Multiple
<b>System</b>	34 (33%)	36 (35%)	42 (39%)	30 (28%)
<b>Parent</b>	10 (10%)	<b>23 (22%)</b>	12 (11%)	<b>24 (22%)</b>

#### **Findings on Research Question 4**

Research data to address the fourth research question were responses from interview data collected from special education directors in Tennessee. The purpose of this question was to determine if any school system practices may help to prevent cases from ending up in the litigation stage. A content analysis was performed using the data collected from interview responses. Using the sampling technique, ten potential interviewees were selected and given the opportunity to participate. The ten selected agreed to participate in the research study. The interviewees represented those that participated in the CFO and those that did not. Also represented were all four of the school system size descriptions: city, suburb, town, and rural. In addition, all of the interviewees represented one of the three regions of Tennessee: East, Middle, and West.

Each special education director was asked five questions (1) Litigation on special education matters is very costly for school districts. What do you think is the single biggest contributor to this kind of legal problem? (2) What does your district do most effectively to prevent parent concerns from getting to the litigation stage? (3) What do you feel it could do even better to prevent those problems from occurring and from going

to litigation? (4) What preparations have administrators and teachers had in working with children with disabilities in your system? (5) Do you have any recommendations to school systems that you feel might limit potential litigation for that system? As the interviews were conducted, other probing questions were added to provide additional insight to the research questions.

The responses were taken from the transcribed notes and coded as to concepts. Three major categories emerged from the content analysis of the interview responses: sources of the problems that led to litigation, prevention of parental concern and litigation, and recommendations for keeping school systems out of litigation.

**Category 1: Sources of the problems.** One category that emerged from the issues was identified as failures in meeting the needs of the students. Responses within this category showed that the implementation of the Individualized Education Plans (IEPs) and keeping up with the necessary paperwork can be a problem within school systems. One system director from the city category stated, “I think we can monitor our IEPs and implementation better ... to ensure that students and teachers are following, teachers in particular, are following the IEPs in terms of accommodations for that student.” Another system director from a city in East Tennessee stated, “I think one thing we need to improve in is making sure that our teachers, you know the paperwork end, and teachers get a little relaxed with that.” That same special education director attributed problems in that area to the fact those teachers were concentrating on working with students to make the necessary gains and to meeting the state standards, rather than focusing on paperwork. Other areas mentioned for improvement in this category included: focusing



on inclusion, providing the appropriate services, and appropriately handling behavior issues.

A lack of training and preparation in the areas of special education emerged as another theme within the category of problem sources. Several of the special education directors agreed that the lack of training and preparation for teachers and parents can lead to parental concerns and potential litigation. At the school level, it was discussed that building-level error can cause situations that allow school systems to get into trouble.

Building error can be explained as the school administrator or teachers at the school level not following the IEP, not monitoring the paperwork, or telling a parent incorrectly that something can or cannot be done. One special education director discussed a specific example that led to the system having to provide compensatory education for a student until that student reached the age of twenty-four. According to that special education director, the issue resulted in damaged relationships, as well as large litigation costs to the school system. In most cases, the building error consisted of inappropriate IEPs, a lack of monitoring of the paperwork, and providing incorrect information to the parents.

Directors also said that in some cases, teachers and administrators caused issues due to their lack of preparation. “So a lot of times, teachers get you in trouble as far as the system because they may say things that are wrong or make a parent mad, and then your school system is in a lurch because of that,” said one special education director. “A lack of training on the teachers’ part, you know, how to work with kids in the classroom and how to effectively talk to parents when parents call and they are concerned,” stated another special education director. A special education director from a town school

system stated, “I think a lot of times ... school systems get into a lot of trouble because they are not doing the right things.”

In addition to the lack of training for teachers and administrators, it was also discovered that a lack of training for the parents could also lead to potential issues. “We as school systems don’t do a very good job of training parents on how to work with their children at home,” said one special education director. It was mentioned that the laws require school systems to provide parent training, but getting the parents to come to the training proved to be a problem.

Special education directors discussed the issue of lack of communication as a cause for parental concern and potential litigation. Several of the interviewees observed that miscommunication can lead to problems between school systems and schools. One special education director mentioned that in some cases, the communication stops before it should and that emotions end up causing issues to increase. A special education director from a city category in Middle Tennessee commented about the issue of communication, saying that a lack of communication, a lack of willingness to spend time with parents on getting their side of the story, or even “listening to them vent” can result in problems for school systems.

The last category that emerged from the issues theme included conflicts with advocates and perceived parental knowledge. One of the concerns of the special education directors was the role of advocacy groups in addressing the concerns of parents. Although some of the respondents stated that the advocacy groups had been beneficial to the cause of the school system, others said that they could be a roadblock, as

well. This is supported by the statement of one special education director, “Advocacy groups are great in helping educate parents and a lot of them try to work with us but there are some groups that do not.” Several of the directors described the advocacy groups as adversarial. Directors indicated that advocacy groups often provide knowledge on parents’ rights but not school rights’ and lack training they need to offer good advice.

The special education directors also noted that parental knowledge of special education laws has increased over the years. However, some agreed that parents' knowledge is not always correct. It was mentioned that parents have a misconception of what is required by IDEA. In many cases the parents believe it is a much higher standard than what is required by law. One special education director said, “I think many times the parents think they know the rules and the laws better than us and they misinterpret those sometimes too.” The Internet was credited for providing information to parents about special education. “I think the Internet has allowed parents to gain some knowledge, it is not always accurate knowledge and so they come to the table with pieces of the puzzle and think they have the whole puzzle,” stated one special education director. Another responded on parental knowledge by saying, “they know enough to be dangerous.” One quote addressed the entire issue of advocacy and perceived parental knowledge as follows:

I think parents get a lot of information from outside sources and they think they have a right to a lot of things, and they bring that, they bring that presumption into IEP meetings and into the schools. And then, when we don’t give them what they think they have a right to, that wedge is there and they got those outside influences

telling them one thing and the school system is trying to tell them another and they think we don't want to do it because we don't want to spend the money.

**Category 2: Prevention of parental concerns and litigation.** The second category that emerged from the content analysis was identified as prevention of parental concerns and litigation. Among this category, three sub-categories emerged: communication, training and preparation, and relationships. The three sub-categories are discussed below.

Almost all of the respondents mentioned communication as the key to preventing parental concerns from going to the litigation stage. The statements differed only slightly; most agreed that by listening to the concerns of parents and maintaining open lines of communication, many of the concerns that could result in litigation could be diffused. In response to the question of what was the key to preventing litigation, one special education director stated, "I think communication, good communication between parents, teachers, principals and the law. I think it's the communication, it's what helps more than anything." Another director mentioned, "... making sure the parent knows you are concerned and you are willing to meet." Several of the directors mentioned the need for honesty along with communication. "I've found that if people will sit down and talk with one another and be open and honest about, on the parents' side, what exactly they want for their child, and on the school side, what we have to offer," said a special education director. "The big thing is what I said initially, just sit down and communicate," stated another special education director. Other special education directors mentioned the need for communication, but also the need of keeping the child's needs first; providing the

appropriate services for the student. One director said, “The biggest thing is just keep open lines of communication, stay on top of what you are doing, and always keep the child’s interest first.” Another director’s statement seemed to sum up the concern of communication:

We try to keep the lines of communication open with our parents. We listen to our parents’ concerns, we don’t have all of the solutions but we do try to come up with, not necessarily a compromise but we listen to them, we try to understand the needs of the child and provide the most appropriate program for that child.

Relationships were also attributed to success in keeping parental concerns from going to the litigation stage. Those relationships mentioned included relationships with the parents, as well as relationships with the central office administrators. Building a strong relationship with a parent can include communication with the parent, being open and honest, explaining the difficult concepts, and treating the parent as a member of the team. None of the special education directors stated which specific relationship or strategy was more important, but they did consistently state that relationships were important. On the parent side, one special education director said, “We try extremely hard to work with the parents and explain to them why we are making decisions and make sure there are options on the table at our meetings, not just come to our meetings and say this is the way it’s going to be.” Another special education director stated, “...we talk about how we are meeting their child’s needs, how we are meeting the goals of the IEP.” Making sure the parents feel that they are part of the team was stated as important by

several of the directors. One special education director commented on relationships with parents,

We buy into the philosophy that if you end up in a due process hearing and it becomes an adversarial proceeding, that's not good for either of them. Ultimately, this kid's going to be with you for awhile. It's not a feel good thing for the parents, and it's not a feel good thing for us.

Also discussed were the relationships with the central office administration. Several of the special education directors mentioned the importance of having the support of their director of schools. The relationships of central office administrators with the educational professionals and parents refer to the support that is provided for not only the special education director and teachers but also the parents. One special education director mentioned that the director of schools should be a strong supporter of special education and should instill that support among the system. Another stated, "I have had a really supportive superintendent in my tenure as supervisor, and that has made a huge difference sitting in my seat." "Our central office here is this system provides a huge amount of support to our teachers, especially in special education," said one special education director in regard to relationships.

### **Category 3: Recommendations for keeping school systems out of litigation.**

One of the interview questions specifically asked about recommendations for keeping school systems out of litigation. Of all the responses, the most represented was keeping the lines of communication open. "If you provide a good service, you have good communication with your parents, and you provide time to meet with parents and listen

to parents on every level... and you really try to meet the needs of children,” stated one special education director. Others also commented on keeping the open lines of communication, listening, being proactive, and meeting the needs of the children. “Try to put yourself in the parents’ shoes,” commented one special education director. A director of special education commented, “And I think in our cases, in situations where we have been wrong, where there is something we could have done better, or differently, we do it.”

Also mentioned as important for prevention of litigation was keeping up with the regulations through consultation from legal services and appropriate training and preparation of those working with children with disabilities. Several directors mentioned more than once that calling legal services should be one of the first options for the director of special education when an issue arises and an answer is not known. One special education director stated, “I think school systems need to be conscious of, at least I try to be conscious of, what you take to a hearing and what precedent you are setting.” Keeping up with IEPs and paperwork, and knowing the proper procedures and policies were also mentioned as important recommendations for preventing litigation.

**Additional findings from interviews.** In order to gather more information from the interviews, additional questions were added based on CFO data analysis results. It was explained to the interviewees about the disproportionate disability types represented in the CFO: mental-retardation, emotionally-disturbed, and autism. The special education directors were asked to provide their insight as to why they thought those three disability types were over-represented in the CFO.

Several of the directors stated that two of the disability types, emotionally-disturbed and autism, were fairly new and less-understood than the other disability types.

One special education director stated,

If you have a learning-disabled child or a child with attention-deficit hyperactivity disorder (ADHD), in most times, that's not difficult. We can put programs into place, we can get services. But when you get a child that is mentally-retarded, autistic, or emotionally-disturbed, the resources are few and far between.

Basically, directors felt that those with learning disabilities are easier served than those with mental-retardation, emotionally-disturbed, or autism labels. One director mentioned, "With emotional-disturbance, there's so much dispute or confusion, in terms of eligibility because it's such a thin line between the behavior disorders and the emotional disorders." In discussing students with autism, a special education director stated, "The parents are so demanding...they feel there is a cure and want every service possible and imaginable to try and work towards that cure." Another director said, "It's the fact that it's supposedly curable, most parents are probably doing just what I would be; anything humanly possible to work towards getting a cure." Although it is not the school system's role to find a cure for autism, parents and advocacy groups will support the idea that the specific practices that school systems use, are believed to be contributors towards that goal. One special education director commented on the broad classification of autism, "I think it's because autism is so broad." "You've got the autism spectrum disorder, then you have about three labels within that spectrum, then you've got the people anywhere in between those," stated the same director. One special education



director commented, “Overall, we’ve just seen an increase with the children who are being diagnosed as autistic within our district and probably throughout the state, and the nation as well.” “There is a steady increase in the number of students with autism and they have a very strong advocacy group to help support them,” commented another special education director.

The special education directors commented on the emotionally-disturbed disability type as well. One director commented, "For emotionally-disturbed in our system ...so many school systems are not equipped to deal with these students. They don't have the appropriate programs and they struggle in that area and a lot of parents ask for private placement." Another director stated, “We are having to deal with the social and mental health side of that and a lot of our teachers aren't truly trained to handle them.” Several of the directors commented that with emotionally-disturbed students, it's tough because they are dealing with not only the behavior side but also the academic side.

The special education directors did not have as much to say about mental-retardation but did provide comments supporting the CFO and special education population comparisons. One director commented, “With mental retardation, it's such a dreaded, I mean, you know when you sit down with a parent and you have to label their child MR, it just slams them right in the face.” Another director commented, “The mental-retardation side is that way because of that lower functioning side and not being able to make the progress that parents feel they should be making at the age-appropriate rate.” Several of the directors commented that there is simply a lot of confusion with mental retardation, emotionally-disturbed, and autism.

## **Summary of Findings**

The analysis of the CFO data showed the percentages of descriptors found in the cases, including: sex of the student, disability type of the student, age of students, the filing party, the prevailing party, issues pertaining to filing, and the school system size description. The comparison of percentages showed three disability types as being disproportionately represented in the CFO as compared to the special education population of Tennessee. Although there is very little research that supports that data, interview responses from special education directors in Tennessee provided insight as to why that might occur.

A binary logistic regression was administered to the CFO data to determine if any of the combinations of variables produced an outcome in favor of the school system. Although the formula did not explain enough of the variance to reliably predict future outcomes, it did produce two variables that contributed to the outcome: single vs. multiple disabilities (significantly) and the medical/psychological categories (somewhat but not significantly).

The interviews of the special education directors of Tennessee provided insight as to the problems that occur in special education in Tennessee. In addition, the directors provided comments on best practices that might prevent future litigation, as well as recommendations for school systems to limit parental concerns that could result in litigation. Three major category themes emerged from the interview responses: sources of the problems that led to litigation, prevention of parental concern and litigation, and recommendations for keeping school systems out of litigation. In addition to the three

categories, the directors elaborated on key issues that they encountered their role as special education director. In addition, those who participated in due process final orders provided insight into what that experience was like. The overall feeling of the special education directors was that special education issues are not going away. Special education is complex and ever-changing, therefore it is important that they, along with teachers and administrators, keep up with the current trends.

## **Chapter 5: Discussion**

### **Introduction to the Discussion**

**Review of the purpose of the study.** The research in the area of due process cases in special education is limited and usually focuses on specific regulations and case law. This study delved into the regulations and case law of special education in the United States and Tennessee, but also provided a quantitative sample of characteristics of special education due process cases and the special education population in Tennessee. The study also provided qualitative information on practices that may aid school systems in staying out of litigation. Although there is no way of completely eliminating school systems' participation in litigation, it was the hope of the researcher that the information gleaned from this study would provide a valuable means of keeping problems manageable. The purposes of this study were to determine if there were any specific characteristics that seem to be disproportionately represented in special education due process cases that have gone to final orders and to identify information and school system practices that may help in reducing or preventing a school system's likelihood of facing potential litigation in special education.

**Review of research questions and methods.** This chapter discusses the interpretation of the findings, the implications of findings for practice, and implications for future research. The information provided in this chapter is based on the four research questions addressed in Chapter 1. In this section, the research questions were stated along with the methodology used in the study. The research questions were as follows: What percentage of the total collection of final orders (CFO) cases fall into each descriptor of

the following categories: sex of the students, disability type of the students, school system size description, age of the students, prevailing party, filing party, and issues of the cases? (2) Are there noticeable differences between the CFO and the population at-large in any descriptor category in terms of percentages of cases? (3) Are there any descriptor variables or combinations of variables that predict an outcome in favor of the system in CFO cases? (4) Based on a content analysis of responses from special education directors, what are common themes of district level practices that have been put into place to prevent cases from going to due process?

A mixed-methods approach was used to answer the four research questions. In the first research question, specific descriptors from the collection of final orders (CFO) from the Tennessee Department of Education website were collected and analyzed by calculating and comparing frequencies. Each case found in the CFO was examined to determine specific descriptors including: sex of the students, disability type of the students, age of students, the filing party, the prevailing party, issues pertaining to filing, and the school system size description. The data collected were analyzed using SPSS software and descriptive statistics were used to determine the percentages of the descriptors found in the CFO.

The second research question also used the data collected from the CFO. Percentages of the total Tennessee special education population found on the Tennessee Department of Education website were obtained and compared with CFO percentages. The two data sets were placed in a spreadsheet file and percentages were examined to determine if any of the descriptor categories were disproportionately represented in the

CFO as compared with the Tennessee special education population. The descriptor categories compared included the disability types of the students, sex of the students, and the grade level of the students.

The third research question used the data collected from the CFO to determine if there were any significant descriptors that resulted in the system being the prevailing party. A binary logistic regression was performed with prevailing party as the dependent variable. In the logistic regression, various combinations of variables were tried in an attempt to see if any predicted the outcome, including the disability types, age and sex of the student, school size description, the issues of the cases, the filing party, and a collapsed form of the disability types (cognitive/academic, medical/psychological, multiple). The logistic regression was run several times in order to determine the best combination of predictors.

The fourth research question used responses from interview data collected from special education directors in Tennessee. The purpose of this question was to determine what, if any, school system practices may help to prevent cases from ending up in the litigation stage. A content analysis was performed using the data collected from the interview responses. The responses were taken from the transcribed notes and coded according to concepts. Concepts were placed onto index cards for convenience. Three major categories emerged from the content analysis of the interview responses: sources of the problems that led to litigation, prevention of parental concern and litigation, and recommendations for keeping school systems out of litigation.

**Review of findings.** After the quantitative and qualitative data were analyzed, the findings were reported in Chapter 4. The results of the frequencies test on the CFO showed percentages in the descriptor categories. The categories included in the frequency included: sex of the students, disability type of the students, age of students, the filing party, the prevailing party, issues pertaining to filing, and the school system size description. The frequencies from the CFO were compared with those from the special education population to answer Research Question 2.

In Research Question 2, the percentages of the descriptors from the CFO and Tennessee's current special education population were compared to see if any of the descriptors were disproportionately represented in either group. It was discovered that three disability types were found to be disproportionately represented in the CFO, including: mental-retardation, emotionally-disturbed, and autism. The percentages of mental-retardation were two times as likely to be represented in the CFO as compared to the special education population. The percentages of emotionally-disturbed were three times as likely to be represented in the CFO as compared to the special education population. The percentages of autism were four times as likely to be represented in the CFO as compared to the special education population.

In Research Question 3, the CFO descriptors were used in a binary logistic regression to determine if any combination of predictors resulted as the system as the prevailing party. In the analysis for this study, the best combination of predictors was a combination of two variables that contributed to the outcome. Single v. multiple issues contributed significantly ( $p=.01$ ) and the medical/psychological contributed somewhat

but not quite significantly ( $p=.08$ ). The Nagelkerke  $r^2$  was .126, indicating, that the variance explained by the variables was around 13%. Based on the Nagelkerke  $r^2$ , the amount of variance explained by the model is low, which limits its usefulness as a predictor model.

Research Question 4 used the responses from interviews of special education directors in Tennessee. Each special education director was asked five questions. Those questions are as follows: (1) Litigation on special education matters is very costly for school districts. What do you think is the single biggest contributor to this kind of legal problem? (2) What does your district do most effectively to prevent parent concerns from getting to the litigation stage? (3) What do you feel it could do even better to prevent those problems from occurring and from going to litigation? (4) What preparations have administrators and teachers had in working with children with disabilities in your system? (5) Do you have any recommendations to school systems that you feel might limit potential litigation for that system? As the interviews were conducted, other probing questions were added to provide additional insight to the research questions. A content analysis was performed on the responses. Three major categories emerged from the content analysis of the interview responses: sources of the problems that led to litigation, prevention of parental concern and litigation, and recommendations for keeping school systems out of litigation.

### **Interpretations of Findings**

**Disability areas.** In the comparison of percentages in the collection of final orders (CFO) and the special education population of Tennessee, three disability types



emerged as having a disproportionately larger representation in the CFO as compared to the special education population. The disability types included in this representation included: mental-retardation, emotionally-disturbed, and autism. Although no predictions can be made in reference to these three disability types, it would help explain to a school system to be aware that these disabilities have a higher representation in the CFO than they do in the special education population as a whole. The interviews with special education directors shed some light as to why this disproportionate representation may occur. Several of the directors felt that the emotionally-disturbed and autism disability types were broad disabilities with very little information on what causes them or how to work appropriately with those students. Especially with autism, advocacy groups provided sometimes confusing information that gave parents false hope as to finding a cure or an appropriate program for that student. The same applies for the category of students who are termed emotionally-disturbed. One special education director mentioned that help for students with an emotionally-disturbed label is very limited. As for the students with mental retardation, parents do not see as much progress as they might with students who fit into another disability category, such as learning-disabled or speech/language deficits. Directors suggested that this perceived lack of progress might trigger disagreements during the process of developing the IEP, eventually leading to a due process challenge.

It was also noted that the population of students in the three over-represented categories is increasing each year, especially with students with autism. “The decades of the 1980s and 1990s have given rise to a large body of due process decisions and case

law related to provision of special education and related services to young children with autism spectrum disorder” (Mandlawitz, 2002, p. 495). This can most likely be contributed to autism being a fairly new diagnosis and the complexities and unknowns related to the disability. Several of the interview responses supported the idea that the incidence of autism is growing. One of the directors stated that autism is fairly new when compared to the history of special education. Another commented that autism has become nationally-known because of the unknown nature of the disability itself. One special education director said, “I was going to say if you were going to ask me, what is the biggest drive of cases, it is autism ... I think it’s because it is a new classification and it’s because it is so broad.” Another special education director supported the previous statements by saying, “Overall, we’ve just seen an increase with the children who are being diagnosed as autistic within our district and probably through the state, and probably the nation as well.”

**Interpreting logistic regression findings.** The binary logistic regression that was run to attempt to find combinations of variables that could predict under which circumstances the school system or the parent would prevail did not indicate that any combinations could reliably predict an outcome in favor of either party. Overall, the system is more likely to win these cases (72%). However, when there are multiple disability issues involved in a case and the child has a medical/psychological disability, results indicate that the parents are twice as likely to win the case. When the two variables mentioned above are present, the odds of winning the case shifted somewhat in favor of the parents.

A more accurate and useful model may be created by comparing the entire collection of due process complaints in Tennessee, not just those that gained final order status, and attempting to predict which variables or combinations of variables lead to the complaints. However, the access to the total number of due process complaints is not as readily available. The CFO data were used for this analysis simply because of the availability due to state and federal laws requiring the final orders to be posted publicly.

It seems likely, however, that once cases are in litigation, predicting the outcome of a case would be difficult with any data set due to variations in how cases are handled. In any court case, a judge determines the final outcome. Although that outcome is usually based on law, decisions can be subjective and dependent on the background of the judge. Administrative law judges in Tennessee also bring subjectivity and various levels of background knowledge to the hearing. Each region has administrative law judges who hear these cases on a rotating basis. In order to predict the outcomes of these cases, one would have to be able to analyze reasoning of the judges who preside. Although we would like to believe that the law is the solid foundation for a judge's decision, it is important to know that the subjective nature of the judge could affect the outcome of the case. The results of the study suggest that the ability to predict which cases may end up in a due process hearing and what the outcome may be are complex issues that should be further addressed in future research.

**Interpreting results of interviews.** The interviews with the special education directors helped explain what causes the problems that lead to special education due process cases. The directors consistently stated that a lack of communication, a lack of

training and preparation that leads to error at the building level, as well as lack of support for the parent as a part of the team are all conditions that can ultimately result in litigation.

Overall, the special education directors seem to be extremely concerned about the complexity of special education and the issues that may arise due to these complexities. The directors seem to have some ideas on what they can do and what they can try, but they seem to feel that some aspects of special education are beyond their control. The literature supported statements by directors that communication is a key to preventing legal problems. Several resources discussed the issue of communication and its impact on relationships between parents and educational personnel.

### **Implications of Study Findings for Policy and Practice**

**Implications of logistic regression findings.** The logistic regression was not able to predict reliably the outcome in favor of the school district. As mentioned above, the outcomes of court cases are generally difficult to predict. The model generated by the logistic regression only explained about 13% of the variance between the two groups (parents prevailing and system prevailing) and, therefore, has a relatively low prediction ability. However, this is still an indication that the more complicated the due process case, the more likely parents are to prevail. Therefore, school districts can keep this in mind and be aware that they should work even harder in these situations to communicate well with the parents, continue to build the relationships with the parents, and take the necessary steps to prevent these cases from going to court.

**The importance of communication.** Communication between parents and educational professionals has been repeatedly mentioned as an important process when working with children with disabilities. The interviews with special education directors produced a large number of responses that pointed toward the issue of communication with parents. Some of the directors commented that communication was a strength in their system, but most would also agree that it is something upon which all systems could improve on. In Applequist (2009), parents viewed successful interactions with professionals as those that were characterized by open communication. Trussell, Hammond, and Ingall (2008) stated, "... professionals can empower parents by using appropriate communication skills, language levels, encouragement, and concrete program suggestions for the child and the family" (p. 21). Applequist (2009) also mentioned, "Alternately, when communication from professionals was limited or in some cases, judgmental, parents felt they were not true parties in the process" (p. 14). Stoner, Bock, Thompson, Angell, Heyl, and Crowley (2005) stated, "... evidence suggests that the arena of interaction between parents and educational professionals is often fragmented and poorly integrated" (p. 39). This study supports the belief that if communication plays such an integral role in the special education process, school systems must put into place better methods of emphasizing and improving communication. The training of not only educational professionals, but also parents emerged as a priority in both the literature and the interviews of the special education directors.

**The importance of training.** With regard to principals and special education supervisors, the literature stated that in most cases, their training is inadequate in working

with disabled students. In a study that regarded the preparation of new principals, the results showed that new principals felt that the preparation in special programs and students services was important to them, but they were not emphasized in their preparation (Petzko, 2008). Wakeman, Browder, Flowers, and Ahlgrim-Delzell (2006) stated, “To be considered competent, principals should have fundamental knowledge of special education as well as knowledge of current issues in special education” (p. 154). Angelle and Bilton (2009) also stated, “Thus, it is imperative that special education supervisors are provided with professional development opportunities so that knowledge will be current, accurate, and shared” (p. 8). The key emphasis of that statement in support of this implication is shared. The supervisors and principals must not only be knowledgeable but also share that information with important stakeholders. The directors felt that professional development through in-service, workshops, and disability-specific information sessions was important in the prevention of parental complaints. This training should include methods of building communication skills, building collaborative relationships with parents, and focusing on those disability types that seem to be on the rise. It may be necessary for state departments of education to research and build professional development activities that focus on best practices for children with disabilities and their families. These trainings should focus on training regular education teachers, as well as special education teachers, administrators, and parents.

**The importance of relationships with parents.** The current culture of collaboration between parents and educators is less positive than desired, according to the responses from the directors of special education. This corroborates what is reported in

the literature. Based on what was discovered in the literature, parents feel that they are not part of the decision-making process. In many cases they feel alienated and not-valued. Applequist (2009) stated, “Upon entry into services, families described feelings of isolation, inadequacy, and hunger for information and guidance” (p. 13). As mentioned before, many of these feelings are most likely generated by a lack of communication. The lack of communication plays a role in the relationships between parents and educational professionals. If parents feel that they cannot trust the school system, future attempts to provide the appropriate services may be met with opposition and can lead to parents taking the next step: litigation. Stoner et al. (2005) stated, “Once reduction in trust occurred between the parents and the educational professionals, parents became increasingly watchful and diligent in their efforts to ensure that their children received all services they deemed necessary to meet the needs of their child” (p. 47). When the relationships between the parents and school systems become adversarial, many parents seek the help of advocacy groups to further their cause. According to several responses from the special education directors, advocacy groups are beneficial to both the school and parents. However, many have had experiences where the meetings involving parents and advocacy groups have become adversarial. This is almost always due to an already-deteriorated relationship between the parents and the school system. School systems need to make a conscious effort to build and maintain strong relationships with the parents, to make them feel like they are part of the team, and to allow the parents to learn while the process continues.

**Disability areas.** With the exception of autism, the literature does not specifically support the increasing numbers in disability-types such as mental-retardation and emotionally-disturbed. The interviews with the special education directors did show that this increase seems likely. Several commented that both emotionally-disturbed and autism disability types seem to be on the rise. The data from the comparisons of the CFO with the current Tennessee special education population also showed that the three disability types mentioned above were more likely to be represented in these cases. The question inevitably arises: Is this because of the rise in identification of these disability types? The responses from the interviews would indicate that it may be more of the consequence of an issue of ambiguous information and lack of support in those areas, especially with emotionally-disturbed and autism. Several of the resources from the literature review mentioned specifically the issues that are associated with autism. Most often the issues mentioned were not about the increasing numbers but the need to be adequately trained in working with students with autism. Mandlawitz (2002) emphasizes the importance of all professionals, including educators and local policymakers, to become more knowledgeable and sensitive about the educational and emotional supports critical to children with autism and their families.

**Perspectives of the school administrator.** The information provided in this research study can be valuable to school systems. To a system administrator, the researcher perceives that the results of the research can be beneficial in preparing plans, procedures, and policy for the specific school or the system as a whole. The director of schools and other system administrators will base the policy decision-making on what is



best for the system. The findings from this study could provide a basis for policy reform for the system. At the school level, it is important for the principal to work with the special education director to develop policies that encompass the implications mentioned in this study: open-lines of communication, training of staff, and relationships with parents. It is also necessary for the principal to know the specific disability-types that may be on the rise to help guide that school-wide policy. In addition, the knowledgeable principal can contribute valuable information to the system administrative team when planning future policy and training in special education.

Based on findings from this study, the researcher believes many of the problems that occur in special education arise because of lack of preparation and knowledge of the school systems. IEP teams, schools, and school-systems cannot make decisions without having knowledge of the regulations, policies, and procedures. In addition, if the IEP team, school, or school-system is not effective in building relationships with parents, making the parents part of the process and keeping the lines of communication open, issues will occur. There are cases in which the school-system has no choice and cannot avoid due-process, but if the system has spent time in the areas mentioned above, the issues may not be as frequent.

Preventing issues in special education comes down to one practice: adequately preparing those involved on how to work productively with children, parents, and advocacy groups. Special education directors, principals, and special education teachers are not the only ones who need the training. Regular education teachers are involved in the education process of children with disabilities, and they are typically the first line of

communication with the parents. They are also involved in developing and implementing the IEP for the students as well as participating in all meetings involving the students. It is necessary for the regular education teachers to be informed of current issues, procedures and policies, and practices regarding special education. The emphasis on preparation will not prevent all special education issues from going to due process, but the frequency will likely decrease.

### **Implications for Future Research**

Based on the research findings reported from this study, it is believed that more information on special education due process cases is needed in order to draw more broad-based conclusions. Although the data derived from the CFO could be beneficial for school systems to have, it would be even more helpful to have a broader base of data predicting which cases are more likely to lead to litigation. Future research studies that use comprehensive data on special education complaints within a state could lead to useful findings on how and what issues lead to the due process complaint stage. Future studies would be most helpful if they included a more complete sample of contested cases, instead of focusing only on those that made it to the final-orders stage. Also, further research involving a more complete set of due process case data could help confirm or refute the results of the logistic regression from this study.

It also seems evident that future research on best practices in dealing with children with disabilities is necessary. Literature on specific disabilities such as autism and emotionally-disturbed is on the rise. Comments about autism and emotionally-disturbed disability-types were mentioned consistently in the interviews with special education

directors, and their importance was also indicated by their over-representation in the CFO. Findings from interview responses showed that knowing and implementing best practices for addressing the needs of children with disabilities are an increasing concern of school systems.

Additional interviews with other stakeholders involved in working with children with disabilities would be beneficial. This research study interviewed special education directors in Tennessee because of their direct involvement in the policies and procedures of working with children with disabilities. Other stakeholders, such as special education teachers, regular education teachers, directors of schools, and even parents could provide valuable information that could add to our knowledge in the field of special education. Future research studies should focus on interviews that involve one or all of those additional groups.

### **Summary of Discussion**

It was the intent of this research study to find predictive data that showed the likelihood of school systems prevailing in due process cases. Through the logistic regression, two predictors were identified as having significance in predicting the outcomes of due process cases: medical/psychological disabilities and multiple disability types. However, due to the low explained variance of the two predictors, this logistic regression model is not the ideal predictor model for future cases. However, the qualitative portion of the study proved to be of great value. First-hand accounts of what is going on in the special education field were a reliable source of preventative information for all school systems. The responses of the special education directors clearly showed

specific areas of concern and viable methods of prevention. Who better to respond to special education issues than those that are dealing with those issues on a day-to-day basis?

As long as parents are concerned about their children with special needs, there will probably be no way of completely preventing litigation in special education. In reality, it is not what a school system does or does not do at the final litigation stage; it is what they do prior to getting to that point that is important. As mentioned by some of the special education directors who were interviewed, sometimes no matter what a school system does, it is going to face litigation. However, they can work to decrease the numbers of these cases. To do that, findings from this study indicate that school systems need to focus on keeping lines of communication open, building collaborative relationships, and assuring that parents are part of the process. School systems should also pay close attention to data collected regarding special education and encourage future research on this topic. It is important for everyone to know that parents, advocates, and educational professionals are all in this together for a common goal: a high quality education that is designed to meet the individual needs of every student.

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## Vita

Michael Shuran lives in Tullahoma, Tennessee, with his wife Wendy and their two children. He graduated from Tennessee Technological University with a Bachelor of Science in Secondary Education with an emphasis in history. In 2002, he received a Master's Degree in Educational Leadership from Tennessee Technological University.

Mr. Shuran has spent his professional career at various levels of education. His first teaching job was in history at Tullahoma High School, where he received a Rotary International Award for excellence in character, caring, competence, cooperation, commitment, and service above self. In addition to teaching U.S. and World History, Mr. Shuran coached basketball at the varsity level. Since that time, he has held positions as assistant principal of two middle schools, principal of an elementary school, and the PreK supervisor for the school system. Mr. Shuran has continued his interest in leadership studies by attending the Beginning Assistant Principals Academy, as well as the Beginning Principals Academy. Recently, Mr. Shuran was accepted into a cohort of twelve members from the state of Tennessee to participate in the Prospective Superintendents Academy. This academy selects members based on recommendations by school leaders as to the potential for becoming a superintendent in Tennessee. The intensive, year-long program prepares school leaders for their future career as a school superintendent.

Mr. Shuran is well-known in his community as one who cares about the children of Tullahoma. He is a finalist in the "Tullahoma's Finest" campaign as a school principal. Whenever possible, he takes the time to speak with future educators at Motlow State

Community College on what it takes to make it in those difficult first years. As for future plans, Mr. Shuran will continue to grow as a school leader, ultimately moving into a career as a district-level administrator. He also has plans to teach at the local universities as an adjunct professor. He is currently principal of the Jack T. Farrar Elementary School.